COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-177– DA22/0515
PROPOSAL	Demolition of the existing structures on the site, construction of two (2) an eleven (11) storey residential apartment buildings comprising 110 residential units, basement and ground level parking, swimming pool, provision of services, landscaping and lot consolidation
ADDRESS	Lots 8, 9, 10 & 11 DP 224382 and Lot 24 DP 776673 13-19 Enid Street, Tweed Heads
APPLICANT	Zone Planning Group Pty Ltd
OWNER	Pinnacle Properties (Aust) Pty Ltd
DA LODGEMENT DATE	4 August 2022
APPLICATION TYPE	Development Application - Integrated and staged
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* declares the proposal regionally significant development as it proposes a development with a CIV of more than $30 million. The application is also regionally significant development pursuant to Cause 3 of Schedule 6 in that the Council is the owner of some of the land on which the development is to be carried out (Lot 24 – sewer relocation) and has a CIV of more than $5 million.
CIV	$60,450,121.87 (excluding GST)
CLAUSE 4.6 REQUESTS	No variations to development standards requested
KEY SEPP/LEP	• *Water Management Act 2000* • *State Environmental Planning Policy (Biodiversity and Conservation) 2021* • *State Environmental Planning Policy (Planning Systems) 2021* • *State Environmental Planning Policy (Resilience and Hazards) 2021* • *State Environmental Planning Policy (Transport and Infrastructure) 2021* • *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* • *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* • *Tweed City Centre Local Environmental Plan 2012;*

	• *Tweed Development Control Plan 2008:*
	  ○ *Section A1 – Residential and Tourist Code (Part C - Residential Flat Buildings and Shop-Top Housing)*
	  ○ *Section A2 – Site Access and Parking Code*
	  ○ *Section A15 – Waste Management*
	  ○ *Section B2 – Tweed City Centre*
	• *Tweed Coast Comprehensive Koala Plan of Management*

TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	12 submissions, with the following issues raised: • Construction impacts • Increase in traffic generation and lack of car parking • Impacts to visual and acoustic privacy, view loss, natural ventilation and solar access • Loss of street character, overdevelopment and excessive height • Overshadowing of the adjoining Jack Chard Park and potential impact to trees in the park • Lack of setback to the adjoining northern building • Flooding impacts on the site • Loss of low cost accommodation • Driveway sight distance and safety of pedestrians • Overshadowing of proposed communal open space • Financial position of the developer • Potential impacts from wind tunnelling • Potential for increase in anti-social behavior • Potential impacts to the structural integrity of existing infrastructure
DOCUMENTS SUBMITTED FOR CONSIDERATION	• Statement of Environmental Effects • Architectural Design Plans • Engineering plans • Landscape plans • Demolition plan • Services Report • Traffic Impact Assessment • Engineering services report • Design Verification Statement and Architectural Design Report • Solar Access Diagrams and Report • Geotechnical Report, Acid Sulphate Soils Report and Dewatering Plan • Preliminary Site Investigation • Waste Management Plan • Acoustic Report • BASIX Certification and report • Staging Plan • Stormwater Management Report • Crime Prevention Through Environmental Design Report • Quantity Surveyor Report • Dial before you dig • Survey

SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Nil
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	28 June 2023
PLAN VERSION	Revision 2, 17June 2022
PREPARED BY	Kim Johnston
DATE OF REPORT	15 June 2023

EXECUTIVE SUMMARY

The development application (DA22/0515) seeks consent for the demolition of existing buildings, construction of two (2) residential flat buildings comprising a North Tower (61 apartments) and a South Tower (49 apartments) over eleven (11) levels to an overall height of 35 metres (RL 40.250) with a common basement level and provision of 192 car spaces. Lot consolidation, earthworks and construction dewatering, landscaping and services are also proposed ('the proposal'). The proposal has a total gross floor area ('GFA') of 14,332m², with an FSR of 3.95:1 complying with the development standard.

The application is referred to the Northern Regional Planning Panel ('the Panel') as the development is '*regionally significant development'*, pursuant to Section 2.19(1) and Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development with a CIV over $30 million. It is also noted that the application is currently on appeal to the NSW land and Environment Court under a deemed refusal.

The subject site is known as No 13, 15-17 and 19 Enid Street, Tweed Heads ('the site') and is located on the western side of Enid Street, along the western edge of the Tweed Heads local centre. The site has a total site area of 3,629.5m² and there are a number of existing buildings on the site which are in a dilapidated state with temporary fencing surrounding the site.

The site is affected by the flood planning level and acid sulphate soils, and is not bushfire prone and is not indicated as known or predictive for Aboriginal Cultural Heritage. The site is relatively flat with a slight fall of less than 1 metre to the south-eastern corner of the site along Enid Street. The site does not contain any trees or other vegetation, with the site largely covered in impervious surfaces including concrete and existing buildings.

The surrounding land uses are a mix of residential and commercial development given the site's proximity to the town centre. Adjoining development to the north comprises a multi storey building known as the *Bay Grand Apartments*, and residential flat development addressing Thompson Street to the west. Jack Chard Park adjoins the site to the south comprising an area of open space. Development on the opposite side of Enid Street is low to medium density residential development.

The application was placed on public exhibition from 31 August 2022 until 28 September 2022, with twelve (12) submissions being received. These submissions which raised issues relating

to construction impacts, increase in traffic generation and lack of car parking, impacts to visual and acoustic privacy, view loss, natural ventilation and solar access, loss of street character, overdevelopment and excessive height and overshadowing of the adjoining Jack Chard Park and potential impact to trees in the park. All of the issues raised are considered further in this report.

There were no concurrence requirements from agencies for the proposal, however, the application is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') as an approval pursuant to Section 90 of the *Water Management Act 2000* for construction dewatering is required. General terms of approval ('GTAs') have been provided from Water NSW. A referral to Essential Energy pursuant to State Environmental Planning Policy (Transport and Infrastructure) 2021 was sent with concerns being raised over safety risks.

The site is located in the R3 Medium Density Residential zone pursuant to Clause 2.2 of the *Tweed City Centre Local Environmental Plan 2012* ('TCCLEP 2012'), where *residential flat buildings* are permissible with consent. The principle planning controls relevant to the proposal include *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* ('SEPP 65'), the TCCLEP 2012, and the *Tweed Development Control Plan 2008* ('TDCP 2008').

The proposal is inconsistent with various provisions of the planning controls including:

- Design quality principles of SEPP 65 including Principle 2: Built form and scale, Principle 5: Landscape, Principle 6: Amenity, Principle 7: Safety and Principle 8: Housing diversity and social interaction;
- Provisions of the Apartment Design Guide ('ADG') including
  - **Part 3B: Orientation** in that the significant overshadowing of the park adjoining the site to the south has not been minimised and is unsatisfactory.
  - **Part 3C: Public Domain Interface** in that there is no direct street entry to the building or to any of the proposed units with the street façade comprising a high stone wall, which is a solid interface with the public domain. There are minimal opportunities for casual surveillance of the street and the proposal does not address the street.
  - **Part 3D: Communal Open Space** in that the proposed areas are unsatisfactory as they also include circulation areas, building entrances, raised planter boxes and clothes drying areas which are not usable communal open space. These areas are also overshadowed for the majority of the day in midwinter and are not consolidated or well designed for a variety of uses unable to be undertaken.
  - **Part 3E: Deep Soil Zones** in that the site is larger than 1,500m² and therefore 15% of the site area should be provided as deep soil zone as outlined in the design guidance, which is not provided.
  - **Part 3F: Visual Privacy** in that the proposal does not comply with the separation distances and the proposed towers are orientated towards each other and to adjoining development with balconies and habitable room windows directly overlooking each other.
  - **Part 3G: Pedestrian access and entries** in that the entry areas are deeply recessed into the frontage which results in them being visually and physically separated from the street and being accessed by a convoluted series of pathways which adjoin blank walls of the ground level car parking and service areas. There is a poor relationship between the entry areas and the street.
  - **Part 3J: Bicycle and car parking** in that the car park design and access is not considered to be safe and secure as the lift lobbies in the basement are difficult to access and are obstructed by bike storage areas, stairs and car parking spaces.

The visual and environmental impacts of underground car parking are not minimised as the proposed ground level car parking results in 4 metre high blank stone walls to the street and park.
  - **Part 4A: Solar and daylight access** in that it appears that the solar access analysis has not taken into account the overshadowing impacts from the Bay Grand development to the north.
  - **Part 4D: Apartment size and layout** in that internal habitable rooms without windows are proposed and some apartments do not achieve the design guidance for distance to windows.
  - **Part 4E: Private Open Space and balconies** in that glass balustrades are proposed which will result in no privacy from the street or communal areas.
  - **Part 4H: Acoustic Privacy** in that there are several apartments located in close proximity to noise sources such as circulation and communal areas.
  - **Part 4W: Waste Management** in that the proposed waste management and collection arrangements are unsatisfactory and the proposed waste rooms are not conveniently located.
- Sections A2, A15 and B2 of the TDCP 2008, including significant building form and setback controls including upper setbacks, front building setback and building depth.

The key issues associated with the proposal included:

1. Public Domain Interface and Pedestrian Amenity
2. Building Separation
3. Building Form and Setbacks
4. Communal Open Space
5. Apartment Design and Layout and Potential Impact on Visual and Acoustic Privacy
6. Overshadowing and Solar Access
7. Car Parking
8. Waste Management
9. View Loss
10. Deep Soil Zones and Site Coverage
11. Contamination
12. Services
13. Lack of Information

Arising from a thorough consideration of the key issues, the following jurisdictional prerequisites to the grant of consent imposed by the following controls have not been satisfied by the proposal and therefore consent cannot be granted, including:

- Section 4.6(1) of *State Environmental Planning Policy (Resilience and Hazards) 2021* for consideration of whether the land is contaminated;
- Clause 30(2) of SEPP 65 where it has not been demonstrated that adequate regard has been given to the design quality principles, and the objectives specified in the Apartment Design Guide for the relevant design criteria; and
- Clause 6.10(2) of the TCCLEP 2012 unless the consent authority considers that the development exhibits design excellence.

Following assessment of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, in particular SEPP 65, the ADG, TCCLEP 2012 and TDCP 2008, it is considered that the proposal cannot be supported. The jurisdictional preconditions are fundamental issues which do not allow consent to be granted, while the key design elements of building separation, form and setbacks result in the proposal being unable to be supported. The application is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

Contents

1. THE SITE AND LOCALITY

1.1 The Site

The site is legally described as Lots 8, 9, 10 and 11 in DP 224382 and is known as No 13-19 Enid Street, Tweed Heads ('**the site**'). The site is located on the western side of Enid Street, along the western edge of the Tweed Heads local centre. The site is located close to the NSW/QLD border and is a short distance to the main shopping area of the Tweed Heads centre. Wharf Road is the main collector road in the area, which is located approximately 200m to the east of the site.

The site has a 70.72 metre frontage to Enid Street, a depth of between 47.14 to 55.075 metres and a rear boundary of 73.42 metres. The site has a total area of 3,629.5m² (**Figure 1**).

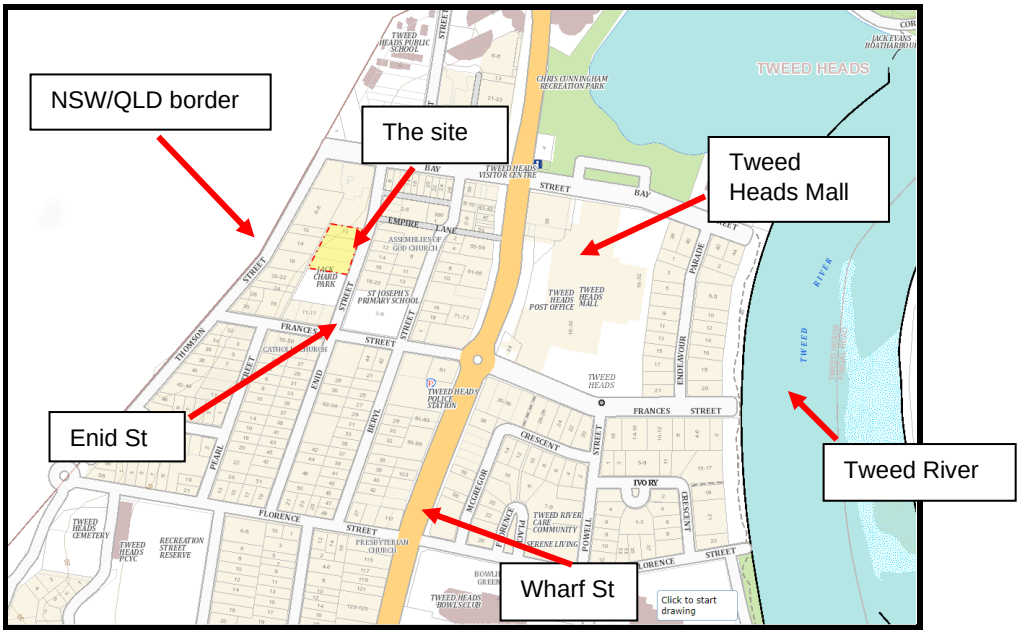

Figure 1: The Site *(Source: SIX Maps)*

The site is relatively flat with a slight fall of less than 1 metre to the south-eastern corner of the site (RL 4.47) along Enid Street. The eastern portion of the site is lower than the rear with the site having an average gradient of 2.19% from the west to the east. The site has an elevation of around 4.5 to 6.0 metres AHD and does not contain any trees or other vegetation. The site is largely covered in impervious surfaces including concrete and existing buildings.

The site is connected to all the urban services, with a 150mm diameter UPVC sewer main within the site, located along the western (rear) boundary. A 1.5m wide Council easement to drain water adjoins the western (rear) boundary, however the site is not benefited by this easement or any other restrictions or easements on the title. Groundwater was encountered in all of the boreholes at varying depths between 0.8 m and 3.1 metres.

The site is affected by a flood planning level of 3.1 metres for the 1 in 100 year event and has a probable maximum flood level of RL 5.4 AHD. The site is affected by Class 5 acid sulphate soils and is within close proximity to Class 2 land. The site is not bushfire prone and is not indicated as known or predictive for Aboriginal Cultural Heritage.

The existing development at the site comprises three (3) buildings, consisting of the following:

- No 13 - a single and two (2) storey brick apartment building (partially demolished) with a detached garage and associated concrete surfaces;
- No 15 – 17 - a single and two (2) storey rendered warehouse building associated concrete surfaces; and
- No 19 – a two (2) storey brick apartment building and associated hardstand areas.

All of the buildings have been abandoned and are in a state of disrepair, with the site fenced with temporary fencing. Vehicle access to the site is from Enid Street via three existing access driveways. The site is illustrated in **Figure 2** to **5**.

Figure 2: The Site (*Source: Google Maps*)

Figure 3: The existing development at the site - No 13 Enid Street

Figure 4: Existing development at the site - No 15-17 Enid Street

Figure 5: Existing Development at the site - No 19 Enid Street

1.2 The Locality

The surrounding land uses are a mix of residential and commercial development given the site's proximity to the town centre. Adjoining development to the north comprises a 9 and 15 storey building known as the *Bay Grand Apartments* at No 11 Enid Street (**Figure 6**). An area of open space adjoins the site to the south, known as Jack Chard Park, which comprises an area for passive recreation (**Figure 7**).

Figure 6: Adjoining development to the north - Bay Grand Apartments at No 11 Enid St

Figure 7: Adjoining to the south - Jack Chard Park

Development to the rear of the site comprises residential flat development addressing Thompson Street and comprises residential development in a mix of styles and scale as oultined in **Figure 8**. Development located on the opposite side of Enid Street to the east of the site is low to medium density residential development (**Figures 9** and **10**), with St Joseph's Primary School located further along Enid Street to the south.

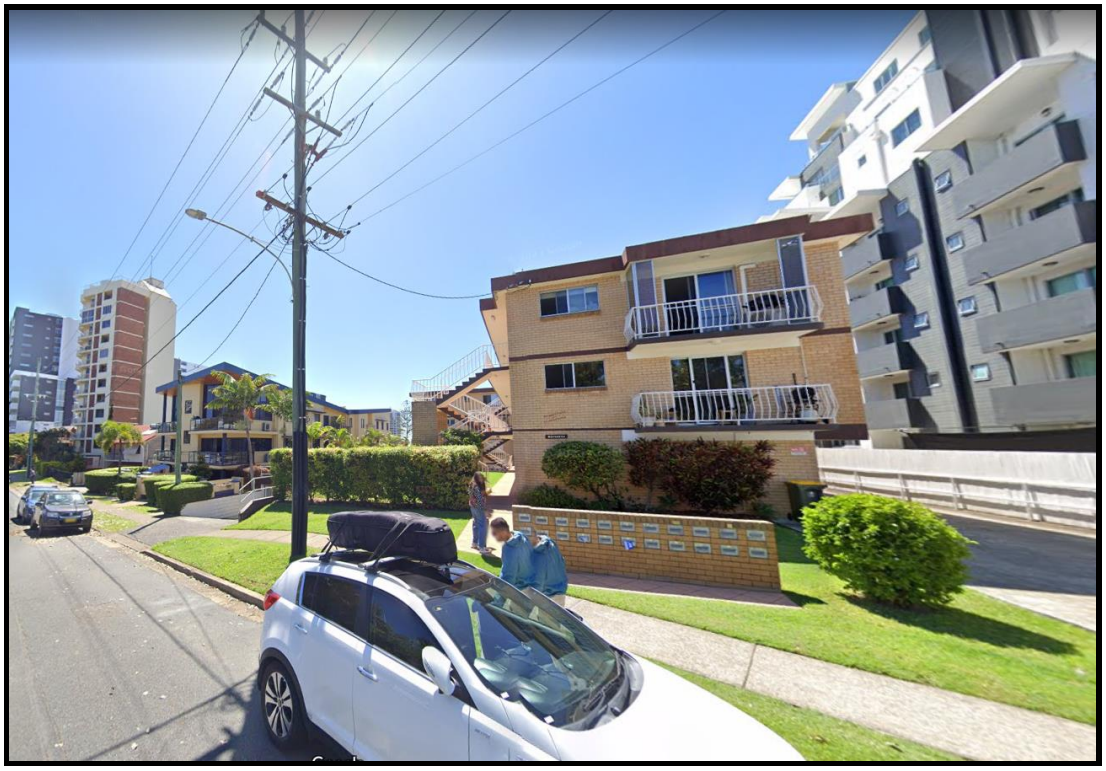

Figure 8: Adjoining development to the rear - addressing Thomson Street

Figure 9: Development to the east on the opposite side of Enid Street

Figure 10: Development to the east on the opposite side of Enid Street

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for the demolition of existing structures on the site and the construction of two (2) residential flat buildings on the site in a staged development.

Specifically, the proposal involves:

- Demolition of all the existing structures on the site. (It should be noted a subsequent application for demolition was submitted being DA22/0643, This application is yet to be determined).

- Construction of two (2) residential flat buildings comprising the North Tower (61 apartments) and the South Tower (49 apartments) over eleven (11) levels to an overall height of 35 metres (RL 40.250) with a common basement level containing a total of 110 apartments consisting of the following:

  - Basement level – 114 parking spaces comprising 54 tandem spaces and 60 single car spaces and bicycle spaces.

  - Ground floor (level 1) - 78 car parking spaces comprising 48 tandem spaces, 10 visitor spaces and 6 single car spaces as well as motorcycle and bicycle parking, waste storage rooms and services. A communal open space area to the south of the building adjoining the park is also provided at ground level.

  - Podium level (level 2) comprising a communal open space area including a pool, BBQ area, drying area and seating as well as an internal communal room

comprising a gym and community room in the north tower. Six (6) units in the north tower and five (5) units in the south tower (in stage 2).

- Levels 3 to 11 comprising proposed apartments ranging from four (4) to seven (7) apartments per floor as outlined on the plans.

- The unit mix is proposed to be:

  - 10 x 1 bedroom units (9.1%)
  - 46 x 2 bedroom units (41.8%)
  - 52 x 3 bedroom units (47.3%)
  - 2 x 4 bedroom units (1.8%)

- Vehicle access from a driveway along Enid Street in the north-east corner of the site;
- Earthworks and construction dewatering for the proposed basement (4 metres);
- Provision of services including the relocation of the sewer easement to the adjoining Council drainage easement; and
- Consolidation of the four (4) lots into one (1) lot.

The key development data is provided in **Table 1** below and the proposal is illustrated in **Figures 11** to **13** and in the accompanying architectural plans.

Table 1: Development Data

Control	Proposal
Site area	3,629.5m²
GFA	14,332m²
FSR	3.95:1 (14,322m²) (Max FSR 4.5:1; 16,332.75m²)
Height	40.25 metres AHD (Max – 49.5 metres AHD)
Deep Soil Zone	332.7m² (9.16%)
Communal open space	27.75% (1,007m²) – pool and paved areas (Applicants calculation - refer to discussion later in this report)
Car Parking spaces	192 spaces (including 102 tandem spaces, 10 visitor spaces and 1 accessible spaces), 220 bicycle spaces and 8 motorbike spaces. Oversupply of 43 car spaces
Front setback (min 4m)	• North tower - **0 – 1m** • South tower – 4m
Street frontage height Upper setback	Street frontage height (required: 12m to 20m) • North tower - 13.950 metres and • South tower – **10.90 metres** Upper setback (6m)

	• North tower – **0m** (level 5) to **1m** (level 6) • South tower – **4m** (podium to level 11)
Setbacks (pursuant to Part 3F of the ADG)	Up to Level 3 (12m) • North (to Bay Grand RFB) – **0.5m** (3m ground) to 6m (6m podium & L3) • South (park) – 6m (3m ground) to 6m (6m podium & L3) • West (Thomson Rd RFBs) – **0.5m** (3m ground) to 6m (6m podium & L3) <u>Level 4 to level 7</u> (up to 25m) • North (to Bay Grand RFB) – **6m** (9m) • South (park) – **6m** (9m) • West (Thomson Rd RFBs) – **6m** (9m) <u>Level 8 to Level 11</u> (+25m) • North (to Bay Grand RFB) – **6m** (12m) • South (park) – **6m** (12m) • West (Thomson Rd RFBs) – **6m** (12m)

Figure 11: Proposed Ground Level (*Source: Jackson Teece, 17 June 2022*)

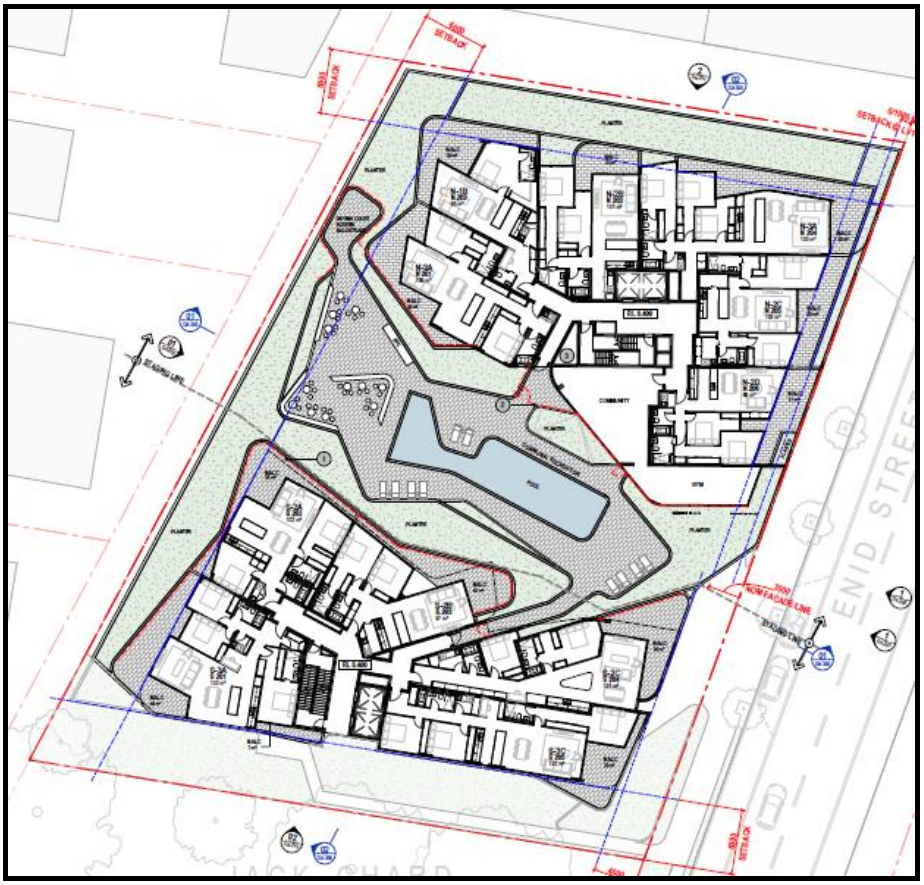

Figure 12: Proposed Podium Level (*Source: Jackson Teece, 17 June 2022*)

Figure 13: Proposed montage from Enid Street (*Source: Jackson Teece, 17 June 2022*)

2.2 Background

The site is located in an established mixed use area comprising residential and former commerical uses and is located on the western edge of the Tweed city centre. Development consent was issued for the site for a mixed use multi storey apartment building comprising 62 dwellings and 6 commercial tenancies on DA04/0646.

A development assessment panel meeting ('DAP') was undertaken for the proposal on 16 June 2021 with the Council. The proposed development at that stage comprised a development with 137 apartments (94 x two bedroom units and 43 x three bedroom units) and demolition of the existing buildings. This meeting included discussion on various matters, including the following matters:

- The relevant planning controls were identified and outlined;

- It was noted that Council supported maximising the building height of development within the city centre and therefore did not support the proposed reduction in height to 35 metres above ground level (AGL). It is not considered appropriate to undermine the density and height sought in this area to avoid the design competition requirements as set out in Clause 6.10 (Design Excellence) of the TCCLEP .

- A detailed assessment must be conducted in relation to the Apartment Design Guide, with a brief assessment indicating the following non-compliances:

  - Communal open space is undersupplied;
  - No deep soil zones are provided;
  - Services are located along the street frontage at ground level;
  - The proposal is not compliant with the building separations from side and rear boundaries or between the north and south tower;
  - It is unclear from the plans provided how residents/visitors access the lifts for the south tower from the basement level car parking area;
  - There appears to be limited opportunity for cross ventilation;
  - A review of 4D Apartment size and layout and 4E Private open space and balconies is required as some units fail to meet the maximum room depth and minimum room width of the combined living, dining and kitchen areas, bedroom minimum area and dimensions and balcony minimum area and dimensions; and
  - Storage areas are to be clearly marked.

- Inconsistencies with Section B2 of TDCP 2008 were identified including:

  - Street frontage height and front setback controls;
  - the allowable GFA per floor;
  - maximum building depth and length;
  - Safety and security controls for the car parking areas and entry points;
  - Porte cocheres are generally not supported;
  - Communal open space is currently undersupplied and the plans should indicate how residents can move between the swimming pool area and the 6m wide northern and eastern landscaped area which if paths and seating were added, could be included as communal open space;
  - limited passive surveillance of Jack Chard Park. Additional balconies overlooking Jack Chard Park to be considered and the internal communal open space areas, having regard to the required separation distances under the ADG.
  - Shadow Diagrams required to demonstrate the impact of shadowing on the

park and assess what impact this would have on users of the park;
- Above ground car parking structures are to be setback from the boundary by 6m and are to be suitably screened;
- Visitor car parking spaces need to be located in accessible locations which are not behind locked gates;
- There is an oversupply of car parking spaces, which should be utilized to accommodate the additional units to achieve higher density requirements
- Sunlight / shadow / overshadowing studies demonstrating sufficient natural light access to residential units (see ADG) and understand the overshadowing impacts on the adjoining neighbours is required.
- Demolition Work Plan required if demolition is proposed.
- Any security lighting provided should contain the light spill within the site.

- Council's Engineering, Building Unit and Environmental Health Unit identified a number of matters in the DAP minutes that were to be addressed in any future DA including that acid sulphate soils and dewatering to be addressed, as well as noise, contamination and a waste management plan to be provided

The recommendations from the DAP meeting included:

- That a higher order development is pursued which increases the overall unit density over the site commensurate with the City Centre Core precinct location and available development standards. This would likely include a design review process for buildings over 35m to achieve the intent of the design excellence clause.
- That the proponent investigates an alternate building form, which could be to offset slender towers which take advantage of allowable maximum building height to reduce impacts of building separation, overshadowing outdoor amenity spaces, overshadowing lower levels of the southern tower and overshadowing of the Jack Chard Park.
- That a revised tower configuration and basement design identify areas for deep soil zones.

The significant issues raised in relation to building form, density and layout of the proposal on the site have largely not been addressed in the application.

The development application was lodged on 4 August 2022. A chronology of the development application since lodgement is outlined in **Table 2**, including the Panel's involvement with the application.

Table 2: Chronology of the DA

Date	Event
4 August 2022	DA lodged
22 August 2022	DA referred to external agencies including Essential Energy and Water NSW (integrated development). The application was also referred to the Panel.
31 August 2022	Exhibition of the application (until 28 September 2022)
6 October 2022	Water NSW issued General Terms of Approval for temporary dewatering that is required for the construction phase of the Proposal
12 October 2022	Essential Energy provided an email stating that additional

	information was required to enable a full assessment.
11 January 2023	Essential Energy advised that insufficient information has been provided to enable it to determine whether safe distances will be maintained by the development. Essential Energy noted that any development is to comply with ISSC 20 *Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure* and the applicant should provide plans showing distances for consideration.
1 March 2023	An appeal against the deemed refusal of the application was lodged by the applicant in the NSW Land and Environment Court.
18 April 2023	The proposal was presented to the panel, with the Statement of Facts and Contentions prepared by the Council provided as background. The key issues were discussed including: • adequacy of the contamination information • the public domain interface, design and streetscape, noting at ground level parking, consistency with locality, activation, bulk and scale • setbacks in relation to existing buildings • staging of the development – insufficient details provided • relocation of sewer line to stormwater easement is not supported by Council • location of water connection • pre-lodgement meeting held • Essential Energy – response to issues raised to be addressed • wind corridors and overshadowing • waste management • Obstacle Height Limitation • mix of bedroom units – supportive of variety and supply of housing Tentative determination date scheduled for June 2023.

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.

Integrated Development – Water Management Act 2000

The proposal involves dewatering for the construction of the basement (no permanent dewatering) and a *water supply work* approval is required under Section 90 (Water management work approvals) of the *Water Management Act 2000*. Pursuant to Section 4.46(1) of the EP&A Act, the proposal is considered to be integrated development. The application was referred to Water NSW along with a *Dewatering Management Plan* prepared by Pacific Geotech dated 13 December 2021. Water NSW issued General Terms of Approval dated 6 October 2022 for the proposal subject to conditions, which are to be included on any consent granted for the proposal.

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 and Development Control Plans are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Tweed City Centre Local Environmental Plan 2012;*
- *Tweed Development Control Plan 2008.*

A summary of the key matters for consideration arising from these Environmental Planning Instruments and Development Control Plans are outlined in **Table 3** and considered in more

detail below. The jurisdictional preconditions to the grant of consent are in **bold**, some of which have not been satisfied.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development - Cl 2 of Schedule 6	Yes
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 4: Koala Habitat Protection 2021 • Section 4.8 of the Policy applies to land to which this Chapter applies and to which an approved koala plan of management applies. The proposal is consistent with this plan of Management.	Yes
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management • **Section 2.10(1) & (2)** - Development on land within the coastal environment area Chapter 4: Remediation of Land • **Section 4.6(1) -** Contamination of land	Yes **No**
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is unsatisfactory as outlined in correspondence from Essential Energy.	**No**
State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development	• Clause 28(2) – matters for consideration – Design quality principles and the ADG • Clause 30(1) – matters which cannot be used to refuse • **Clause 30(2)** - consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the design quality principles, and the objectives specified in the Apartment Design Guide for the relevant design criteria.	**No** Yes **No**
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	A BASIX Certificate has been provided.	Yes
Tweed City Centre Local Environment Plan 2012	Permissible with consent and generally consistent with the development standards and controls. • Clause 4.3(2) – Height of Buildings • Clause 4.4(2) - FSR • Clause 5.10 – Heritage • Clause 5.21 – Flood Planning • Clause 6.1 – Acid Sulphate Soils • Clause 6.3 – Floodplain Risk Management • Clause 6.6 – Minimum Building Street Frontage • Clause 6.9 – Airspace Operations	Yes Yes Yes Yes Yes Yes Yes

	• Clause 6.10 – Design Excellence	Yes **No**
Tweed Development Control Plan 2008	• Section A1 – Residential and Tourist Code (Part A – Preliminaries and Part C - Residential Flat Buildings and Shop-Top Housing) • Section A2 – Site Access and Parking Code • Section A15 – Waste Management • Section B2 – Tweed City Centre	**No** **No** **No** **No**

(i) State Environmental Planning Policy (Planning Systems) 2021

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development with a CIV of more than $30 million. Accordingly, the Northern Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

(ii) State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 ('Biodiversity & Conservation SEPP') provides controls for various environmental issues, with Chapter 4 the only relevant chapter for the current application.

Chapter 4: Koala Habitat Protection 2021

This Chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. Pursuant to Section 4,4, the Policy applies to the site as the Tweed is listed in Schedule 2 and the relevant koala management area is North Coast.

Section 4.8 of the Policy applies to land to which this Chapter applies and to which an approved koala plan of management applies. In relation to the current application, the *Tweed Coast Comprehensive Koala Plan of Management 2020* ('TCCKPoM') applies and therefore Section 4.8 of the Policy is relevant to the current proposal. Pursuant to Section 4.8(2), the Council's determination of the development application must be consistent with the approved koala plan of management that applies to the land.

The proposed does not involve any koala habitat or the removal of any preferred koala habitat trees. Accordingly, it is considered that the proposal conforms to the TCCKPoM.

(iii) State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 ('Resilience and Hazards SEPP') commenced on 1 March 2022 and provides controls relating to resilience and hazards matters, with Chapter 2 (Coastal Management) and Chapter 4 (remediation of land), are relevant to the proposal, which are considered below.

Chapter 2: Coastal Management

Chapter 2 aims to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*, including the management objectives for each coastal management area. The site is located within the Coastal Environment Area pursuant to Section 2.4(4), however, is not indicated on

the Coastal Wetlands Map or the Coastal Use Area map pursuant to Section 2.4(2) and (5). The relevant provisions of Chapter 2 are considered below.

Section 2.10: Development on land within the coastal environment area

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 (s2.10(1)):

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment – The proposal will not adversely impact on these values given the proposal does not remove any significant vegetation.

(b) coastal environmental values and natural coastal processes – The proposal will not adversely impact on any natural coastal processes or the coastal environmental values given the distance from the site to the coast.

(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 – The proposal will not adversely impact on the water quality of the marine estate or a coastal lakes given the proposed stormwater and construction management measures are satisfactory.

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms – There will be no significant impacts on these areas arising from the proposal.

(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 – The proposal will not adversely impact on any existing public open space or access to or along the foreshore.

(f) Aboriginal cultural heritage, practices and places – The proposal will not adversely impact on Aboriginal cultural heritage, which is considered further in the key issues section of this report.

(g) the use of the surf zone – The proposal will not adversely impact on the use of the surf zone given the distance of the beach from the site.

Development consent **must not be granted** to development on land to which this section applies unless the consent authority is satisfied that (s2.10(2)):

(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.

It is considered that the proposal has been designed, sited and will be managed to avoid an adverse impact as outlined above given the lack of any significant environmental impacts arising from the proposal.

Therefore, the proposal is considered to be consistent with Chapter 2 of the Resilience and Hazards SEPP and the jurisdiction preconditions to the grant of consent have been satisfied.

Chapter 4: Remediation of Land

Chapter 4 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Section 4.6 requires contamination and remediation to be considered in determining a 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.*

Comment: This is considered further below.

(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.

Comment: A change in land use for the land is proposed as parts of the site are currently (previously) used for industrial purposes and a residential development is proposed. The site is considered to be 'land specified' in subclause (4) as it is proposed to be used for residential purposes and there is a known history of industrial use on the site which are listed in Table 1 to the contaminated land planning guidelines. A Preliminary Investigation has been prepared for the site, which is considered further below.

(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.

Comment: A Preliminary Investigation has been prepared for the site (considered further below), however given the conclusion of this preliminary investigation is that the site is contaminated, a detailed investigation is required, which has not been provided. This is unsatisfactory and the Consent authority cannot be satisfied as to the matters outlined in this control.

(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).

Comment: The site is not within an investigation area, however, the site is to be used for residential purposes and a land use listed in Table 1 has been known to occur on the site (industrial uses). Therefore, a Preliminary Investigation has been undertaken which is considered further below.

A Stage 1 *Preliminary Site Investigation* prepared by ADG Consulting P/L dated November 2021 ('PSI') has been undertaken on the site, which included a review of the site history and a limited soil sampling program comprising 4 boreholes (used for geotechnical Report). The PSI has been undertaken to determine if land contamination has occurred from historical and current land use activities occurring on site or immediately nearby and to determine if the site poses a significant risk of harm to end users (and nearby sensitive receptors).

The PSI identified that the site may have potentially been exposed to historical contamination as a result of the following:

- The site has been identified as being located in an historic heavy railway corridor (the site was part of the Tweed Heads Railway Station on the former South Coast Railway line, with services running until an eventual closure of the line on 30 June 1961).
- The locality has an incidence of asbestos disposal deposits.
- The northern adjacent site (Bay Grand Apartments) has a history of soil and ground water contamination from hydrocarbons from an underground storage system.

The PSI provided the following notable observations:

- Confirmed asbestos containing materials (ACM) in roof materials and ACM fragments embedded under a concrete slab of the site along the western boundary.
- Suspected ACM roofing for the residential apartment building along the northern boundary of the site (known as 'Rangeview Court')
- Coal fines and anthropogenic materials observed with the soil sub-surface along the eastern boundary of the site (BH1 and BH3)
- Suspected ACM sheeting fragments littering the soil surface within Jack Chard Park to the south of the site and also within the stormwater easement to the west of the site

The PSI acknowledged that the soil sampling was limited and stated:

Although preliminary soil sampling and limited selective analysis (excepting confirmed ACM) has indicated no contamination is present, it must be noted that only four boreholes were advanced in areas away from current buildings and concrete slabs which occupy a significant portion of the site, and only a limited number of collected samples were analysed within the scope of this Preliminary Site Investigation.

Two samples collected for ACM presence/absence confirmed asbestos containing materials (chrysotile and amosite), with the PSI testing that given the age of the current structures, suspected ACM is likely within roof/wall materials of all structures on site.

The PSI recommends that a Stage 2 Detailed Site Investigation be carried out for the site once aboveground infrastructure (including concrete slabs) have been removed from the site. The Stage 2 DSI will be carried out using an appropriate excavator to advance at least eleven (11)

test pits to visually observe the soil profile to a depth of 3 mbgl with subsequent analysis for potential contaminants of concern for asbestos and historic heavy railway use.
Following a review of the PSI and consideration of the comments from Council's Environmental Health Officer, it is considered that the application has not adequately addressed Section 4.6 of the Resilience and Hazards SEPP in that a DSI has not been undertaken for the site. This lack of a DSI is unsatisfactory, particularly given that the PSI recommended that one is prepared and there is significant evidence that the site is contaminated with asbestos.

The consent authority cannot be 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 (Section 4.6(1)(b)). Accordingly, it is considered that the jurisdiction precondition to the grant of consent has not been satisfied and therefore consent cannot be granted.

(iv) State Environmental Planning Policy (Transport and Infrastructure) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021 ('Transport & Infrastructure SEPP') outlines the controls for the provision of infrastructure and schools, among other matters. Chapter 2 (Infrastructure) is relevant to the development application.

Chapter 2: Infrastructure

The following provisions of Chapter 2 are relevant to the development application:

- *Section 2.48 – Determination of development applications – other development* - This section applies to a development application involving development carried out immediately adjacent to an easement for electricity purposes, immediately adjacent to an electricity substation or within 5 metres of an exposed overhead electricity power line (among other matters) pursuant to Section 2.48(1)(b)(i), (ii) and(iii). An overhead electricity power line is located in the road reserve of Enid Street.

  Pursuant to Section 2.48(2), the Council consulted with Essential Energy, the electricity supply authority. Essential Energy stated that insufficient information has been provided to enable a determination to be made on whether safe distances will be maintained by the development. On that basis, Essential Energy has safety concerns. Therefore, the proposal is considered to be inconsistent with this clause.

- *Section 2.119 - Development with frontage to classified road & Section 2.120 – Impact of road noise or vibration on non-road development* – Enid Street is not a classified road and is also not included in the "mandatory" or "recommended" category for a road noise or vibration assessment. Accordingly, these controls are not relevant to this proposal.

- *Section 2.122 – Traffic-generating development* - This section requires consideration of certain matters relating to development which is deemed to be traffic-generating. In this case, the proposal involves less than 200 car parking spaces (192 spaces are proposed in total) and less than 300 dwellings (110 units are proposed) and therefore the proposal does not meet the criteria in Column 2 for a site with access to a road (generally)). In relation to Column 3, while the proposal involves more than 75 dwellings and 50 or more car parking spaces, however, the site does not have access to a classified road or to a road that connects to a classified road within 90 metres of connection. Therefore, the proposal does not achieve the criteria listed in Column 2 and a referral to TfNSW is not required under this Section.

Accordingly, the proposal is considered to be consistent with the Transport & Infrastructure SEPP and satisfies the matters requiring consideration prior to determining a development application.

(v) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development ('SEPP 65') aims to improve the design quality of residential apartment development. SEPP 65 applies to the proposal as it involves a new building comprising at least 3 storeys and 4 or more dwellings (Cl 4(1)). Clause 6A of the Policy states that there are certain matters in which any controls in a DCP have no effect, including visual privacy, solar and daylight access, common circulation and spaces, apartment size and layout, ceiling heights, private open space and balconies, natural ventilation and storage. This has been noted in the assessment of the DCP below.

Clause 28(2) of SEPP 65 requires the consent authority is to take into consideration the following matters in determining a development application for consent to carry out development to which this Policy applies:

(a) the advice (if any) obtained from the design review panel, and
(b) the design quality of the development when evaluated in accordance with the design quality principles, and
(c) the Apartment Design Guide.

In this case, there is no design review panel for the LGA. The relevant matters are considered below.

Clause 30(1) of the SEPP states that a development application cannot be refused if it complies with the prescribed criteria for these matters as specified in the ADG for reasons relating to the following:

- Car parking – the proposal complies with the car parking requirements of the ADG;
- Minimum internal area for apartments – the proposal complies with the minimum internal apartment area requirements of the ADG; and
- Ceiling heights - the proposal complies with the minimum ceiling height requirements of the ADG;

The proposal generally satisfies these controls, as outlined in the ADG assessment below.

Clause 30(2) requires the consent authority to consider prior to granting consent whether the application has demonstrated that adequate regard has been given to the design quality principles, and the objectives specified in the ADG for the relevant design criteria. As outlined below and in the key issues section of this report, the proposal has **not** adequately addressed these requirements and therefore consent cannot be granted as this is a jurisdictional precondition to the grant of consent which has not been satisfied.

Pursuant to Section 29(1) of the Regulations, a design verification is required to be submitted which explain how the development addresses the design quality principles, and the objectives in Parts 3 and 4 of the Apartment Design Guide. This statement has been provided.

Design Quality Principles

The design quality principles are contained in Schedule 1 of SEPP 65 and are considered

in **Table 4**. The proposal is considered to be inconsistent with principles 2 (built form and scale), 5 (landscape), 6 (amenity), 7 (safety) and 8 (housing diversity and social interaction), which are considered further in the key issues section of this report.

Table 4: SEPP 65 Design Quality Principles

DESIGN QUALITY PRINCIPLE	REQUIREMENT	PROPOSAL	COMPLY
Principle 1: Context and neighbourhood character	Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.	The proposed building form is generally considered to be consistent with the context and neighbourhood character in that it proposes a residential development similar in design to other nearby buildings.	Yes
Principle 2: Built form and scale	Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	There are a number of concerns with the built form given the inconsistencies with setbacks, street frontage heights and building depth. The large blank walls to the street framed by heavy concrete arches provides an unsatisfactory streetscape facade for the proposal.	**No**
Principle 3: Density	Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.	The proposed density is considered satisfactory in that it complies with the controls.	Yes

Principle 4: Sustainability	Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	The proposal is satisfactory.	Yes
Principle 5: Landscape	Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.	The proposed landscape design is considered to be unsatisfactory. The main portion of landscaping is the deep soil zone adjoining the southern boundary of the site, which does not assist with the streetscape appearance of the proposal or combine it with the usable communal open space.	**No**
Principle 6: Amenity	Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.	There are a number of inconsistencies of the proposal with the ADG which are likely to impact on amenity including communal open space, solar access to proposed units, potential visual and acoustic privacy concerns and the layout of some of the units with internal rooms and narrow windows.	**No**
Principle 7: Safety	Good design optimises safety and security within the development and	There are a number of concerns with the interface	**No**

	the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.	of the proposal with the public domain in relation to the deeply recessed entry areas and the lack of surveillance of the street entry points given the large blank walls to the street. There are also a number of concerns in the basement in relation to potential entrapment sites and concealment opportunities.	
Principle 8: Housing diversity and social interaction	Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.	The housing diversity provision is considered to be satisfactory, however, there are limited areas for social interaction between residents as the entry areas do not provide these opportunities and the communal spaces are largely the pool and other small areas of circulation spaces and planter boxes.	**No**
Principle 9: Aesthetics	Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	The proposed building form provides good proportions and a balanced composition of elements	Yes

Apartment Design Guide

The *Apartment Design Guide* ('the ADG') aims to achieve better design and planning for residential apartment development, by providing benchmarks for designing and assessing these developments. The relevant controls and principles of the ADG are considered in the context of the proposal in **Attachment B.**

There are several inconsistencies of the proposal with the ADG controls which are considered below. These inconsistencies are not supported and are considered further in the key issues section of this report.

<u>Part 3: Siting the Development</u>

- Part 3B: Orientation

  The significant overshadowing of the park adjoining the site to the south has not been minimised and is unsatisfactory. The proposal is inconsistent with Objective 3B-2 in relation to overshadowing of neighbouring properties which is not minimised during mid-winter and the design guidance in that the building separation of the south tower to the southern boundary to the park does not comply with Part 3F of the ADG.

- Part 3C: Public Domain Interface

  There is no direct street entry to any of the proposed units with the street façade comprising a high stone wall, which is a solid interface with the public domain. There are minimal opportunities for casual surveillance of the street given the long, high wall proposed and the significant level changes between the street level and the podium level. The street level only contains the pedestrian entry, bicycle parking, manager's office and basement entry point. The perimeter of the site provides some landscaping, however, is dominated by the high stone walls at street level and services are largely at the street level including the service bays and substation.

  The proposal is considered to be unsatisfactory having regard to Part 3C of the ADG, being inconsistent with Objectives 3C-1 in that the transition between private and public domain is not achieved without compromising safety and security and Objective 3C-2 in that the amenity of the public domain is not retained or enhanced.

- Part 3D: Communal Open Space

  The proposed areas of communal open space are unsatisfactory as the majority comprise circulation areas, building entrances, raised planter boxes and clothes drying areas which are not usable communal open space. These areas are also overshadowed all day in midwinter, with the exception of the southwestern corner at 3pm. The podium level area is also significantly overshadowed throughout the day in midwinter being in shadow throughout the morning and to midday with the western and southern portions receiving sunlight between midday and 3pm.

  The communal open space areas are not consolidated or well designed with an easily identifiable area with the location split between two levels of the building. The proposed pool area achieves the required dimension as well as the southern area, however, the majority of the areas comprise small pockets of space in and around the circulation and entry areas to the buildings. There is a lack of uses which can be undertaken in the communal open space as it is largely the pool and circulation, entry and planting areas, which is unsatisfactory. The proposal is contrary to the design criteria, guidance and objectives of Part 3D of the ADG.

- Part 3E: Deep Soil Zones

  The minimum required deep soil zone for any proposal is 7% of the site area, requiring a minimum area of 254.065m². The proposal provides 332.7m² (9.16%) with minimum dimension of 6 metres provided along the southern boundary of the site, which is the only area on the site which is not covered by the basement.

  The site is larger than 1500m² and therefore 15% of the site area should be provided as deep soil zone as outlined in the design guidance. The proposal is considered to be inconsistent with design guidance of Part 3E of the ADG.

- Part 3F: Visual Privacy

  The following separation distances are provided by the proposal (bold indicates non-compliance, which the bracketed figure identifies the setback in the control):

  Building separation between sites:

  Up to Level 3 (12m)
  - North (to Bay Grand RFB) – **0.5m** (3m ground) to 6m (6m podium & L3)
  - South (park) – 6m (3m ground) to 6m (6m podium & L3)
  - West (Thomson Rd RFBs) – **0.5m** (3m ground) to 6m (6m podium & L3)

  Level 4 to level 7 (up to 25m)

  - North (to Bay Grand RFB) – **6m** (9m)
  - South (park) – **6m** (9m)
  - West (Thomson Rd RFBs) – **6m** (9m)

  Level 8 to Level 11 (+25m)

  - North (to Bay Grand RFB) – **6m** (12m)
  - South (park) – **6m** (12m)
  - West (Thomson Rd RFBs) – **6m** (12m)

  Building Separation within the site (north to south towers)

  Up to Level 3 (12m – (6 x 2))
  Podium: 16.75m to 18.26m
  Level 3: **10.83m,11.43m,**16.75m**,**18.26m

  Level 4 to level 7 (up to 25m) (18m –(9x2))
  Level 4: **10.83m,11.43m,16.75m,**18.26m
  Level 5: **14.51m,17.38,16.75m,**18.26m
  Level 6: **14.51m,17.38,16.75m,**18.26m
  Level 7: **14.51m,17.38,16.75m,**18.26m

  Level 8 to Level 11 (+25m) (24m –(2x12))
  Level 8: **14.51m,17.38,16.75m,18.26m**
  Level 9: **14.51m,17.38,16.75m,18.26m**
  Level 10: **14.51m,17.38,16.75m,18.26m**
  Level 11: **14.51m,17.38,16.75m,18.26m**

  The concerns with the inconsistencies with the building separation controls include:

  - The proposed towers are orientated towards each other with inadequate building separation between them, with balconies and habitable room windows directly overlooking each other.
  - Proposed units N201, S202, S203, S204 are located adjoining the communal area and are likely to be overlooked and be subjected to noise from the pool area, which is unsatisfactory.
  - There is also likely to be overlooking between the proposed western apartments with the existing development to the west of the site given there is inadequate building separation between sites.

- There are some recessed balconies however, it appears from the 3D images that louvers are required to provide privacy between balconies, which is unsatisfactory.

The proposal is considered to be inconsistent with design criteria of Part 3F-1 and the design guidance of Part 3F of the ADG. The proposal is also inconsistent with Objectives 3F-1 in that inadequate building separation distances are provided between neighbouring sites, to achieve reasonable levels of external and internal visual privacy and Objective 3F-2 in that the site and building design elements do not increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.

- Part 3G: Pedestrian access and entries

The proposal is inconsistent with several objectives and design guidance for pedestrian access an entries. These include:

- There are two (2) main entries to the building from the street, comprising the north lift lobby and the south lift lobby. These areas are accessed from Enid Street via three separate pedestrian entry points. The lift lobbies, however, are deeply recessed into the frontage which results in them being visually and physically separated from the street and being accessed by a convoluted series of pathways which adjoin blank walls of the ground level car parking and service areas. The lift lobby for the south tower is located approx. 27 metres into the site and is visually obscured from the street by the blank car park walls.
- Landscaping is also proposed at these entry points, which further reduces their visibility from the street.
- The entry paths into the recessed lift lobbies represent only approx. 13 metres of the 70 metre frontage to Enid Street, representing less than 20% of the street frontage. Therefore, it is considered that the proposed building entry areas are not clearly visible from the street and there is a resulting lack of pedestrian amenity for the entry area.
- There is a poor relationship between the entry areas and the street, which adversely impacts on the safety of these areas and interaction with the streetscape.

As outlined above, the building entries are not clearly visible from the street given they are recessed into the building and adjoin service areas including switch/pump rooms, waste storage areas and blank walls of the ground level car parking area. There is also minimal surveillance of this area. The pedestrian access and entries are considered to be unsatisfactory.

The proposal is considered to be inconsistent with design guidance and objectives of Part 3G-1 in that the building entries and pedestrian access do not connect to and address the public domain and Objective 3G-2 in that entries are not accessible or easy to identify under the ADG.

- Part 3J: Bicycle and car parking

The proposal generally complies with the required provision for car parking with the exception of the number of visitor spaces (notwithstanding that there is an oversupply of car parking). The concerns with the design guidance for car parking include:

- The car park design and access is not considered to be safe and secure as the lift lobbies in the basement are difficult to access and are obstructed by bike storage areas, stairs and car parking spaces. Similarly on the ground floor, the lift lobbies

are adjoining the waste storage rooms and there is no direct access between the car spaces and the lift with residents and visitor having to enter the lift lobby through doors between the car parking area and the entry areas. A clear path of travel to the lift areas is not provided. Therefore, there is limited surveillance of the car park or the lift lobby areas from people entering and leaving the car parking area.

- The parking layout is not well organised given there is no clear path of travel between the lift lobby areas and the car parking spaces and there is an excessive reliance on tandem parking (53% of the spaces) which is not supported. Pedestrian access to the lifts from the car spaces along the western wall of the basement is long and difficult, having to navigate through car spaces and narrow areas adjoining the stair wells and bike storage areas.
- The visual and environmental impacts of underground car parking are not minimised as the proposed ground level car parking protrudes more than 1 metre above ground level across all elevations and results in 4 metre high blank stone walls to the street and park.
- The visual and environmental impacts of above ground enclosed car parking are not minimised as the proposed parking results in an unsatisfactory streetscape to Enid Street and exacerbates the bulk and scale of the development at the street level and pedestrian scale. This on grade car parking also reduces the pedestrian entry and amenity to the building, making the entry areas obscured by large blank walls to the street.
- A positive street address and an active frontage have not been provided at ground level, with high, blank walls provided to the street which enclose the on-grade car parking.

The proposal is considered to be inconsistent with design guidance and objectives of Part 3J-3 in that the Car park design and access is safe and secure and Objective 3J-6 in that the visual and environmental impacts of above ground enclosed car parking are not minimised under the ADG.

<u>Part 4: Designing the building</u>

- Part 4A: Solar and daylight access

  Design criteria (2) of Part 4A-1 requires that the living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter (outside of Sydney, Newcastle, Wollongong). The plans and the solar access report/diagrams indicate that 76 of the proposed apartments achieve 3 hours of solar access (69% of the units), however, it appears that this has not taken into account the overshadowing impacts from the Bay Grand development to the north given this is to the north of the subject site. Therefore, it is considered that the proposal does not achieve the design criteria of Part 4A and does not satisfy Objective 4A-1 in that the proposal does not optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

- Part 4D: Apartment size and layout

  Design criteria (2) of Part 4D-1 requires that every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

There are 19 proposed apartments which contain Study rooms (habitable rooms) which do not have access to a window including the following:

i) Type S-3A (South tower) x 10
ii) Type S-3C (South tower) x 9

In addition, the following proposed apartments (32 in total) rely on very small (snorkel-style) windows for natural ventilation which are considered be too small and indented from the building edge to provide effective cross ventilation and daylight access:

i) Type N-2B (North tower - 10 units)
ii) Type N-2D (North tower - 3 units)
iii) Type N-3C (North tower - 9 units).
iv) Type S-2C (South tower – 1 unit)
v) Type S-3B (South tower – 8 unit)
vi) Type S-4A (South tower – 1 unit)

There is a total of 51 (46.3%) proposed apartments which do not have sufficient windows to comply with this control.

Proposed apartments S-3B and S-2C in the south tower include kitchens located in the circulation space/hallway and proposed apartment N-2C: 8.3m to back of kitchen to a window.

Accordingly, the proposal does not satisfy the design criteria (2) or Objective 4D-1 in that some of the proposed apartments provide a layout of rooms which are not functional, well organised or provide a high standard of amenity.

- Part 4E: Private Open Space and balconies

  The proposal is generally consistent with these controls, however, all of the balcony areas are proposed to have glass balustrades. The podium level apartments have no privacy from the street or the communal open space which is unsatisfactory. In this way, the proposal is considered to be contrary to the design guidance of Part 4E-3 in that the proposed glass balustrades do not allow for visual privacy to be maintained for the lower levels of the development.

- Part 4H: Acoustic Privacy

  The proposal is generally consistent with these controls, however, there are a number of proposed apartments which are located closer to noise sources such as communal open spaces and circulation areas than the recommended 3 metres in the design guidance.

  i) Adjoining the communal open space – Units N201, N206, S202, S203 and S204 (x 5units)
  ii) Adjoining stairwells in the South tower – Units S201 to S1101 (x10);
  iii) Adjoining stairwells in the North tower Units N301 to N1101 (x9) and Units N307, N407, N506 to N1006 (x8) and N1105 (1 unit);
  iv) Adjoining lift cores in the South tower – Units S205 to S1001 (x9).

  These proposed apartments are considered to be contrary to Objective 4H-1 in that noise transfer is not minimised through the siting of buildings and building layout.

- Part 4Q: Universal Design

The proposal generally complies with these controls, with the exception of the design guidance for Objective 4Q-2 for a variety of apartments with adaptable designs to be provided. While there are more adaptable apartment proposed than the DCP requires, there is only one (1) accessible car parking space provided, which is unsatisfactory.

- Part 4W: Waste Management

  Objective 4W-1 requires that waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents, while Objective 4W-2 requires that domestic waste is minimised by providing safe and convenient source separation and recycling.

  The proposed waste management arrangements are unsatisfactory arising from the adverse impact on the streetscape from the on-street collection proposed of large bins and the proposed waste rooms are not conveniently located given the long distances to them from car parking areas (on the ground floor while the majority of car parking is provided in the basement). Accordingly, it is considered that the proposal is contrary to the Objectives 4W-1 and 4W-2 in that the waste storage facilities have not been designed to minimise impacts on the streetscape, building entry and amenity of residents and a safe and convenient source separation and recycling area has not been provided.

Accordingly, the proposal involves numerous inconsistencies with the design quality principles of SEPP 65 as well as various non-compliances with the ADG. These matters are further considered in the key issues section of this report. The proposal is considered to be unsatisfactory having regard to the SEPP 65 and ADG matters.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 aims to ensure consistency in the implementation of the BASIX scheme throughout the State. A BASIX Certificate referenced 1267179M_02 dated 12 July 2022 prepared by Vipac has been submitted with the development application satisfying the minimum requirements of the SEPP. In this regard, the proposal has adequately satisfied the requirements of the SEPP.

(vii) 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* ('TCCLEP 2012'). The particular aims of the LEP pursuant to Clause 1.2(2) which are relevant to the proposal 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 proposal is consistent with some of the aims, including the provision of residential development in the city centre and the economic revitalisation of the centre, however, is inconsistent with other aims arising from the concerns with the building form and presentation to the street. In particular, the proposal is considered to be inconsistent with aim (h) in that building design excellence is not achieved, which is further discussed in the key issues section of this report.

Zoning and Permissibility (Part 2)

The site is located within the R3 Medium Density Residential zone pursuant to Clause 2.2 of the TCCLEP 2012 (**Figure 14**). The proposal is defined as a *residential flat building* as it comprises a building containing 3 or more dwellings, which is a permissible use with consent in the Land Use Table in Clause 2.3 as '*Any other development not specified in item 2 or 4'*. Demolition is proposed and is permissible with consent pursuant to Clause 2.7.

Pursuant to Clause 2.3(2), the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide for the housing needs of the community within a 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 proposal is considered to be consistent with these zone objectives as it provides for housing needs in a medium density environment and provides a variety of housing types. Therefore, the proposal is considered to be consistent with Clause 2.3(2) of the TCCLEP 2012.

Figure 14: Zoning Map *(Source: e planning Spatial Viewer)*

Development Standards (Part 4), Miscellaneous provisions (Part 5) and Additional local provisions (Part 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below. It is noted that the following provisions do not apply to the proposal:

- Cl 4.1: Minimum subdivision lot size – no subdivision proposed;
- Cl 5.1: Relevant acquisition authority - the site is not indicated for land acquisition;
- Cl 5.4: Miscellaneous permissible uses – none proposed;
- Cl 6.4: Terrestrial Biodiversity – the site is not identified on the Bushland Map;

Table 5: Consideration of the TCCLEP 2012 Controls

Control	Requirement	Proposal	Comply
Part 4: Principal development standards			
Height of buildings (Cl 4.3(2))	49.5 metres AHD	40.25 metres AHD	Yes
FSR (Cl 4.4(2))	4.5:1 (16,332.75m²)	3.95:1 (14,322m²)	Yes
Part 5: Miscellaneous provisions			
Heritage (Cl 5.10)	Consideration of potential impacts to heritage	There are no heritage items located on the site, on adjoining sites or in the vicinity of the site. Therefore consent is not required under this clause. There are no items or places of	Yes

		Aboriginal cultural heritage on the site. Accordingly, there will be no adverse impacts on heritage raising from the proposal.	
Flood planning (Cl 5.21)	Consideration of matters prior to granting consent for land within the flood planning area.	The land is within the PMF area.	Yes Refer below
Part 6: Additional local provisions			
Acid sulphate soils (Cl 6.1(1))	Consent is required for the carrying out of works described in the table to this subclause on land shown on the Acid Sulfate Soils Map and matters to be satisfied.	The site is affected by Class 5 acid sulphate soils and is located within 20 metres of Class 2 land (i.e. within 500m of adjacent Class 1,2 3 or 4 land and some of the site is below RL 5.	Yes Refer below
Floodplain risk management (Cl 6.3)	Consent must not be granted unless appropriate measures are made to manage risk to life from flooding.	Appropriate measures have been made.	Yes Refer below
Minimum building street frontage (Cl 6.6)	Consent must not be granted unless at least one street frontage of 20 metres or more.	Frontage to Enid St - 70.72m	Yes Refer below
Airspace operations (Cl 6.9)	Development which penetrates the Limitation or Operations Surface, consultation with the relevant Commonwealth body about the application must be made prior to granting consent.	The site is within the Obstacle Limitation Surface (Outer Horizontal Surface) for the Gold Coast Airport (GCA). The GCA have advised there are no objections subject to recommended conditions.	Yes Refer below
Design excellence (Cl 6.10)	(2) The development must exhibit design excellence.		**No** Refer below

	(4) (b) development in respect of a building that is, or will be, higher than 35 metres, (c) development for which the applicant has chosen to have such a competition.	Notwithstanding a maximum specified height of 49.5 metres AHD, the proponent seeks to build to 40.25 metres AHD only, and as such, a design competition is not required as the proposal is not higher than 35 metres AGL.	N/A

Flood Planning (Clause 5.21)

This Clause requires the consent authority to consider certain matters in relation to flood planning. The objectives of this clause include:

(a) to minimise the flood risk to life and property associated with the use of land,
(b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,
(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,
(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

The proposal is considered to be consistent with these objectives as the potential flood risk to life and property is considered to be mitigated by the proposal achieving the required minimum flood levels and will allow for safe evacuation if required on the site.

Pursuant to Clause 5.21(2), development consent **must not be granted** to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

(a) is compatible with the flood function and behaviour on the land, and
(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
(d) incorporates appropriate measures to manage risk to life in the event of a flood, and
(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Council's Development Engineer has reviewed the proposal and stated that the site has a Design Flood Level ('DFL') of 2.6m AHD and a minimum habitable floor level of 3.1m AHD. The minimum habitable floor level for the development is 8.45m AHD provided on the level 2 podium and therefore the site has achieved the required minimum floor levels above the DFL and therefore is not affected by this flood event. The proposed basement also provides protection against inflow of water with the entrance level at 4.4m AHD being greater than 3.1m AHD. Therefore, it is considered that the proposal is consistent with the requirements of the DCP.

In deciding whether to grant consent, the consent authority must consider the following matters (Cl 5.21(3)):

(a) the impact of the development on projected changes to flood behaviour as a result of climate change,
(b) the intended design and scale of buildings resulting from the development,
(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

The proposal is considered to be satisfactory having regard to flooding as outlined by Council's engineer. Accordingly, it is considered that consent can be granted to the proposed development as the matters required to be addressed have been satisfied.

Acid Sulphate Soils (Cl 6.1)

Clause 6.1(2) requires consent for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map. The site is located on Class 5 land and within 20 metres of Class 2 land and comprises land that is below RL 5m AHD. The proposal involves earthworks below the natural ground surface for the proposed construction of the basement and accordingly, consent is required for the works under this clause.

Pursuant to Cl 6.1(3), consent **must not be granted** under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

The application is accompanied by an *Acid Sulfate Soil Report* ('ASS Report') prepared by Pacific Geotech dated December 2021. This ASS Report has been prepared and signed by a suitably qualified and experienced consultant and the investigation included field and NATA laboratory testing of samples collected at the site. The investigation resulted in samples exceeding the nett acidity values above the ASSMAC and therefore an *Acid Sulfate Soil Management Plan* ('ASSMP') prepared by Pacific Geotech dated December 2021 has also been prepared as Appendix E of the ASS report. The ASSMP has been reviewed by Council's Environmental Health Officer and found to be satisfactory, subject to the imposition of recommended conditions of consent.

Accordingly, the proposal is considered to satisfactorily address the matters required by Cause 6.1(3) and therefore consent can be granted.

Floodplain Risk Management (Cl 6.3)

The objective of this clause is to minimise the flood risk to life associated with certain uses of land above the flood planning level. This Clause applies to land above the flood planning level and up to the level of the probable maximum flood shown on the Flood Planning Map and land surrounded by the flood planning area. The site is located on land affected by the PMF (**Figure 15**) and therefore this clause applies (Cl 6.3(2)(a)).

Figure 15: Flood Mapping *(Source: DAP Report)*

Pursuant to Clause 6.3(3)(f), development consent **must not be granted** for the proposed residential development (among other uses) unless the consent authority is satisfied that the development incorporates appropriate measures to manage risk to life from flooding.

Council's Engineers have reviewed the proposal and consider that it is satisfactory having regard to flooding risk.

Minimum building street frontage (Cl 6.6)

The objectives of this clause are as follows—

(a) to ensure that, visually, buildings have an appropriate overall horizontal proportion compared to their vertical proportions,
(b) to provide appropriate dimensions and spacing to ensure adequate privacy between any residential component and the adjoining land use,
(c) to provide appropriate dimensions for the design of car parks levels and ensure access is reasonably spaced along roads and lanes,
(d) to encourage larger development of commercial office, business, residential and mixed use buildings provided for under this Plan.

The site dimensions allow these objectives to be achieved for the proposed development. Clause 6.6(2) requires that consent **must not be granted** to the erection of a building on land in the R3 zone that does not have at least one street frontage of 20 metres or more. In this case, the site has a frontage to Enid Street of 70.72 metres and is therefore consistent with this Clause.

Airspace operations (Cl 6.9)

The site is located within the Operational Limitation Surface of Gold Coast Airport ('GCA') and therefore, GCA was notified of the application. The objectives of this clause include to provide for the effective and ongoing operation of the Gold Coast Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport and to protect the community from undue risk from that operation.

Pursuant to Clause 6.9(2), if a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority **must not grant** development consent unless it has consulted with the relevant Commonwealth body about the application.

A referral was sent to GCA which stated there were no objections to the application on the basis that a condition be imposed that any equipment used at height which will/could constitute an infringement of the GCA's controlled airspace will require an approval to be submitted (cranes and other construction equipment).

Therefore, pursuant to Clause 6.9(3)(a), the consent authority may grant development consent for the development as the relevant Commonwealth body has advised that while the development will penetrate the Limitation or Operations Surface, it has no objection to its construction. The proposal is consistent with this clause.

Design excellence (Cl 6.10)

This clause applies to development involving the erection of a new building or external alterations to an existing building on land to which this Plan applies and therefore is relevant to the proposal.

Pursuant to Clause 6.10(2), development consent **must not be granted** for development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to certain matters, which is considered in **Table 6**.

Table 6: Consideration of the Design Excellence Clause

Matter	Comments	Comply
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	The proposed building form is of a high standard in terms of architectural detailing, design and materials.	Yes
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	The proposed development does not provide a satisfactory interface to the street arising from the high blank walls to the street and the lack of clearly defined and legible pedestrian access to the building. The lack of an adequate upper-level setback along the street and the front building setback being contrary to the controls exacerbates the adverse impact of the proposal on the amenity of the public domain.	**No**
(c) whether the development detrimentally impacts on view corridors	The proposed development has the potential to impact on view corridors to the east towards the city centre and the coast for development to the west of the site, particularly Nos 10, 12-14 and 16-18 Thomson Street. The potential impact on these	**No**

	views corridors has not been adequately considered in the application.	
(d) the requirements of the Tweed City Centre DCP,	The proposal is considered to be inconsistent with numerous provisions of the TDCP 2008 as outlined below and in this way is inconsistent with this clause.	**No**
(e) how the development addresses the following matters—	The proposed development does not adequately address the following matters in the design of the development:	
(i) the suitability of the land for development,	Satisfactory	Yes
(ii) existing and proposed uses and use mix,	Satisfactory	Yes
(iii) heritage issues and streetscape constraints,	Satisfactory	Yes
(iv) ***the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,***	The proposed development is considered to have unsatisfactory building separation with respect to the adjoining buildings as well as between the proposed buildings on the site. This lack of an adequate setback to adjoining development and also between the proposed buildings results in a loss of amenity in relation to visual and acoustic privacy and a lack of solar access. The proposal also involves an urban form which due to the lack of adequate separation and setbacks has an adverse impact on the streetscape and lacks appropriate pedestrian amenity.	**No**
(v) ***bulk, massing and modulation of buildings,***	The bulk and massing of the proposed building is unsatisfactory in that there are inconsistencies with the upper level and front building setbacks such that there is an adverse impact on the streetscape. The setting back of the upper levels and compliance with the front building setback would provide more visual relief to the street and allow a more even distribution of bulk from the development across the site. The blank facades and high arches walls to the street also increase the bulk of the development from the street and lack an identified entry and pedestrian interface to the public domain.	**No**
(vi) ***street frontage heights,***	The proposal does not achieve the upper-level setbacks contained in the street frontage controls of the DCP, which results in an adverse impact on the streetscape. The large blank walls to the street surrounding the car parking at ground level further	**No**

	exacerbate the bulk and scale of the building and contributes to the lack of an adequate pedestrian environment to the front of the building.	
(vii) ***solar access controls,***	The proposal has not adequately considered solar access to the proposed apartments and the proposal significantly overshadows the park to the south of the site, which is unsatisfactory.	**No**
(viii) ***environmental impacts such as sustainable design, overshadowing, wind and reflectivity****,*	As outlined above, the proposal has not adequately demonstrated that the proposed apartments will receive adequate solar access and results in significant overshadowing to the adjoining park to the south of the site.	**No**
(ix) the achievement of the principles of ecologically sustainable development,	Satisfactory	Yes
(x) ***pedestrian, cycle, vehicular and service access, circulation and requirements****,*	The proposed pedestrian access points to the building are unsatisfactory in that they are deeply recessed into the façade, are not overlooked for surveillance and are not clearly legible from the street.	**No**
(xi) ***the impact on, and any proposed improvements to, the public domain.***	The proposal is considered to have an adverse impact to the public domain arising from the proposed large blank walls to the street, the lack of an adequate upper setback of the levels along the street and the inconsistencies with the front building setback. These building features combine to locate a considerable proportion of bulk to the street and contributes to the lack of an adequate pedestrian amenity and interface to the street by the development.	**No**

Accordingly, it is considered that the development does not exhibit design excellence for the reasons outlined above and therefore consent must not be granted. The matters for consideration as outlined above are considered in more detail in the key issues section of this report.

The proposal is considered to be generally consistent with the TCCLEP 2012, with the exception of design excellence pursuant to Clause 6.10.

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

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

- *Draft Remediation of Land SEPP*
- *Draft SEPP (Environment)*

These proposed instruments are considered below:

Draft Environment SEPP

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating seven existing SEPPs. The proposal is consistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Draft Remediation of Land SEPP was exhibited from 31 January 2018 to 13 April 2018. The proposed remediation of land SEPP will:

- Provide a state-wide planning framework for the remediation of land;
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well;
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land;
- Clearly list the remediation works that require development consent;
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

The potential land contamination on the site is considered under in the assessment under the Resilience & Hazards SEPP.

The proposal is generally consistent with these proposed instruments.

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

The *Tweed Development Control Plan 2008* ('TDCP 2008') is relevant to this application, which aims to provide design issues, performance criteria and standards for development both on a shire wide basis and those that relate specifically to particular development areas. Part A of the DCP contains development standards for the whole of the Shire, while Part B provides development standards for specific sites.

The following sections of the DCP are relevant to the proposal:

- Section A1 Part C: Residential and Tourist Code (Part A - Preliminaries);
- Section A1 Part C: Residential and Tourist Code (Part C - Residential Flat Buildings and Shop-Top Housing);
- Section A2: Site Access and Parking Code;
- Section A15: Waste Minimisation and Management; and
- Section B2: Tweed City Centre.

These controls are considered below.

(i) Section A1 Part C: Residential and Tourist Code (Part A - Preliminaries)
This section of the TDCP 2008 contains controls on site analysis, streetscape and views and vistas.

Streetscape

C2. Site design, building setbacks and the location and height of level changes are to consider and be compatible with other buildings and sites along the street, particularly those that are older and more established.

C4. Building design is to consider the contribution of façade elements on the streetscape, including:

ii. Coordinating and integrating building services, such as drainage pipes, with the overall facade design;

ii. Integrating the design of architectural features, including stairs and ramps, and garage/carport entries with the overall facade design, and by locating car parking structures on secondary streets where possible;

iii. Ensuring entrance porticos and other articulation zone features are single storey or of a scale relative to the building; and

iv. Include screening to exposed undercroft areas particularly those visible from the street.

These controls are addressed throughout the report (in responding to ADG and controls in DCP Section B2.

Views and vistas

C1. Building siting and height is, as far as it is practical, to be designed to minimise the impact on views from surrounding properties, and follow the Planning Principles of view sharing between properties.

*C2. The location and height of new development is not to significantly diminish the public views to heritage items, dominant landmarks, public buildings from public places or unreasonably obscure public district views of major natural features such as the water, ridgelines or bushland.**

*A scenic impact assessment may be required where development intrudes within scenic landscape vistas. Also refer to Planning Principles relating to view sharing and assessment of view impact which can be accessed at: http://www.lawlink.nsw.gov.au/ lawlink/lec/ll_lec.nsf/pages/ LEC_planningprinciples

Refer to Section 5.9 of this report.

(ii) Section A1 Part C: Residential and Tourist Code (Part C - Residential Flat Buildings and Shop-Top Housing)

This section of the TDCP 2008 contains the controls for residential flat buildings, with Chapter 2 providing the site and building controls under a number of design controls.

- *Design Control 1: Public Domain Amenity* – The proposal is inconsistent with a number of controls ls in this section which are considered in the key issues section of this report.

- *Design Control 2: Site Configuration* – This section contains controls relating to deep soil zones, impermeable site area and communal open space. The matters are largely considered under the ADG, however, the proposal does not comply with the maximum area for impervious surfaces which is considered in this report.

- *Design Control 3: Setbacks* – These matters are considered under the ADG assessment and Section B2 of the TDCP 2008.

- *Design Control 4: Car Parking and Access* - These matters are considered under the ADG assessment and Section B2 of the TDCP 2008. The proposal is unsatisfactory

having regard to these controls given on grade parking is proposed (although enclosed), which results in adverse impacts to the streetscape arising from the blank walls which enclose the car parking along the frontage of the site.

- *Design Control 5: Building Footprint and Attics, Orientation and Separation* – These matters are considered under the ADG assessment and Section B2 of the TDCP 2008. The proposal is unsatisfactory having regard to these controls given the proposed pedestrian entry to the development is not clearly visible or accessible from the street.

- *Design Control 6: Height* – This is considered under the LEP assessment.

- *Design Control 7: Building Amenity* - These matters are considered under the ADG assessment.

- *Design Control 8: Internal Building Configuration* - These matters are considered under the ADG assessment.

- Design Control 9: External Building Elements - These matters are considered under the ADG assessment.

- *Design Control 10: Building Performance* – satisfactorily addressed through the BASIX certification.

- *Design Control 11: Floor Space Ratio (FSR)* - This is considered under the LEP assessment.

A table of compliance for this section of the DCP is provided at **Attachment C**.

(iii) Section A2 - Site Access and Parking Code

Section A2 provides design principles and a schedule for access and parking demands for developments. The proposal is inconsistent with a number of the applicable requirements of Section A2 of the TDCP 2008 as outlined in **Table 7**. The car parking arrangements for the proposal are considered in further detail in the key issues section of this report.

Table 7: Consideration of Section A2 of TDCP 2008

CONTROL	REQUIREMENT	PROPOSAL	COMPLY
A2.2 Design Principles			
A2.2.2 Public Transport, Pedestrian and Cyclist Access and Amenity	**C1.** Access and parking treatments pursued to optimise pedestrian, cyclist, public transport and disabled person's access to and within the site.	Adequate facilities are provided within the site.	✓
A2.2.3 Vehicle Access and Parking	**C1.** Onsite parking provided - Table 2.	See below	No
	C2. Any development involving a land use other than a dwelling, secondary dwelling or dual occupancy must provide vehicular access to and from the site in a forward moving direction.	Provided from the vehicle entry.	✓

	C3. If a dual occupancy is in a 'stacked' arrangement ….	Not proposed.	N/A
	C4. Provide suitable separation and design treatments between large vehicle manoeuvring areas, loading and unloading areas and adjoining residential areas to mitigate impacts within and surrounding the site.	Not proposed. Enid Street only option.	N/A ✓
	C5. Vehicle access from lowest pedestrian and cycle volumes.	Not located in the CBD strip shopping area.	N/A
	C6. Driveway access in any CBD strip shopping area will not be supported without substantial justification as this breaks the active street frontage.	Not located in the CBD strip shopping area. Not proposed.	N/A N/A
	C7. Porte cocheres will not be supported in any CBD strip shopping area.	Not proposed.	✓
	C8. Generally, no new off street parking bays or aisles at street level within 6m of principal property frontage anywhere within the CBD sectors outlined in areas 1,2 and 3 of Table 2	Not applicable	N/A
	C9. Tandem or stacked parking is not generally favoured. However, a limited number of stacked employee and/or resident spaces may be considered where suitably justified, addressing the following: • A demonstrated need for tandem or stacked parking • **Demonstration of no inconvenience to employees/residents**; • Demonstrated assessment that provision will not adversely affect functioning of parking and access to the site; • No more than two (2) cars are parked in a stacked arrangement, so that no	There are 51 pairs of tandem spaces – 102 spaces in total. These spaces are not allocated to an individual unit, and would need to be allocated to a 3 or 4 bedroom unit to ensure they are used by the same unit. The car parking provision has been reduced given it is under the RTA Guide to Traffic Generating Development (GtTGD) which allocates only 1.4 spaces per 3 or 4 bedroom units. The provision of such a high number of tandem	No

	more than one (1) vehicle has to move to allow egress of another; • Tandem or stacked parking is only to be used for people employed or residing on the premises where vehicles are likely to parked all day or a major part of the day; • **Paired tandem or stacked spaces must be used by the occupants of the same tenancy**; • Sufficient space shall be provided on site for shifting vehicles without requiring their movement onto public streets; • Tandem or stacked parking not permitted for customer/public parking or multi dwelling housing; • The minimum length of tandem or stacked parking is 10.4m. • Mechanical car lifts may be acceptable in residential developments provided all spaces have capacity to store B99 vehicle (Appendix A AS2890.1) with headroom in accordance with section 5.3 of AS2890.1 (minimum 2.2m). **C10.** Small car spaces will not count towards required number of vehicle spaces in Table 2 **C11.** Visitor parking shall be incorporated within reasonable and convenient proximity of the visitor's final destination with no barriers to pedestrian movement located in between (e.g. public roads).	spaces is excessive and is unsatisfactory. There are 9 small spaces provided. Table 2 does not strictly apply to the proposal as the car parking requirements are pursuant to the GtTGD, however, this further illustrates the inadequacies of the car parking proposed. The visitor spaces are located close to the entry	**No** ✓

<table>
<tr><td></td><td>C12. Provide aisles for parcel-pickup facilities or areas for the manoeuvring or docking of commercial vehicles or garbage trucks separate from areas of normal pedestrian/vehicular traffic.
Large Developments (greater than 5,000m² GFA)
C13. Provide a dedicated rank for a minimum of 2 taxis, supported by a minimum 2m wide paved and roofed pedestrian access to the building entrance</td><td>to the ground floor car parking area.

Not required.

Can be provided along the Enid Street frontage.</td><td>N/A</td></tr>
<tr><td colspan="4">A2.3 Access & Parking Demand Schedule</td></tr>
<tr><td>RFBs –
1 Bed – 1 space
2 Bed – 1.5 spaces
3+ Bed – 2 spaces
Visitor – 1/4 units

Bicycle
Residents – 1 per unit
Visitor – 1/8 units</td><td><table>
<tr><th>Unit</th><th>No</th><th>Required</th></tr>
<tr><td colspan="3">DCP</td></tr>
<tr><td>1 bed (1 space)</td><td>10</td><td>10 spaces</td></tr>
<tr><td>2 Beds (1.5 spaces)</td><td>48</td><td>72 spaces</td></tr>
<tr><td>3 beds (2 spaces)</td><td>50</td><td>100 spaces</td></tr>
<tr><td>4 beds (2 spaces)</td><td>2</td><td>4 spaces</td></tr>
<tr><td>Visitors (1/4)</td><td>110</td><td>28 spaces</td></tr>
<tr><td>Total required</td><td></td><td>214 spaces</td></tr>
<tr><td colspan="3">GtTGD (Sub-Regional)</td></tr>
<tr><td>1 bed (0.6)</td><td>10</td><td>6 spaces</td></tr>
<tr><td>2 beds (0.9)</td><td>48</td><td>43 spaces</td></tr>
<tr><td>3 beds (1.40)</td><td>52</td><td>73 spaces</td></tr>
<tr><td>1/5 (visitor)</td><td>110</td><td>22 spaces</td></tr>
<tr><td>Total required</td><td></td><td>144 spaces</td></tr>
</table></td><td>192 spaces are provided, comprising:

• 182 residential spaces and 10 visitor spaces.

• Bicycle – 110 resident and 14 visitor (220 provided)</td><td>No

Lack of visitor spaces</td></tr>
</table>

(iv) Section A15: Waste Minimisation and Management

Section A15 of the TDCP 2008 provides the controls for waste management, which are considered in **Table 8**. The proposed waste management arrangements are considered unsatisfactory and generally inconsistent with Section A15 of the TDCP 2008. These matters are further considered in the key issues section of this report.

Table 8: Consideration of Section A15 of the TDCP - Waste Management

REQUIREMENTS	PROPOSAL	COMPLY
Part B -Submission/Application Requirements		
3.4 3 - Waste/Recycling Generation Rates		
Multi-Unit Complex (large scale unit block) • Waste (Red) - 80L/unit/week (required) • Recycling (Yellow) - 40L/unit/week (required) • Green waste (Green) - 240L/fortnight (optional) • Waste bin sizes available in 80L, 140L and 240L. • Recycling bins available in 240L and 360L.	The waste generation rates are adopted in waste calculations, however, it is unclear what size bins are being proposed as the WMP states 2m³ and 1m³ bins, while the plans indicate smaller bins.	**No**
Part D - Development-Specific Assessment Criteria/Controls		
2.4 Multi-Unit Dwellings (Town Houses, Residential Flat Buildings and Villas)		
Waste Management Plan (WMP) required	A waste management plan is provided.	✓
Minimum collection/storage facilities shall be provided: i. Each unit - indoor waste/recycling storage (1 day) ii. RFBs - communal waste/recycling storage facilities (Appendix D). iii. Multi-unit – N/A iv. Waste storage area - accommodate and manoeuvrer separate garbage, recycling and green waste containers at rate of Council provision.	Provided Provided N/A WMP states the following bins will be required for each tower: <u>North</u>: • waste - 2 x 2m³ and 1 x 1m³ bins; • recycling: 1 x 2m³ and 1 x 1m³ bins • Total – 3 x 2m³ and 2 x 1m³ <u>South</u> • waste - 2 x 2m³ bins; • recycling: 1 x 2m³ bins • Total – 3 x 2m³ Based on the size of the bins proposed to be used, the waste storage area for the North tower would need to be 11.49m² and the south tower would need to be 7.35m². Concerns with the proposed waste storage areas include: • It is unclear if this amount of area has been provided in each of the waste storage rooms as there are no dimensions provided.	✓ ✓ N/A **No**

	• The bin chute infrastructure occupies significant space and is likely to reduce the manoeuvring area of the bins in this proposed space. • The plans also show the outline of 10 bins in the north storage room and 8 bins in the south storage area which is inconsistent with the proposed bins outlined in the WMP. • The Council also does not service 1m³ for recycling and therefore these bins cannot be provided. • These large bins will require a bin tug to move them to the collection point, however, space to store this vehicle has not been provided. A bulky waste storage area has not been provided.	**No**
v. Multi-storey (10+ units) – bulky waste storage		
The following location and design criteria shall apply to collection and storage facilities: a. Townhouse and villa developments.	Not proposed.	N/A
b. Unobstructed and Continuous Accessible Path of Travel (NCC) from waste/recycling storage to Adaptable Housing (AS 4299), principal entrance to each residential flat building and collection point.	Provided via the ramp	✓
c. Each service room and storage area located for convenient access by users and must be well ventilated and well lit.	The proposed bin storage rooms are not conveniently located, with access by residents difficult due to the long paths of travel from car spaces and on a different level to a large proportion of the car parking spaces.	**No**
d. Where site characteristics, number of bins and length of street frontage allow, bins may be collected from a kerbside location. In instances where kerbside bin collection is not appropriate, bins must be collected onsite. Bins that are collected onsite are to be collected either from their usual storage point or from an onsite temporary holding area located inside the property boundary and close to a property entrance.	The placement of 6 x 2m³ and 2 x 1m³ bins on the street for collection would result in a 16 metre line of bins to the street. This is an unacceptable streetscape outcome and would result in a traffic hazard to empty that number of large bins from the street.	**No**
e. Where bins cannot be collected from a kerbside location or from a temporary holding area located immediately inside the property boundary, the development must be designed	On-site collection of the bins is required.	**No**

	to allow for on-site access by garbage collection vehicles (Appendix E).		
f.	Should a collection vehicle be required to enter a property, access driveways and internal roads must be designed in accordance with AS 2890.2.	Not provided but required.	**No**
g.	If Council waste collectors and/or waste collection vehicles are required to enter a site for the purpose of emptying bins, then site specific arrangements must be in place.	Refer above.	**No**
h.	If bins need to be moved from normal storage areas to a different location for collection purposes, it is the responsibility of agents of the owners' corporation to move the bins to the collection point no earlier than the evening before collection day and to then return the bins to their storage areas no later than the evening of collection day.	Building manager.	**-**
i.	Water supply for cleaning of bins and waste storage areas.	Provided	✓
j.	Design and location of waste storage areas/facilities to compliment the design of the development and surrounding streetscape.	Bin store satisfactory in that it is proposed away from the street frontage, however the type and number of bins is unsatisfactory.	✓
k.	4+ storeys - suitable system for transportation of waste and recyclables from each storey to waste storage/collection areas.	Garbage chute proposed.	✓
l.	Garbage chutes must be designed in accordance with Appendix F	Can be a condition.	✓

(v) Section B2: Tweed City Centre

This section of the TDCP 2008 contains the controls for the Tweed City Centre, with the following sections relevant to the proposal:

- *Section 3: Building Form* – The proposal is inconsistent with a number of the building form controls including front setback, street frontage heights and upper setbacks, building depth and design of the building. These matters are considered further in the key issues section of this report.

- *Section 4: Pedestrian Amenity* – There are a number of significant inconsistencies with the controls for the proposal, particularly in relation to the lack of a street address for the proposed development. These matters are considered further in the key issues section of this report.

- *Section 5: Access, Parking and Servicing* – The proposal is inconsistent with a number of the controls in this section relating to the car parking design and the provision of

services to the site. These matters are considered further in the key issues section of this report.

- *Section 6 : Environmental Management* – The waste management requirements are considered elsewhere in the controls.

- *Section 7: Residential Development Controls* – The proposal is generally consistent with these controls, with the exception of the need for an Access report and additional accessible car parking spaces to be provided.

A compliance table is provided at **Attachment D.**

Contributions Plans

The relevant contribution charges can be included in any consent granted.

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

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

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

The following matters require consideration in relation to Part 4, Division 1 of the 2021 Regulations:

- Section 61(1) - In determining a development application for the demolition of a building, the consent authority must consider the *Australian Standard AS 2601—2001: The Demolition of Structures* - Demolition is proposed to and relevant conditions can be included in the recommended consent conditions in relation to demolition of structures.

- Section 62 (consideration of fire safety) – this is not relevant as a new building is proposed;

- Section 64 (consent authority may require upgrade of buildings) – this is not relevant as a new building is proposed;

Accordingly, the provisions of the 2021 EP&A Regulation have been adequately considered.

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

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

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

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed new building is of an appropriate scale and use for the site. This is further discussed in the ADG and SEPP 65 assessment.

- Access and traffic – The access and traffic issues are considered in satisfactory, however, there are concerns with the car parking which is considered in the key issues section of this report.

- Public Domain – The proposal can provide pedestrian linkages in the area through the provision of additional footpaths along Enid Street. The presentation of the proposal to the public domain is unsatisfactory, as oultined in the key issues section of this report.

- Utilities – The required utilities for the site are available in the vicinity, however, provisions for these services to the development have not been adequately demonstrated as outlined in the key issues section of this report.

- Heritage – There are no heritage items located on the site contain or on any adjoining or nearby sites. Aboriginal cultural heritage is considered in the key issues section of this report and is adequately addressed.

- Other land resources – The site is not located within or adjacent to water catchment, agricultural or mining land uses in the area, and is considered to be satisfactory in the site context.

- Water/air/soils impacts – The potential for contaminated land is considered in the assessment under the Hazards & Resilience SEPP and is found to be unsatisfactory. Accordingly, the proposal is considered to satisfactorily address the matters required by Cause 6.1(3) and therefore consent can be granted (refer to the TLEP 2014 assessment).

- Flora and fauna impacts – there are no ecological impacts or tree removal proposed, however, the potential impact of the proposal on the trees on the adjoining site to the south (park) has not bene adequately considered.

- Natural environment – There are no trees proposed to be removed and there are earthworks proposed on the site, however, impacts to the natural environment have been minimised.

- Noise and vibration – An Acoustic Report has been provided which has been considered by Council's Environmental Health Officer who was satisfied with the report. Potential acoustic impacts to some of the proposed apartments is considered in the ADG assessment.

- Natural hazards – The site is affected by flooding, which has been considered by Council's engineers to be satisfactory. Relevant conditions can be included on any consent granted.

- Safety, security and crime prevention – This is considered in the key issues section of this report. There are considered to be some concealment opportunities and entrapment sites in the basement.

- Social impact – The proposal enhances housing opportunities on the site and is unlikely to result in any adverse social impacts in the area.

- Economic impact – The proposal will assist with employment generation in relation to constructed related jobs. The proposal is considered to result in a positive economic impact.

- Site design and internal design – There are a number of concerns with the proposed building form on the site, which is considered in the key issues section of this report.

- Construction – Relevant conditions can be imposed to reduce potential construction impacts on any consent granted.

- Cumulative impacts – The proposal will not result in any adverse cumulative impacts.

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 site is considered to be suitable for the development given the proposal is for residential development in a residential zone. The proposed development is considered to be compatible with the locality given the proposal has been designed having regard to the topography of the site.

There are adequate services, transport infrastructure and open space in the vicinity which will assist in minimising the impact of the development in the area. The site is affected by flooding which has been considered by Council and is considered satisfactory subject to conditions.

The site attributes are conducive to the development in that the proposal will provide additional residential development within an existing residential area in close proximity to the town centre and services. There are not any adjoining uses which are prohibitive of the proposal.

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

The community submissions are considered in Section 4 of this report.

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

The proposal is not considered to be in the public interest as the proposal is inconsistent with a number of the planning controls relevant to the site as outlined in this report. Accordingly, on balance, it is considered that the proposal is contrary to the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 9**. There are outstanding issues arising from the referral to Essential Energy, which is considered in the key issues section of this report.

Table 9: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A	N/A	N/A	N/A
Referral/Consultation Agencies			
Electricity supply authority	Section 2.48 – *State Environmental Planning Policy (Transport and Infrastructure) 2021* Development near electrical infrastructure	Objections are raised by Essential Energy.	**No**
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	section 90 of the *Water Management Act 2000* – construction dewatering	General Terms of Approval (GTA) from the Water NSW. Relevant conditions of consent to be included in any consent conditions.	Yes

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 10**.

Table 10: Consideration of Council Referrals

Officer	Comments	Resolved
Building	No objections subject to: • Submission of a BCA and Access report • Proposed BBQ area should be located outside the swimming pool barrier	Yes
Environmental Health	Issues relating to contamination remain outstanding.	**No**
Water and Wastewater	Concerns included: • Insufficient engineering information in relation to the proposed basement being constructed in close proximity to the proposed sewer (to satisfy D15).	**No**
Roads and Stormwater	Considered the following issues: • Flooding acceptable – stated the opening of the driveway to the basement off Enid Street will achieve the Flood DCP requirements and therefore there are no flood concerns for the development. • On-site detention – Based on the provided calculations, considers that on-site detention is required for this	**No**

	development and the current underground piped network is undersized. • Stormwater quality – the proposal involves products for stormwater quality which requires further technical product information to justify their suitability for the proposal.	
Development Engineer	No objections to the proposed sewer relocation/realignment and conditions can be imposed for water, sewer and other services. Concerns included: • Lot 24 for the proposed sewer realignment and relocation is not included in the description or applicable land; • Car parking plan does not provide adequate details to demonstrate compliance with AS2890.1, particularly the length of the car spaces should be 5.5m and not 5m car parks needs to be a minimum 5.4m to comply with AS2890.1. with aisle width to remain at a minimum 5.8m.	**No**

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

4.3 Community Consultation

The proposal was advertised and notified in accordance with the Council's Community Participation Plan with a submission period from 31 August 2022 to 28 September 2022. The notification included the following:

- An advertisement in the local newspaper Tweed Link (from 31 August 2022);
- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (approx. 180 letters?);
- Notification on the Council's website.

A total of twelve (12) unique submissions noting concerns with the proposal were received. The issues raised in these submissions are considered in **Table 11**. The issues are considered further in the key issues section, where relevant, and have been adequately considered in this assessment.

Table 11: Community Submissions

Issue	No of submissions	Comments
Increase in traffic generation	2	The submissions stated that the proposed development will result in additional traffic generation in the area which is already high due to the school, park and church in the vicinity of the site. Comment: The Traffic report considered the likely traffic generation from the proposal stating that it is expected that

		the development would generate 4 in trips and 17 out trips during the morning peak hour and 14 in trips and 3 out vehicle trips would be generated during the evening peak hour. The Traffic report concluded that this increased traffic generation is unlikely to have any significant impact on the local road network and the existing road network can absorb the likely additional traffic generated arising from the proposal. Council's Engineers have not raised concerns with the likely traffic generation arising from the proposal.
Insufficient car parking	3	There were concerns that the proposal provides insufficient car parking and that there is limited on-street parking available along Enid Street. Comment: The amount of car parking provided complies with the *Guide to Traffic Generating Development*, however, there are a number of concerns with the type of parking (tandem) and its location above ground level, which is discussed in the key issues section of this report.
Privacy	4	The submissions raised concerns with privacy and overlooking concerns, particularly from residents along Thomson Street. Comment: The proposal is located in close proximity to the western boundary and there is likely to be some overlooking of the adjoining developments. This is considered further in the key issues section of this report.
Inconsistent with character	2	The submissions raised concerns that the proposal erodes the character of the street and area. Comment: The proposal is consistent with the R3 zoning of the site and its location on the western edge of the City Centre.
Construction impacts	6	The submissions stated that the construction was likely to result in adverse impacts to adjoining developments including from dust, noise, potential impact from asbestos and the need for a dilapidation report. Comment: Relevant conditions can be imposed on any consent granted.
View loss	1	Concerns were raised that there could be view loss for developments adjoining to the west of the site. Comment: The proposal has the potential to result in view loss for adjoining sites along Thomson Street, which is considered further in the key issues section of this report.
Overshadowing of Park	1	Concerns were raised that there could be a loss of solar access to the adjoining park to the south of the site.

		Comment: The proposal is likely to significantly overshadow the adjoining park, which is considered further in the key issues section of this report.
Overshadowing of communal open space	1	Concerns were raised that there could be a loss of solar access to the proposed pool area in the middle portion of the site. Comment: The proposal is likely to significantly overshadow the proposed pool given it is located between the proposed towers on the site, which is considered further in the key issues section of this report.
Noise	3	Concerns were raised that there could be an increase in noise impacts to adjoining development (particularly to the western adjoining development) arising from the proposal. Comment: The proposal is located in close proximity to the adjoining development to the west and north which may result in additional noise impacts, however, these impacts are unlikely to be significant given it is a residential development.
Loss of solar access to adjoining development to the west	2	Concerns were raised that there could be a loss of solar access for developments adjoining to the west of the site. Comment: There is some overshadowing in the morning in midwinter to 18, 20-22, 24 and 28 Thomson Street, however, this is minor and is largely to the rear portion of the site for less than 3 hours. The proposal does not result in any significant overshadowing of the properties to the west of the site, as there will be more than 3 hours of solar access to these properties in mid-winter.
Height is excessive	1	Concern was raised that the proposal was of an excessive height and that the height limit should be 8 storeys. Comment: The proposal is consistent with the height limit for the site under the LEP.
Wind tunnel impacts	2	The submissions raised concerns that the proposal will result in wind tunnel impacts. Comment: It is considered that the proposal has not adequately considered this matter.
Natural air flow	2	The submissions raised concerns that the proposal will result in a lack of natural breezes. Comment: It is considered that there will be minimal impacts arising from this given the proposed towers will allow for natural air flow to the buildings adjoining to the west.
Financial position of developer	1	There was a concern that the developer/builder may run out of money and not finish the project.

		Comment: This is not a planning issue.
Anti-social behaviour in area	1	There were concerns that there would be break ins throughout the area arising from more people in the area. Comment: The proposal is unlikely to result in any increase in anti-social behaviour.
Overdevelopment	1	There were concerns that the proposal was an overdevelopment of the site, particularly having regard to the large development adjoining the site, comprising Bay Grand. Comment: The proposal complies with the maximum height and FSR development standards under the LEP. The proposal is a lower density than envisaged by the controls.
Loss of low-cost accommodation	1	There were concerns that the proposal will result in the loss of low-cost housing on the site. Comment: The site currently contains three buildings, one of which is a former commerical building. The other two buildings were formerly used for multi dwelling residential accommodation. The proposal provides 9.1% of the total apartments as one (1) bedroom units, which will assist with low-cost housing. The proposal in general will allow for additional residential accommodation on the site providing additional housing supply in the area, which will assist with the housing needs in the area.
Structural integrity of existing infrastructure	1	There were concerns raised that the proposal may adversely impact on the structural integrity of existing infrastructure on the site and in the area. Comment: There are concerns from Council's engineers that the proposal has not adequately considered the potential impact to the sewer and stormwater in the area, which is discussed in the key issues section of this report.
Driveway sight distance	1	Concerns were raised with the location of the proposed driveway including the following: • The location of the proposed driveway is on a slight corner, which means drivers will not have a clear view of other traffic when exiting driveway, which is occurring with the neighbouring development 'Bay Grand' with near misses when exiting the Bay Grand driveway occurring, which is only a few metres from this proposed driveway. • Many children walk/ride to/from school along this Enid St strip and having two driveways with large volume traffic so close to each other/ with exiting driver's view blocked by the corners of the building plus being on a physical corner area will make it more dangerous the kids. The driveways should be separated by a more appropriate distance.

		Comment: Council's engineers have reviewed the proposal and have not raised this issue.
Impact on Trees in Park	1	There were concerns in relation to the potential impact of the proposed basement excavation on the existing trees along the boundary of the site with the Park. Comment: This has not been adequately considered by the proposal and is discussed in the key issues section of this report.
Flooding	1	Concerns were raised with the flooding constraint on the site. Comment: This has been considered by Council's engineers and found to be adequately addressed, which is considered in the LEP assessment.
Lack of setback to Bay Grand	1	There were concerns raised that a 30m long x 700mm wide alleyway will be created along the northern boundary of this site with the adjoining northern site (Bay Grand) which could become an area for anti-social behaviour. Comment: This has not been adequately considered by the proposal and is discussed in the key issues section of this report.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls, issues raised in the submissions and by Council officers and the proposal in detail.

1. Public Domain Interface and Pedestrian Amenity
2. Building Separation
3. Building Form and Setbacks
4. Communal Open Space
5. Apartment Design and Layout and Potential Impact on Visual and Acoustic Privacy
6. Overshadowing and Solar Access
7. Car Parking
8. Waste Management
9. View Loss
10. Deep Soil Zones and Site Coverage
11. Contamination
12. Services
13. Lack of Information
14. Earthworks
15. Aboriginal cultural heritage

5.1 Public Domain Interface and Pedestrian Access

The interface with the public domain is an important feature of any residential apartment

development, particularly in city centre locations. For the proposed development, there are significant concerns with the relationship of the proposed building to the street and the associated pedestrian entry and amenity aspects of the proposal. Parts 3D and 3G of the ADG provide controls for the public domain interface and pedestrian access which are considered below (**Figure 16**):

(a) Safe transition between private and public domain is not achieved

Objective 3C-1 of the ADG requires that the transition between private and public domain is achieved without compromising safety and security, however, there are number of design elements which prevent a safe transition from being provided including:

- There are no ground floor apartments proposed and therefore there are no direct street entry points to any of the proposed apartments, contrary to the ADG which encourages terraces, balconies and courtyard apartments to have direct street entry;

- The street façade comprises a high stone wall, approximately 4.8 metres in height, which is a solid interface with the public domain and is contrary to the ADG which encourages street frontages with visually permeable materials and treatments and any solid fences or walls to be limited to 1 metre;

- There are minimal opportunities for casual surveillance of the street given the long, high walls proposed, the 4 metre level change between the street and the podium level and the lack of any opportunities for casual interaction between residents and the public domain such as seating at building entries. The street level only contains the pedestrian entry, bicycle and car parking, manager's office and vehicle entry point, which is contrary to the ADG.

Accordingly, a safe and secure transition between private and public domain has not been achieved.

(b) Amenity of the public domain is not retained or enhanced

Objective 3C-2 of the ADG requires that the amenity of the public domain is retained and enhanced, however, the proposal does not achieve this given the perimeter of the site is dominated by the high stone walls at street level with minimal landscaping to soften the street edge. Services including boosters, substation and vehicle access point are largely located along the street edge of the proposal, which further reduces the amenity of the street edge of the development.

Section B2.3.5(g) of the TDCP 2008 requires that opaque or blank walls for ground floor uses is limited to 30% of the street frontage, however, this has not been achieved arising from the large blank walls which dominate the street edge.

(c) Building entries and pedestrian access are not legible or address the Street

Objective 3G-1 of the ADG seeks to provide building entries and pedestrian access that addresses the street, with multiple entries encouraged to be provided to activate the street edge and building entries to be clearly identifiable, with communal entries clearly distinguishable from private entries. Similarly, Objective 3G-2 of the ADG requires that building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces. Objective 4M-1 for facades also requires building entries to be clearly defined.

Section B2.4.2(g) to ((l) also requires that the site has a 'street address' (as opposed to an active street frontage), which is to comprise entries, lobbies, and habitable rooms with clear glazing to the street not more than 1.2m above street level. Section B2.5.1(a) also requires that the main building entry points should be clearly visible from primary street frontages and enhanced as appropriate that improve clarity of building address and contribute to visitor and occupant amenity.

Facades visible from the public domain are to be well designed by having important elements such as front doors and building entry areas prominent in the building facade and clearly identifiable from the street pursuant to Section A2 Part C of the TDCP 2008 (Design Control 1: Public Domain Amenity, Design Control 5 – Building Footprint and Attics, Orientation and Separation and Design Control 9 - external building elements).

There are two (2) main entries to the building from the street, comprising the north lift lobby and the south lift lobby. These areas are accessed from Enid Street via three separate pedestrian entry points. The lift lobbies, however, are deeply recessed into the frontage, with the lift lobby for the south tower located approx. 27 metres into the site which results in them being visually and physically separated from the street and being accessed by a convoluted series of pathways which adjoin blank walls of the ground level car parking and service areas. Landscaping is also proposed at these entry points, which further reduces their visibility from the street.

The entry paths into the recessed lift lobbies represent only approximately 13 metres of the 70 metre frontage to Enid Street, representing less than 15% of the street frontage. There is also limited surveillance of the entry areas, with no habitable or usable areas surrounding these areas. The proposed ground street level interface is largely dominated by screening areas to the car parking behind, as well as service areas and basement car parking access.

The lack of any ground floor apartments within the proposed development exacerbates this poor interface with the public domain. Without habitable rooms, balconies and individual entries at ground level, the street interface lacks any street presence and surveillance of the entry areas which would assist the design of the development at ground level.

There is a poor relationship between the entry areas and the street, which adversely impacts on the safety of these areas and interaction with the streetscape. It is considered that the proposed building entry areas are not clearly visible or legible from the street and there is a resulting lack of pedestrian amenity for the entry area.

The street address to the park is similarly poor, with the continuation of the high blank walls as well as the lack of any habitable spaces or glazed areas existing along this southern frontage of the site.

Accordingly, it is considered that in this case, a street address and a prominent and legible entry area in the building façade have not been provided arising from the high blank stone walls proposed at ground level enclosing the on grade car parking, the lack of any ground floor apartments and habitable rooms with clear glazing or entry and lobby areas visible from the street frontage. The proposed development does not provide a clear street address and direct pedestrian access of Enid Street is not provided.

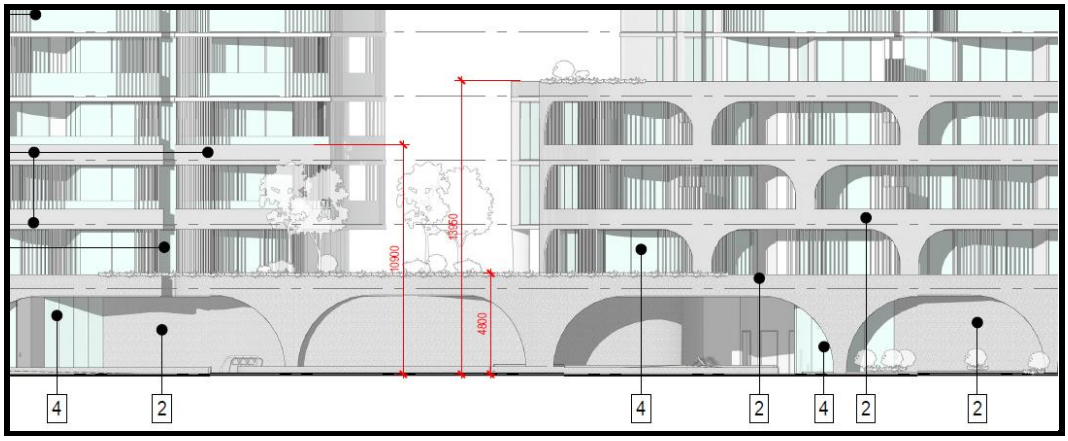

Figure 16: Proposed Street interface of the Development *(Source: Jackson Teece, 17 June 2022)*

5.2 Building Separation

Part 3F of the ADG provides the controls for building separation which are required to achieve reasonable levels of external and internal visual privacy. The design criteria required to be achieved for Objective 3F-1 and the setbacks of the proposal are outlined in **Table 12**, including the required separation distances between buildings on the same site which are to be combined for the required building separations. There are a number of non-compliances which are in bold.

The inconsistencies are largely for the ground floor level to the north and west and the upper level setbacks above the 12 metre height mark which are only 6 metres when the required distance is from 9 to 12 metres. The other major source of inconsistencies with the controls is the internal building separation between the proposed north and south towers within the site. This distance is required to be between 12 to 24 metres.

Similarly, Objective 3F-2 requires that site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.

Table 12: Building Separation Controls of Part 3F of the ADG

BUILDING HEIGHT	HABITABLE ROOMS & BALCONIES	NON-HABITABLE ROOMS	PROPOSAL TO ADJOINING DEVELOPMENT	BLDG SEPARATION WITHIN THE SITE
Up to 12m (4 storeys) *Up to L3*	6m	3m	• North – **0.5m** (3m ground) to 6m (6m, podium & L3) • South - 6m (3m ground) to 6m (6m podium & L3) • West - **0.5m** (3m ground) to 6m (6m podium & L3)	• Podium: 16.75m to 18.26m • Level 3: **10.83m, 11.43m,** 16.75m, 18.26m
12m – 25m (5-8 storeys) *L4 to L7 (up to 25m)*	9m	4.5m	• North (to Bay Grand RFB) – **6m** (9m) • South (park) – **6m** (9m) • West (Thomson Rd RFBs) – **6m** (9m)	• L4: **10.83m, 11.43m, 16.75m,** 18.26m • L5: **14.51m, 17.38, 16.75m,** 18.26m • L6: **14.51m, 17.38, 16.75m,** 18.26m • L7: **14.51m, 17.38, 16.75m,** 18.26m

Over 25m (9+ storeys) *L8 to L11 (+25m)*	12m	6m	• North (to Bay Grand RFB) – **6m** (12m) • South (park) – **6m** (12m) • West (Thomson Rd RFBs) – **6m** (12m)	• L8: **14.51m, 17.38, 16.75m, 18.26m** • L9: **14.51m, 17.38, 16.75m, 18.26m** • L10: **14.51m, 17.38, 16.75m, 18.26m** • L11: **14.51m, 17.38, 16.75m, 18.26m**

Privacy within the site

The proposed towers are orientated towards each other with inadequate building separation between them, with a large number of balconies and habitable room windows directly overlooking each other within the site between the towers which have an unacceptable separation. Arising from this lack of compliance for the internal building separation distance are numerous vertical privacy screens for the south facing units in the north tower and the north facing units in the south tower. These screens are likely to reduce the outlook, amenity and solar access to these units which would not be required if the separation distances were consistent with the controls.

Objective 3F-1 encourages communal open space, common areas and access to be separated from private open space and windows to apartments, particularly habitable room windows, however, proposed units N201, S202, S203, S204 are located adjoining the communal area and are likely to be overlooked and be subjected to noise from the pool area, which is unsatisfactory. Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas, however, proposed units N201, S202, S203, S204 are located adjoining the circulation areas for the proposed communal areas including habitable room windows and balconies (discussed further in apartment layout).

While the ADG requires that recessed balconies and/or vertical fins be used between adjacent balconies, the majority of the proposed balconies require louvers to provide privacy between balconies, which is unsatisfactory.

Privacy between sites

There are also likely to be overlooking concerns into the existing buildings on the adjoining sites arising from the inconsistencies with the required setbacks to side boundaries. As illustrated in **Figures 17, 18** and **19**, there are a significant number of existing balconies and habitable room windows in these adjoining buildings, which would be overlooked by the large number of balconies in the proposal.

Objective 3F-2 also requires that windows should be offset from the windows of adjacent buildings, however, there is likely to be overlooking between the proposed western apartments with the existing development to the west of the site given there is inadequate building separation between sites.

Therefore, it is considered that the proposal does not achieve Objective 3F-1 and 3F-2 of the ADG in that adequate building separation distances to achieve reasonable levels of external and internal visual privacy have not been provided.

Figure 17: Adjoining development to the west with balconies and habitable windows facing the subject site

Figure 18: Adjoining development to the west with balconies and habitable windows facing the subject site

Figure 19: Adjoining development to the north with balconies and habitable windows facing the subject site

5.3 Building Form and Setbacks

The proposal does not comply with a number of building form and setback controls which combine to highlight fundamental concerns with the overall design and form of the proposed building. These concerns include the following:

(a) Building Design

There are some features of the proposed design of the building which are considered to exacerbate the bulk and scale of the building and result in an adverse streetscape presentation.

The podium is forward of the building setback line (as discussed further below), with a series of arched openings adding additional bulk and scale of the development to the streetscape and decreasing engagement with Enid Street. These arches extend to the ground level to conceal the car parking areas located at ground level, which reduces interaction with the street. While the tower provides a contrast to the podium expression, the lack of an adequate upper setback in accordance with the DCP (discussed further below) also diminishes the interaction with, and appearance to, the street.

An alternate building form with slender towers which take advantage of allowable maximum building height to reduce impacts of building separation, overshadowing, outdoor amenity spaces, overshadowing lower levels of the southern tower and overshadowing of the Jack Chard Park would have more adequately addressed the site characteristics.

(b) Street building alignment and setbacks

The Street building alignment and setbacks requirements are set out in Section B2.3.1(a) of the TDCP 2008 which provides a 4 metre predominant building line (pursuant to Figure 3.1 of the DCP). The north tower is proposed on a nil to 1 metre front boundary setback, which is inconsistent with the controls, while the front balconies are between 0 and 1 metre of the front boundary, also inconsistent with the controls. The proposed south tower, including the balconies, is setback the required 4 metres.

The SEE states that the inconsistency with the street setback is to match the existing Bay Grand development to the north, to provide a transition to the part to the south and due to the diagram error in Figure 3-7 which the applicant considers allows for a zero front setback to the street. This figure is illustrating street front heights (discussed below) and not street setbacks and therefore the latter reason is not supported. The planning controls aim to provide a greater street setback for the site as it is zoned residential and is surrounded by other residential development, distinct from the nearby commerical and mixed use developments closer to the main street and city centre.

The objectives of the Building Alignment and Setbacks controls of the DCP include:

1) *To provide a clear and consistent definition of the public domain.*
2) *To provide a hierarchy of street edges from commercial core with no street setbacks to residential locations with landscaped setbacks.*
3) *To establish the desired spatial proportions of the street and define the street edge.*
4) *To create a clear transition between public and private space.*
5) *To locate active uses, such as shopfronts, closer to pedestrian activity areas.*
6) *To assist in achieving visual privacy to dwellings from the street.*
7) *To create good quality entry spaces to lobbies, foyers or additional dwelling entrances.*
8) *To allow an outlook to, and surveillance of, the street.*
9) *To allow for street landscape character, where appropriate.*
10) *To maintain shared views to the ocean and Tweed River.*
11) *To maintain sun access to the public domain.*

It is considered that the proposed north tower does not satisfy these objectives as it does not provide a clear and consistent definition of the public domain or provide a hierarchy of street edges from commercial core with no street setbacks to residential locations with landscaped setbacks given the absence of any setback particularly at street level. The proposed setback is considered to overwhelm the street in a residential context.

The spatial proportions of the street and definition of the street edge are also not established for the site given the inconsistencies with the front setback control, nor does the development create a clear transition between public and private space. The proposal also does not create a good quality entry space to the lobbies or foyers given the blank walls which face the street (discussed below) and the lack of an appropriate setback to the street which could create a more legible entry area. It is also considered that an outlook to, and surveillance of, the street is not achieved given the large areas of building forward of the front setback.

Accordingly, it is considered that the inconsistency with the required front setback results in an excessive bulk and scale to the street and a poor relationship between the entry areas and the street.

(c) Street frontage heights

The controls pursuant to Section B2.3.2(a) outline the street frontage heights for the site, stating that the site is subject to the Street Frontage Height C applies as illustrated in Figures 3.4 and 3.7 of the DCP (**Figure 20**). The street frontage height for the site is to be between 12 metres and 20 metres, with an upper setback 6 metres for buildings with a total height of greater than 34 metres.

The proposal has a street frontage height of 13.93 metres for the proposed north tower, complying with this control, while the south tower has a proposed street frontage height of 10.90 metres which is slightly lower than the minimum of 12 metres. The proposal, however, does not comply with the upper setback of 6 metres (above the street frontage height from 20 metres) for either of the towers. The north tower has a 3 metre upper setback to the façade line of the building with the balconies on a zero to 1 metre setback only, while the south tower also does not comply with the upper level setback of only 4 metres (podium to level 11).

The objectives for the street frontage heights of the DCP state:

1) *To provide a strong, consistent and appropriate definition of the public domain.*
2) *To achieve comfortable street environments for pedestrians in terms of daylight, scale, sense of enclosure and wind mitigation as well as healthy environments for street trees.*
3) *To allow sunlight access to key streets and public spaces*

The proposal is inconsistent with objective (1) in that it does not allow for a consistent or appropriate definition of the public domain as the proposed north tower has been built to the boundary, while both of the towers do not provide an adequate upper setback to locate the bulk of the building away from the street and more adequately define the public domain.

The proposal is also inconsistent with objective (2) in that a comfortable street environment for pedestrians in terms of daylight, scale and sense of enclosure has not been provided given the lack of an adequate upper setback which places a high proportion of the building's bulk at the street, which also arises from the inconsistency with the predominate front setback. It is also considered that potential wind tunnel impacts of the proposal have not been adequately demonstrated and there is a lack of space at the street for large trees to be planted which would complement the streetscape.

The proposed building form, with its inconsistency with the upper-level setback of the street frontage height controls is considered to be unsatisfactory and is inconsistent with the objectives of Section B2.3.2 of the TDCP 2008.

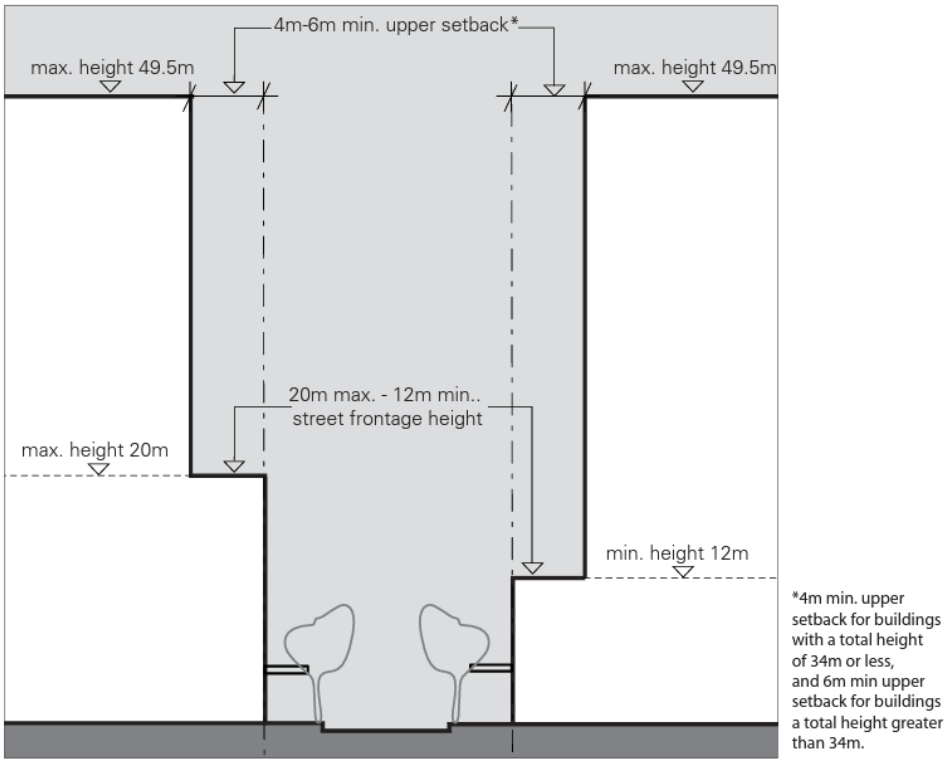

Figure 20: Street frontage height - Figure 3-7 of the DCP *(Source: TDCP 2008)*

(d) Building Depth and Bulk

There are a number of building depth and bulk controls pursuant to Section B2.3.3(a) of the TDCP 2008 which apply to the proposal including maximum GFA per floor above the street frontage height, building depth and building length (**Figure 21**). The proposal complies with the building length and maximum GFA per floor, however, does not comply with the building depth control of 18 metres. The floor plate of both towers exceeds this building depth, primarily in the eastern section of the north tower and the western section of the south tower.

The inconsistencies with the building depth control results in a building which includes numerous apartments with internal rooms which adversely impacts on the internal amenity of the proposed apartments. This excessive building depth also increases the bulk and scale of the building form, particularly when viewed from adjoining properties and the public domain, and contributes to view loss for adjoining properties to the west. Overshadowing is also potentially increased due to the building depth exceeding 18 metres.

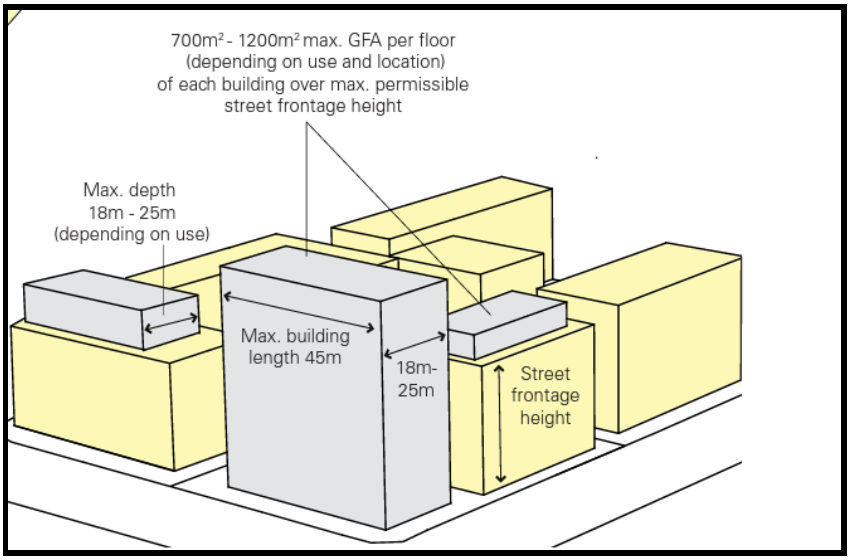

Figure 21: Building bulk and depth controls *(Source: Figure 3-11 of Part B2 of the TDCP 2008)*

The objectives of these controls are:

1) *To promote the design and development of sustainable buildings.*
2) *To achieve the development of living and working environments with good internal amenity, and minimise the need for artificial, heating, cooling and lighting.*
3) *To provide viable and useable commercial floor space.*
4) *To achieve a usable and pleasant public domain at ground level by controlling the size of upper level floorplates of buildings.*
5) *To achieve a city skyline sympathetic to the topography and context.*
6) *To allow for view sharing and view corridors.*
7) *To reduce the apparent bulk and scale of buildings by breaking up expanses of building walls with modulation of form and articulation of façades.*
8) *To encourage building designs that meet the broadest range of occupants' needs possible, and which can accommodate whole or partial changes of use.*

The proposal is considered to be inconsistent with the objectives for the building depth controls in that the internal amenity of the proposed apartments is adversely affected arising from the internal rooms proposed and results in view corridors being obscured for adjoining properties. The exceedance of the building depth controls, combined with the lack of an appropriate upper setback, increases the bulk of the building when viewed from the street and adjoining properties. Accordingly, it is considered that the proposed building depth is unsatisfactory.

(e) Side setback to Bay Grand

The proposed development provides a setback to the northern site boundary of approximately 700mm at ground level, adjoining the boundary with the Bay Grand development (**Figure 22**). A 2 metre (approx.) high wall exists along the majority of the boundary with Bay Grand, with an open area existing at the street boundary which includes an electrical substation and other infrastructure (**Figure 23**). Given the setback proposed for this current development, this will result in a 'gap' between building structures of approximately 700mm wide, which will become a narrow and unusable area.

There were concerns raised in the submissions that this area could become an area for anti-social behaviour. Furthermore, it is considered that this area will be difficult to maintain given the small gap within which maintenance could be carried out.

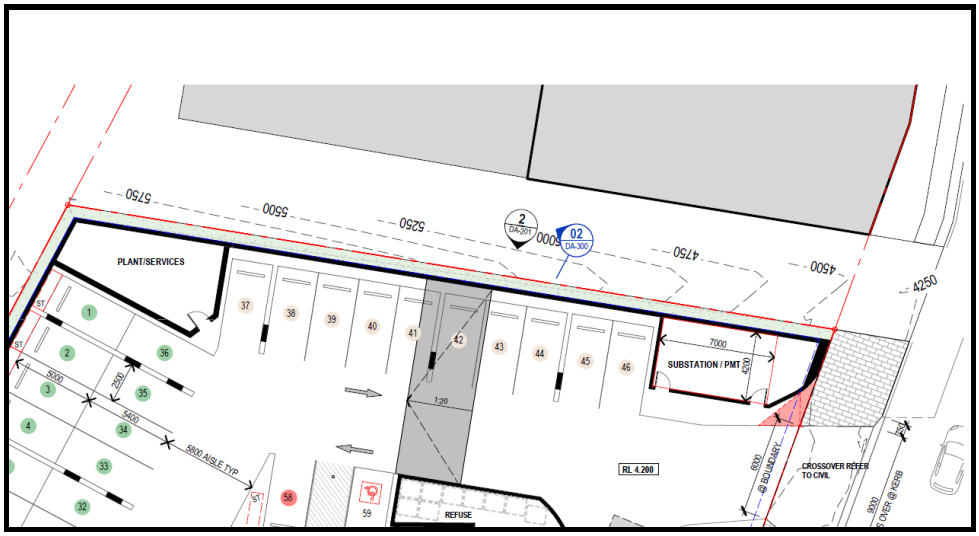

Figure 22: Proposed ground level setback to the northern adjoining site *(Source: Jackson Teece, June 2022)*

Figure 23: Existing boundary with the Bay Grand Building

(f) Front façade

Pursuant to Section B2.3.5(g) - Building Design and Materials of the TDCP 2008, developments are to limit opaque or blank walls for ground floor uses to 30% of the street frontage. The proposed development provides blank walls enclosing the on-grade car parking for the majority of the front façade to Enid Street, with only small pathways to the recessed lift lobbies providing any change to this front façade. There is limited activation of the street frontage of the proposal, with no defined entry or interaction with the street.

The objectives of these controls state:

1) ***Contribute positively to the streetscape and public domain by means of high quality architecture and robust selection of materials and finishes.***

2) ***Provide richness of detail and architectural interest especially at visually prominent parts of buildings such as lower levels and roof tops.***
3) *Present appropriate design responses to nearby development that complement the streetscape.*
4) *Clearly define the adjoining streets, street corners and public spaces and avoid ambiguous external spaces with poor pedestrian amenity and security.*
5) *Maintain a pedestrian scale in the articulation and detailing of the lower levels of the building.*
6) *Contribute to a visually interesting skyline.*

The proposal is considered to be inconsistent with these objectives in that the proposal does not positively contribute to the streetscape or the public domain given this limited interaction or addressing the street and does not provide architectural interest at the lower (street) level. This issue is further considered in relation to Part 3C and 3G of the ADG.

The proposal is also considered to be inconsistent with the aims of the LEP pursuant to Clause 1.2(2)(h) aims of the LEP pursuant to Clause 1.2(2) in that the proposal does not facilitate building design excellence appropriate to a regional city in Tweed City Centre.

5.4 Communal Open Space

Part 3D of the ADG outlines the requirements for communal open space, with the design criteria stating that the communal open space shall have a minimum area equal to 25% of the site (907.38m²) and that developments are to achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

The plans indicate that the communal open space provided is 1,027sqm (28.2% of the site) comprising an area on the ground level adjoining the park and the entry areas from the street comprising 553m²; and a pool area on the podium level with a seating area and clothes drying area comprising 474m².

The proposed communal open space is considered to be unsatisfactory for the following reasons:

- These areas largely comprise circulation areas, building entrances, raised planter boxes and clothes drying areas which are not usable communal open space;
- The ground level space on the southern side of the building is overshadowed throughout the day in midwinter, with the exception of the southwestern corner at 3pm. The podium level communal open space is also significantly overshadowed throughout the day in midwinter being in shadow throughout the morning and to midday with the western and southern portions receiving sunlight between midday and 3pm.
- The communal open space is not consolidated or well designed with an easily identifiable area given it is split between different levels of the building, with the ground level space detached from the main areas of the building.
- The proposed communal open space has not been designed to allow for a range of activities, given it largely comprises the pool or smaller areas within building entrances and drying yards.
- The location of facilities does not respond to site conditions with access to sun in winter and shade in summer not adequately demonstrated given the communal areas are overshadowed for large parts of the day in midwinter and it is unknown whether there is shade in summer, which may require awnings or other sun protection.
- The proposed communal open space on the southern side of the building is isolated

and will not maximise safety and people using it.

Accordingly, the proposed communal open space is unsatisfactory and is inconsistent with Objectives 3D-1 and 3D-2 of the ADG.

5.5 Apartment design and Layout and Potential visual and Acoustic Privacy

There are number of aspects of the proposed apartment design and layout which are inconsistent with the ADG and/or DCP controls and which are likely to result in adverse impacts on the amenity of some of the proposed apartments.

These concerns include:

(a) Windows to habitable rooms – There are a number of apartments which include rooms without windows or with very small window areas, which are considered to be contrary to Design Criteria 2 of Part 4D-1 which requires that every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room, with daylight and air not to be borrowed from other rooms. There is another control which requires that a window should be visible from any point in a habitable room.

The apartments which are contrary to these controls include:

- Apartments which contain Study rooms (habitable rooms under the ADG) which do not have access to a window including the following (total – 19 units):

  iii) Type S-3A (South tower) x 10
  iv) Type S-3C (South tower) x 9

- Apartments which rely on very small (snorkel-style) windows for ventilation and daylight including the following (total – 32 units):

  vii) Type N-2B (North tower - 10 units)
  viii) Type N-2D (North tower - 3 units)
  ix) Type N-3C (North tower - 9 units).
  x) Type S-2C (South tower – 1 unit)
  xi) Type S-3B (South tower – 8 unit)
  xii) Type S-4A (South tower – 1 unit)

There is a total of 51 proposed apartments, or 46.3% of the proposed apartments, which are considered not to have sufficient windows to comply with this control.

(b) Kitchens in circulation spaces - Proposed apartment types S-3B and S-2C in the south tower include kitchens located in the circulation space/hallway, contrary to Part 4D-1 which requires that kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space) ((total – 9 units).

(c) Kitchens more than 8 metres from a window – Proposed Apartment type N-2C is 8.3m to the back of kitchen to a window contrary to the design criteria 2 for Objective 4D-2 to maximise the environmental performance of the apartments (total – 9 units).

(d) Living areas and bedrooms located on the external face of the building - Proposed Apartment types S-3B, S-2C and S-4A in the south tower comprise bedrooms which

rely on a very small, snorkel type window to achieve compliance with this control which is unsatisfactory (**Figure 24**).

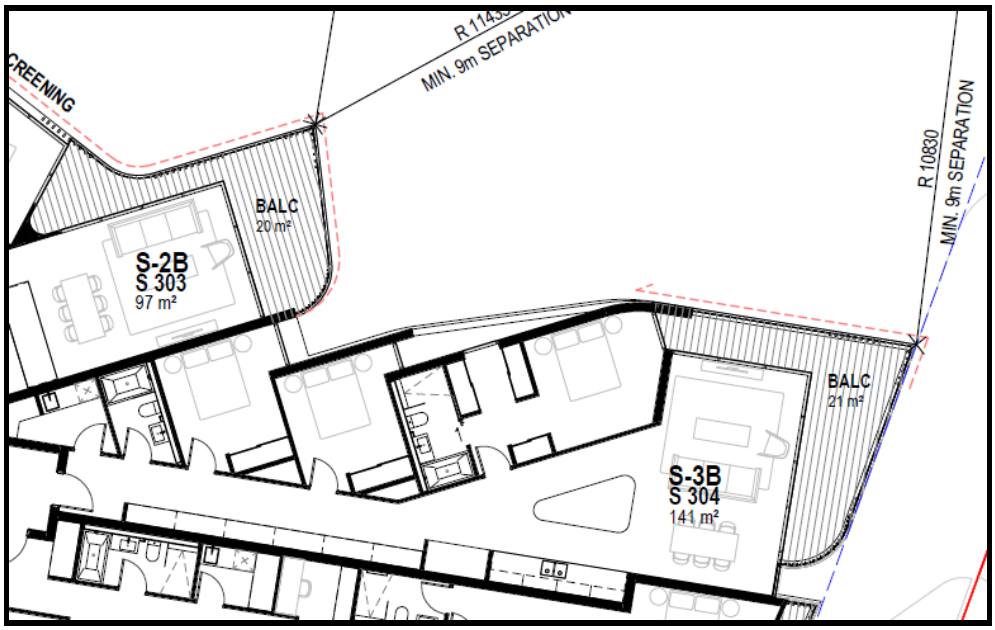

Figure 24: Proposed Apartment Type 3B (same for 2C and 4A) with small style snorkel windows to qualify as an external wall (Source: Jackson Teece, June 2022)

(e) Balustrades - All of the balcony areas are proposed to have glass balustrades, including on the podium level apartments, which will have no privacy from the street or the communal open space which is unsatisfactory. Furthermore, this is considered to be contrary to the design guidance in Part 4E-3 which encourages solid and partially solid balustrades, with full width full height glass balustrades alone are generally not desirable.

(f) Acoustic privacy – there are a number of proposed apartments which do not satisfy the design guidance for acoustic privacy pursuant to Part 4H-1 in that there are numerous units which include bedrooms within 3 metres of adjoining noise sources including:

v) Adjoining the communal open space – Units N201, N206, S202, S203 and S204 (x 5 units)
vi) Adjoining stairwells in the South tower – Units S201 to S1101 (x 10 units);
vii) Adjoining stairwells in the North tower Units N301 to N1101 (x 9 units) and Units N307, N407, N506 to N1006 (x 8 units) and N1105 (x 1 unit);
viii) Adjoining lift cores in the South tower – Units S205, S305, S405, S505, S605, S705, S805, S905 and S1005 (x 9 units);

(g) Visual privacy – There are a number of proposed apartments where visual privacy will be adversely impacted arising from the proximity of the proposed communal open space including Apartments Units N201, N206, S202, S203 and S204 (x 5 units). This is contrary to Design Control 2 – Site Configuration of Section A2, Part C of the TDCP 2008.

Arising from these concerns and inconsistencies with the planning controls, it is considered that there are several significant concerns with the proposed apartment design and layout and

the proposal is contrary to the objectives design criteria or design guidance of Parts 4D-1, 4E-3 and 4H-1 of the ADG and the proposal is unsatisfactory.

5.6 Overshadowing and Solar Access

The potential for overshadowing arising from the proposal and whether there is adequate solar access to the proposed apartments and communal open space requires further consideration.

Overshadowing to park

Jack Chard Park adjoins the site to the south and is an area of passive open space containing children's play equipment, seating and paths. As outlined in the community submissions, the Park has recently been upgraded and is well used by the community and nearby schools.

The shadow diagrams demonstrate that there will be significant overshadowing of the Park throughout the morning and through to midday during mid-winter, while the north-east portion of the park will also be in shadow through to 3pm. The proposed southern tower has a long, largely unbroken southern elevation, which will have a significant impact on the amount of natural direct sunlight reaching this important community park. The lack of sunlight to the park is likely to reduce its use by the community and may impact on the health of the trees, vegetation and grass within the park.

Part 3B of the ADG provides objectives and controls for orientation and seeks solar access to be optimised and overshadowing to be minimised. In this case the proposal is considered to be inconsistent with Objective 3B-2 in that overshadowing of neighbouring properties has not been minimised during mid-winter, given the significant overshadowing to the Park.

The design guidance for orientation of the ADG recommends that if the proposal will significantly reduce the solar access to adjoining properties, the following design solutions should be considered:

- building separation should be increased beyond minimums contained in section 3F Visual privacy,
- increased upper level setbacks
- orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts.

The proposal does not demonstrate any of these design solutions which would potentially reduce the overshadowing to the Park given:

- The proposed southern tower, the largest contributor to the overshadowing of the park, does not satisfy the building separation requirements of Part 3F of the ADG in that from level 4 and above, the setback is required to be 9 metres and 12 metres from Level 8, however, the 6 metre setback continues for the whole building;

- The upper levels are not further setback in that the setback remains 6 metres for all levels;

- There has not been any change to the building configuration or orientation which may have reduced the overshadowing.

- It is also noted that the building depth of the southern tower is between 10m to 20 metres (at level 11), which is inconsistent with the controls of B2.3.3(a) for building depth and bulk.

These changes to the building form are likely to have the effect of reducing overshadowing impacts on the Park. The overshadowing to the park is extensive and will cause the playground equipment, public seating and mature vegetation to be in shadow for the majority of the day.

Accordingly, it is considered that the overshadowing of the Park is unacceptable and is inconsistent with Part 3B of the ADG.

Solar access to the proposed apartments and communal open space

Solar access to both the proposed apartments and the communal open space needs to be considered. As oultined above, there is likely to be significant overshadowing of the communal open space to both the pool area and the southern side area given these areas are located to the south of the site and as outlined in the shadow diagrams.

In relation to the proposed apartments, Part 4A of the ADG provides the design criteria, design guidance and objectives for solar access and daylight. For this site, Part 4A-1 requires living rooms and private open space of at least 70% of apartments (77 apartments) in a building to receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.

The plans and the solar access report/diagrams indicate that 76 of the proposed apartments achieve 3 hours of solar access (69% of the units). However, it appears that this overshadowing material, comprising views from the site, has not taken into account the overshadowing impacts from the Bay Grand development given this is adjoining building is located to the north of the subject site. The calculations resulting from this analysis cannot be relied upon to satisfy the design criteria of Part 4A of the ADG and in this way does not satisfy Part 4A of the ADG.

In this way, the proposal is considered to be inconsistent with the design criteria as well as Objective 4A-1 in that the proposal does not optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

5.7 Car Parking

The design criteria in Part 3J of the ADG states that development on sites within 400 metres of land zoned B3 Commercial Core (among other zones) in a nominated regional centre (which includes Tweed Heads), the minimum car parking requirement for residents and visitors is set out in the *Guide to Traffic Generating Developments* ('GtTGD') or the car parking requirement prescribed by the relevant council, whichever is less. As outlined in **Table 13**, the GtTGD requires less car parking spaces than the DCP and therefore these rates apply.

Table 13: Car Parking Requirements

UNIT TYPE	NO	REQUIRED CAR SPACES
DCP		
1 bed (1 space)	10	10 spaces
2 Beds (1.5 spaces)	48	72 spaces
3 beds (2 spaces)	50	100 spaces

4 beds (2 spaces)	2	4 spaces
Visitors (1/4)	110	28 spaces
Total required		**214 spaces**
GtTGD (Sub-Regional)		
1 bed (0.6)	10	6 spaces
2 beds (0.9)	48	43 spaces
3 beds (1.40)	52	73 spaces
1/5 (visitor)	110	22 spaces
Total required		**144 spaces**

There are a number of concerns with the proposed car parking comprising the following:

- Tandem spaces – While tandem spaces are permissible, pursuant to Section A2.2.3 Vehicle Access and Parking (C9) of the TDCP, tandem or stacked parking is not generally favoured and should be limited to a number of stacked employee and/or resident spaces where suitably justified. Factors to be considered in the provision of tandem parking as outlined in the DCP include whether there is a demonstrated need for tandem or stacked parking, that there is no inconvenience to employees/residents and that the provision will not adversely affect the functioning of parking and access to the site. Paired tandem or stacked spaces must be used by the occupants of the same tenancy.

  There are 51 pairs of tandem spaces proposed, consisting of 102 car parking spaces in total, which represents 53% of the total spaces provided. These spaces are not allocated to an individual unit, and would need to be allocated to a 3 or 4 bedroom unit to ensure they are used by the same tenancy. The provision of such a high number of tandem spaces is excessive and is considered to be unsatisfactory.

- Visitor parking provision (Design Criteria 1 - Objective 3J-1 of the ADG) – The plans outline that 10 visitor spaces are provided, however, 22 visitor spaces are required pursuant to Design Criteria 1 of Objective 3J-1 of the ADG and Section A2.2.3 Vehicle Access and Parking (C1) of the TDCP, which is unsatisfactory.

- Small car spaces – Pursuant to Sections A2.3 and A2.2.3 Vehicle Access and Parking (C10) of the TDCP, small car spaces do not count towards the required number of vehicle spaces, however, there are nine (9) small spaces provided, which further illustrates the inadequacies of the car parking proposed.

- Accessible car parking spaces – Section B2.5.3(d) and B2.7.2(f) of the Tweed DCP requires that a minimum of 2% of the required parking spaces, or minimum of 1 space per development, (whichever is the greater) is to be appropriately designated and signposted for use by persons with a disability. The proposal, however, only provides one (1) accessible car parking space when four (4) are required.

- Car parking dimensions - Section B2.5.3(c) of the Tweed DCP requires that the car parking spaces are to comply with AS 2890.1 2004 – Parking facilities. The proposed

car parking spaces are only 5 metres long, however the spaces are to be a minimum 5.4 metres to comply with AS2890.1, which is unsatisfactory.

- Car park design and access is not safe and secure (Objective 3J-3 of the ADG) - The ADG requires that supporting facilities within car parks to be safe and secure, including garbage, plant and switch rooms, storage areas and car wash bays are to be accessed without crossing car parking spaces, that direct, clearly visible and well-lit access should be provided into common circulation areas and a clearly defined and visible lobby or waiting area should be provided to lifts and stairs.

  The proposed lift lobbies in the basement are difficult to access and are obstructed by bike storage areas, stairs and car parking spaces. Similarly on the ground floor, the lift lobbies are located adjoining the waste storage rooms and there is no direct access between the car spaces and the lift with residents and visitor having to enter the lift lobby through doors between the car parking area and the entry areas. A clear path of travel to the lift areas is not provided. Therefore, there is limited surveillance of the car park or the lift lobby areas from people entering and leaving the car parking area. In these ways, the proposed car parking layout is contrary to Objective 3J-3 of the ADG in relation to car parking.

  Safe and direct access to the building entry is not provided since the lift lobbies are obscured by these high blank walls surrounding the on-grade car parking and are recessed into the building. A positive street address and an active frontage have not been provided at ground level, with high, blank walls provide to the street which enclose the on-grade car parking. The proposal is contrary to Part 3J of the ADG.

- Visual impacts of underground and above ground enclosed car parking (Objective 3J-4 and 3J-6 of the ADG) - The ADG requires that the visual impacts of underground car parking are minimised and that the car parking layout should be well organised, using a logical, efficient structural grid and double loaded aisles. Protrusion of car parks should not exceed 1 metre above ground level.

  The ADG also requires that screening, landscaping and other design elements should be used to integrate the above ground car parking with the facade. Design solutions may include car parking that is concealed behind the facade, with windows integrated into the overall facade design and/or car parking that is 'wrapped' with other uses, such as retail or units along the street frontage. A positive street address and active frontages should be provided at ground level. Section B2.5.3(i) and (j) of the TDCP also requires that all car parking is to be below ground level, except where site physical constraints prevent this and that above ground parking is not to address the primary street frontage where active street frontages are required under this Plan.

  This has not been achieved by the proposal given there is no clear path of travel between the lift lobby areas and the car parking spaces and there is an excessive reliance on tandem parking (53% of the spaces) which is not supported. Pedestrian access to the lifts from the car spaces along the western wall of the basement is long and difficult, having to navigate through car spaces and narrow areas adjoining the stair wells and bike storage areas. Furthermore, the proposed ground level car parking protrudes more than 1 metre above ground level across all elevations and results in 4 metre high blank stone walls to the street and park.

  The proposed on-grade car parking results in high, blank walls to the street frontage resulting in an unsatisfactory streetscape to Enid Street, which exacerbates the bulk and scale of the development at the street level and pedestrian scale. This adverse

relationship to the street arising from the on-grade car parking also reduces the ability to provide appropriate pedestrian entry and amenity to the building, since the entry areas are obscured by large blank walls surrounding the car parking to the street. Design solutions which could reduce this impact have not been implemented to this frontage including windows or units being integrated into the overall facade design and/or car parking that is 'wrapped' with other uses such as lift lobby and communal areas.

The proposal is also contrary to Section A1 Part C Design Control 4 (d) and (h) car parking and access in that the proposed on-grade car parking is within the front setback and is located within 12 metres of the primary street boundary.

- Safety and security of the basement - The proposed basement is considered to result in numerous entrapment sites in the basement and ground floor parking area, which is inconsistent with Section B2.4.3 Safety and Security. The DCP requires proposals to address the 'Safer-by-Design' principles to the design of public and private domain, and in all development. The building design must allow for passive surveillance of public and communal space, accessways, entries and driveways and must avoid creating blind corners and dark alcoves that provide concealment opportunities in pathways, stairwells, hallways and carparks.

  The proposed development is considered to be unsatisfactory having regard to the safety and security of the basement in that the proposed basement level provides entrapment areas and concealment opportunities including:

  - the entry to the south lift lobby which is located along the southern wall adjoining a bike storage area
  - the north lift lobby which faces away from the larger part of the car park limiting casual surveillance of this area.
  - Storage areas in the NE corner of the basement
  - Bicycle parking in the SE corner
  - The bicycle storage area in the SW corner of the ground floor parking area
  - The waste storage rooms are also a potential entrapment site.

Given these concerns with the proposed car parking arrangements for the site, the proposal is considered to be inconsistent with Sections A2 and B2.5.3 of the TDCP 2008.

5.8 Waste Management

A *Waste Management Plan* prepared by Zone Planning Group dated July 2021 ('WMP') has been provided for the proposal, which outlines waste management arrangements for the demolition, construction and operation phases of the development. Section A15 of the TDCP 2008 provides the relevant controls for waste management (refer to DCP assessment).

For the operational phase of the proposal, the WMP states that waste will be collected via garbage chutes in each tower and the bins will be stored in the waste rooms on the ground floor of each of the proposed towers. The bins will be placed on Enid Street for weekly collection for both waste and recycling bins. The following bins are required for each of the towers as outlined in the WMP:

North:

- waste - 2 x 2m³ and 1 x 1m³ bins;
- recycling: 1 x 2m³ and 1 x 1m³ bins
- Total – 3 x 2m³ and 2 x 1m³

South
- waste - 2 x 2m³ bins;
- recycling: 1 x 2m³ bins
- Total – 3 x 2m³

There are a number of concerns with the proposed waste management arrangements for the operational phase of the proposed development, which include the following:

- Number and type of bins - The bins outlined in the waste storage rooms on the plans appear to be smaller than the proposed 2m³ and 1m³ bins proposed in the WMP as there are 10 bins in the north tower storage room and 8 bins in the south storage area which is inconsistent with the proposed bins outlined in the WMP. Furthermore, the Council does not service 1m³ for recycling and therefore these bins cannot be serviced. These large bins will require a bin tug to move them to the collection point, however, space to store this vehicle has not been provided.

- Area of the waste storage rooms - Based on the size of the bins proposed to be used, the waste storage area for the North tower would need to be 11.49m² and the south tower would need to be 7.35m², not including room for manoeuvring the bins, people to enter and leave the room and for cleaning and transporting equipment. The bin chute infrastructure occupies significant space which is likely to reduce the manoeuvring area for the bins in this proposed space. The plans do not provide dimensions for the proposed waste storage rooms and therefore it is unclear if the required area to store the proposed bins has been provided pursuant to Section A15.2.4 of the TDCP 2008.

  Objective 4W-1 of the ADG also requires that waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents and that adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park. This has not been achieved by the proposal.

- Bulk waste area - A bulky waste storage area has not been provided as required by Section A15.2.4(v) of the TDCP 2008.

- Location of bin storage rooms - The proposed bin storage rooms are not conveniently located, with access by residents difficult due to the long paths of travel contrary to Section A15.2.4.(c) of the TDCP 2008. Objective 4W-2 of the ADG also requires that domestic waste is minimised by providing safe and convenient source separation and recycling, with communal waste and recycling rooms to be in convenient and accessible locations related to each vertical core. This has not been achieved by the proposal.

- On-street collection – The proposal involves on-street collection of the bins, which would result in the placement of 6 x 2m³ and 2 x 1m³ bins on the street for collection where a 16 metre line of bins to the street would eventuate. This is an unacceptable streetscape outcome and would result in a traffic hazard to empty that number of large bins from the street. the volume of waste likely to be generated on the site due to the number of proposed apartments, on-site collection of the bins is required which will require a higher height clearance on the ground floor for waste collection vehicle to enter and service the bins. There is also no above ground collection storage area and therefore bins are likely to be located on the street until and after collection.

In this regard, Objective 4W-1 requires that waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents, however, the adverse

impact on the streetscape from the on-street collection proposed of large bins does not achieve this objective. The lack of temporary storage for large items is also contrary to this objective. Objective 4W-2 requires that domestic waste is minimised by providing safe and convenient source separation and recycling**,** however, the proposed waste rooms are not conveniently located given the long distances to them from car parking areas.

Given these concerns with the proposed waste management arrangements for the site, the proposal is considered to be inconsistent with Sections A15 and B2.5.5(f) and (l) of the TDCP 2008.

5.9 View Loss

The proposal is located to the east of several multi storey residential buildings located along Thomson Street which currently have view corridors towards the Tweed River, ocean and Fingal Head. Potential impacts to these existing view corridors arising from the proposal needs to be considered.

Section A1, Part A provides the following controls for view sharing:

Views and vistas

- *Design Control C1. Building siting and height is, as far as it is practical, to be designed to minimise the impact on views from surrounding properties, and follow the Planning Principles of view sharing between properties.*

- *Design Control C2. The location and height of new development is not to significantly diminish the public views to heritage items, dominant landmarks, public buildings from public places or unreasonably obscure public district views of major natural features such as the water, ridgelines or bushland.**

  *A scenic impact assessment may be required where development intrudes within scenic landscape vistas. Also refer to Planning Principles relating to view sharing and assessment of view impact which can be accessed at: http://www.lawlink.nsw.gov.au/ lawlink/lec/ll_lec.nsf/pages/ LEC_planningprinciples

Section A1, Part C provides the following controls for view sharing:

- Design Control 1: Public Domain Amenity (public Views and Vistas (d)) - *The location and height of new development is to be designed to minimise the impact on public views or view corridors between buildings.*

- Design Control 7: Building Amenity (View Sharing – (a)) - *Building siting is, as far as it is practical, to be designed to minimise the impact on view sharing between properties.*

Section 3.6 of the SEE stated the following in relation to view sharing:

> *View sharing has been thoroughly considered as part of the original design concept through a detailed site analysis and appreciation of surrounding built form with the objective of retention of major view corridors to the water views to the east.*
>
> *In this affect, several design initiatives have been pursued to retain view corridors for surrounding land uses including providing for appropriate scale and massing enabled through limiting the overall building height to 35m, limiting the overall GFA per floor plate not exceeding 700m² consistent with Section B2 Tweed City Centre, minimising the building depths and lengths and providing a significant separation distance between the towers of between 10.8m-18.2m. The result is a suitable building mass*

and scale that retains significant view corridors for surrounding built form and reasonable share views.

The SEE provided a brief consideration of the view sharing under the principles established in the *Tenacity* case and a diagram with a concept of view sharing (**Figure 25**), however, there has been no analysis of the location of the existing apartments most affected by view loss, what type of view has been affected and how the design of the proposed towers has been designed to reduce view impacts. This is particularly relevant given the proposal does not achieve compliance with all of the building form controls as outlined in the keys issues above.

Accordingly, it is considered that the proposal has not adequately considered and demonstrated that view sharing for buildings to the west of the site along Thomson Street has been minimised.

Figure 25: View Sharing diagram ***(Source: SEE, Zone Planning Group, June 2022)***

5.10 Deep Soil Zones and Site Coverage

The ADG provides a design criteria that a site with a total site area of greater than 1,500m², is to provide a minimum of 7% of the site as deep soil area with a minimum dimension of 6 metres. In this case, the site has a total area of 3,629.5m² and therefore a minimum deep soil area of 254.065m² is required to be provided. A deep soil area of 332.7m², representing 9.16% of the site area, with minimum dimensions of 6 metres is provided along the southern boundary of the site. This is the only area on the site which is not covered by the basement.

While this complies with the design criteria in art 3E-1 of the ADG, the design guidance is that on some sites it may be possible to provide larger deep soil zones, depending on the site area and context, with 15% of the site as deep soil on sites greater than 1,500m² being recommended. This would require a deep soil zone on this site of 544.425m², which has not been provided on the site. A wider deep soil zone in this portion of the sit would also assist with reducing the overshadowing impact to the park.

Section A1, Part C (Design Control 2: Site Configuration - Impermeable Site Area (g)) of the TDCP 2008 provides that the maximum area of impervious surfaces on a site with an area greater than 750m² is 60% of the allotment. The proposal involves a total of 66% (2,393.94m²) of impervious site coverage, exceeding the 60% consistent with this control by 218.04m².

The objectives of this control include to promote residential development that is sympathetic with the existing topography, water cycle and amenity of the site and neighbourhood and to retain the lands ability to infiltrate stormwater. Given the inconsistencies with this control and the lack of a deep soil area appropriate for the site area, it is considered that these objectives are not satisfied by the proposal.

Accordingly, it is considered that the proposal is contrary to Part 3E-1 of the ADG and Section A2, Part C (Design Control 2 – Site Configuration) of the TDCP 2008 in that the proposal involves an excessive site coverage and lack of deep soil areas.

5.11 Contamination

As oultined in the Resilience and Hazards SEPP assessment, a PSI has been provided which recommended that a Stage 2 Detailed Site Investigation be carried out for the site once the above ground infrastructure (including concrete slabs) have been removed from the site. Council's Environmental Health Officer considered that the application has not adequately addressed Section 4.6 of the Resilience and Hazards SEPP in that a DSI has not been undertaken for the site and that the applicant has not submitted a Pre-Demolition Under slab Soil Contamination Investigation Report or assessed potential contamination from under slab contamination in the submitted Stage 1 Preliminary Site Investigation Report.

The consent authority cannot be 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 (Section 4.6(1)(b)). Accordingly, it is considered that the jurisdiction precondition to the grant of consent has not been satisfied and therefore consent cannot be granted.

5.12 Services

The following reports and plans have been prepared in relation to the servicing of the site:

- *Stormwater Management Report* prepared by Van der meer dated 28 June 2022 ('Stormwater Report')
- *Engineering Services Report* prepared by Van der meer dated 11 July 2022 ('Engineering Report');
- Dial Before You Dig Report

Section B2.5.5: site facilities and services (utility services (t) and (u)) of the TDCP 2008 requires consideration of the following:

(t) *Development must ensure that adequate provision has been made for all essential services including water, sewerage, electricity and telecommunications and stormwater drainage to the satisfaction of all relevant authorities;* and

(u) *The applicant must liaise with the relevant power authority with regard to the need for a conduit to be installed within the footway area for the future provision of an underground power supply and extension of the conduit up to the wall of the existing or proposed building*.

These matters are considered below.

Water and Sewer Services

There is an existing 200mm diameter main within the road reserve of Enid Street, with the site being serviced by three separate property connections from this main to the existing development on the site. These existing water property connections will be capped and removed and the site will be serviced with a single property connection and fire service will be provided from this water main to service the development.

There is an existing sewer main located within the site along the western boundary, with the site serviced via a property connection through this reticulation main. There is an existing sewer manhole in the south western corner of the site.

The proposal involves realigning and relocating the sewer main to within the adjoining drainage easement (Lot 24) owned by Council to the west of the site due to the proposed basement excavation within the subject site. This realigned sewer would run from the existing manhole within the drainage easement to a proposed new manhole near the existing manhole in the south western corner of the site. The proposal indicates that since it is a staged development, the proposed sewer realignment would be required to be completed as part of the first stage of the development. It is noted that Lot 24 is not included in the description and no owners consent was sought from Council for any proposed works in this lot.

There are a number of concerns with the provision of water and sewer infrastructure for the proposal including the following:

(a) Impacts to Council Infrastructure

The proposal does not comply with Council's requirements concerning access and protection of infrastructure having regard to the following:

- *Proposed Relocation of Sewer Line* - The proposal involves relocating an existing sewer line that is currently located within the site to a Council owned drainage reserve adjoining the site along the western (rear) boundary at Lot 24 DP 776673. The Council will not accept the relocation of the sewer line to the Council owned property as that would unacceptably impact the existing function of the overland drainage reserve. The proposal does not consider service utility easement requirements as specified in Tweed Shire Council's *Development Design Specifications*.

- *Impacts to Existing Stormwater Infrastructure* - The design of the proposed basement car park and building does not provide access to maintain and repair the existing public stormwater infrastructure located within drainage reserve Lot 24 DP 776673. The proposed basement and building will create a narrow void up to 3.5m deep adjacent to Lot 24 DP 776673. Council's *Development Design Specification D15 Works in Proximity* (Section D15.04 (1)) requires that development allow access to Council Utilities by various means for repairs, upgrade or inspection. The Proposal should provide an easement over sewerage infrastructure within the site to ensure that access is maintained for the existing drainage infrastructure in Lot 24 DP 776673.

(b) Requirements for Sewer for the Proposal & Works in Proximity to Council Utilities

The proposal fails to comply with the following Council requirements:

- The sewer easement requirements outlined in the *Development Design Specification D12 – Sewerage Systems*;
- The proposed sewer junction fails to demonstrate compliance with key requirements for sewer house connections, and
- The proposal fails to meet requirements to protect Council Utilities in the *Development Design Specifications D15 – Works in Proximity*.

In particular, the proposal does not demonstrate compliance with the following:

(i) D12.07.5(h), which requires easements shall be protected with a Section 88b restriction as to user.
(ii) D12.07.5(i), which requires the sewer to be located centrally within the easement.
(iii) D12.07.6, which restricts any structures or part thereof from encroaching into the sewer easement.
(iv) D15.10, which does not permit trees or other landscaping that will grow to over 1.0m in height at maturity within 1.0m of Council utilities to prevent the tree roots protruding into pipes, and which specifies no deep soil zones (DSZ), are to be located within one meter of Council utilities.
(v) D15.08 Works in Proximity, in particular, D15.08(3) which requires a minimum distance horizontally from an above ground or buried structural element to be 1.0m from the pipeline face and/or collar of the Council utility.
(vi) D12.08.9, pg.22, sewer manhole access covers should not be located within overland flow paths or stormwater drainage channels. Covers should not be located within one meter of a stormwater or roof water inlet/outlet pit/grate/headwall (including scour protection) or within a downstream flow path channel or pipe outlet.
(vii) D12.08.13, pg.22, which does not permit sewer house connections to be made into sewer manholes.
(viii) D15.08.4, pg.8, buildings and other structures (i.e. basements) should be founded so that a 45° decline from extreme lower edge of any part of the footing passes below the pipeline.

These matters result in an inadequate proposal for sewage, and risks of unacceptable impacts to the sewer and Council utilities.

(c) Water connection

The proposal does not adequately identify the location of the water connection for the property and does not demonstrate compliance with the requirements for the water connection. In particular, the proposal does not demonstrate that there is sufficient room for a water connection to be provided in accordance with Council's Standard Drawings S.D.323 & S.D.327. The proposal also does not demonstrate compliance with Council's Development Design Specification D15.10, which specifies that no mature vegetation that exceeds 1.0m in height, or deep soil zones are to be located within 1 metre of Council utilities.

Stormwater

Civil plans and the Stormwater Report have been provided to outline the proposed stormwater arrangements for the site. This Report outlines that there is an existing stormwater pipe and gully pit adjoining the site within the western portion of the road reserve along the Enid Street frontage of the site, which is the nominated lawful point of discharge for the site.

The proposed stormwater management for the site comprising the following:

- Roof runoff will be captured and discharged into the proposed stormwater drainage network;
- Podium level runoff will be captured through the internal drainage network with the roof runoff and flow through the stormwater treatment infrastructure (refer to Section 6 of this report);
- This will then continue through downpipes to the ground flow before proceeding to the lawful point of discharge.
- No on-site detention has been proposed due to the existing significant impervious areas on the site, with the increase in flows in the proposed scenario being negligible.
- The final pit and treatment locations and the staging of the stormwater strategy (quantity & quality) are subject to confirmation at detailed design stage.

In relation to stormwater quality, the proposal involves a treatment strategy comprising three (3) x Ocean Protect OceanGuard filter baskets (or similar approved equivalent); and nine (9) x Ocean Protect Stormfilter Cartridges (or similar approved equivalent) fitted within a 2250mm diameter manhole.

The Stormwater Report included some input parameters utilising some off the shelf Ocean Protect products that Council is not familiar and it is considered that the proposal does not adequately demonstrate the water quality aspects of the proposal given the following information was not provided:

- Digital copies of both the input and output files of the MUSIC modelling were not provided to support the size of the proposed bio-retention basin.
- Supporting technical product information on the proposed Ocean Protect products and justification for their suitability for this development, including the anticipated ongoing maintenance obligations of these systems.
- The proposed nutrient treatment is utilising - 9 “Ocean Protect” Stormwater Filters contained in an oversized manhole. The applicant shall provide supporting details on the Ocean Protect” Stormwater Filters in terms of nutrient treatment capabilities and the anticipated maintenance requirements of utilising these systems.

Electricity

The proposal was referred to Essential Energy as the local energy provider, pursuant to Section 2.48(2)(a) of the Transport & Infrastructure SEPP as the proposed development carried out is within 5m of an exposed overhead electricity power line (Section 2.48(1)(b)(iii)).

In correspondence dated 12 October 2022 and 11 January 2023, Essential Energy stated that the proposal has not demonstrated compliance with the relevant safety requirements specified by Essential Energy including *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. In particular, the following concerns were raised:

(i) The DA did not include information to make clear what is proposed to occur to the existing electricity network;
(ii) The DA proposed a substation within a room. The requirements for a chamber substation should be met rather than requirements for a pad mount substation;
(iii) Fire segregation requirements as per AS 2067 will need to be considered for any substation including the existing 1500kVA substation on the boundary of the existing property at SP97735 being 11 Enid Street;

(iv) The Proposal has not demonstrated that the required horizontal clearance distances to existing overhead power lines in Enid Street are achieved for the development or during the construction phase of the development.
(v) The Proposal has not demonstrated that the required clearances, including the zone of influence, are provided for the existing underground cables in Enid Street.
(vi) The DA has not addressed service disconnection of existing buildings, which must be completed prior to commencement of works.

The proposal is unsatisfactory having regard to Section 2.48(2)(b) of the Transport & Infrastructure SEPP.

Accordingly, it is considered that the proposal has not demonstrated that adequate provision has been made for all essential services including water, sewerage, electricity and stormwater drainage to the satisfaction of all relevant authorities, being Council and Essential Energy. In this way, the proposal is inconsistent with Section B2.5.5: site facilities and services (utility services (t) and (u)) of the TDCP 2008.

5.13 Lack of Information

There are a number of key documents which have not been provided with the application which would assist

a) Accessibility - An Access Report has not been provided notwithstanding that Section 7.2(e) of the TDCP 2008 requires that a development application must be accompanied by certification from an accredited Access Consultant confirming that the adaptable dwellings are capable of being modified, when required by the occupant, to comply with the Australian Adaptable Housing Standard (AS 4299-1995).

b) Impact on Trees in Park - Potential impacts of the proposed basement excavation on the existing trees along the southern boundary of the site with Jack Chard Park have not been adequately considered.

c) Wind tunnel impacts – The proposal has not adequately demonstrated whether the proposal will result in wind tunnel impacts, particularly given that two (2) towers are proposed on this site, the towers are proposed close to the street and the proposal adjoins two other tall buildings on the adjoining western and northern sites.

d) Staging - There is insufficient information concerning staging of the application. The application indicates that the development is to be completed over two stages with partial completion of the basement and ground level parking included in the first stage. The following information is considered to be inadequate:

- Whether completion of the first stage will enable occupation of the North Tower;
- Details on how the partial construction of the basement is to be achieved, including details on dewatering, stormwater management and provision of services for each stage of the development,
- Details regarding management of the stage 2 construction phase if the North Tower is to be occupied, including the provision of parking for residents occupying stage 1 of the development.
- Supporting reports and plans, including the dewatering management plan, acid soils management, acoustic report, engineering service report, stormwater management report and waste management plan for the application do not address staging of the application.

e) BCA Compliance – There is insufficient information to demonstrate that the proposal complies with the requirements of the Building Code of Australia including access for persons with a disability.

f) Car Parking – The following information relating to car parking is lacking:

- Details of the proposed basement ventilation.
- Details of facilities for electric vehicles is to be provided.
- Any future strata subdivision of the Proposal will need to consider parking allocation to the units. Clarification is required if future strata subdivision is proposed that the parking provision is sufficient for each of the units and that the proposed tandem parking spaces will need to be allocated to individual units and plans marked accordingly.

g) On-site Detention of Stormwater - An assessment and details of the On-Site Detention is required which shall address the OSD requirements contained in Clause D5.16 of D5.

h) Water Quality Treatment - Supporting technical product information on the proposed Ocean Protect products is required and justification on the suitability for this development.

i) Solar Access and Overshadowing - There is insufficient detailed overshadowing information in plan and elevation form detailing the existing and proposed extent of solar access and overshadowing to potentially impacted residential apartments and private open space on adjoining and surrounding sites.

5.14 Earthworks

The Engineering Report considers that there is expected to be considerable earthworks performed to obtain a bulk excavation of up to 3 metres for the basement excavation to a bulk excavation level of 1.45m AHD. A *Geotechnical Report* has also been prepared to support the proposed earthworks by Pacific Geotech dated December 2021 ('the Geotechnical Report'). The topography of the site slopes gently downwards towards the south east at an angle of less than 5°. Surface levels at the site range from approximately R.L 6m along the rear western boundary to R.L 4.5m adjacent to Enid Street. Groundwater was noted in all boreholes at depths of between 0.7m and 3.0m at the time of drilling.

A Dewatering Plan has also been prepared by Pacific Geotech dated 13 December 2021 based on the findings of the Geotechnical Report that the construction of the basement and foundation system in the eastern end of the site, is likely to require dewatering. Minimal dewatering is expected to be required at the western end of the site, where weathered rock or residual clays are present. Dewatering, approximately 1 metre below the excavation level (or a depth of 4.0m), is required for basement construction. The groundwater will need to be lowered to a minimum of 1.0m below the final excavation depths, to allow the compaction of the founding soils to be achieved. Water NSW raised no objections to the proposed dewatering and GTAs have been issued.

It is considered that the proposed earthworks and dewatering is satisfactory subject to conditions on any consent granted.

5.15 Aboriginal Cultural Heritage

The Council adopted the *Aboriginal Cultural Heritage Management Plan 2018* ('the ACHMP') in July 2018, which is supported by mapping of Aboriginal place of heritage significance and predictive Aboriginal cultural heritage. The site is not indicated on the map

for any areas of Aboriginal Place of Heritage significance or Predictive Aboriginal Cultural Heritage (**Figure 26**).

A search of the Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that there are no Aboriginal sites recorded in or near the site and no Aboriginal places have been declared in or near the site. Clause 5.10(8) of the TCCLEP 2012 is satisfied in that the site does not contain any such places impacted by the proposed development.

Accordingly, the proposal is considered satisfactory having regard to Aboriginal cultural heritage subject to conditions of consent (if granted) requiring work to cease if any cultural material is revealed as part of the development works.

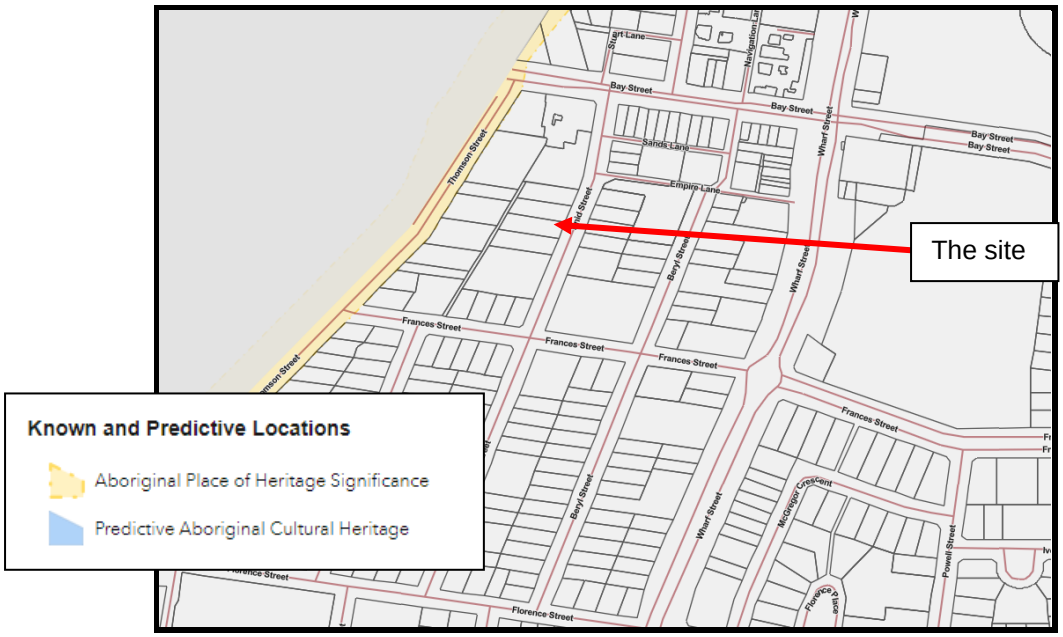

Figure 26: Aboriginal Cultural Heritage Management Plan *(Source: Tweed Shire Council mapping system)*

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 cannot be supported for the reasons outlined in **Attachment A**.

The key issues of public domain interface and pedestrian amenity and the building form concerns comprising separation, setbacks and other development controls, warrant refusal of the application given the adverse impact those matters will have on the streetscape.

The lack of an adequate consolidated area of communal open space, concerns with some of the proposed apartment layouts and positions on the site in relation to visual and acoustic privacy as well as the lack of an adequate consideration of the potential overshadowing of the

adjoining park and whether the proposed apartments will receive adequate solar access are further significant concerns that have not been resolved.

Concerns with car parking, waste management, contamination and servicing of the site, largely technical issues, have also not been adequately considered or resolved by the proposal. The proposal was also not sufficiently detailed to address all of the issues as outlined in the significant list of information that remains outstanding.

7. RECOMMENDATION

THAT pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act, 1979*, the Northern Regional Planning Panel refuse development consent to Development Application DA2022/0515 for the demolition of the existing structures on the site, construction of two (2) x eleven (11) storey residential apartment buildings comprising 110 residential units, basement and ground level parking, swimming pool, provision of services, landscaping and lot consolidation at Lot Lots 8, 9, 10 & 11 DP 224382 and Lot 24 DP 776673, known as 13-19 Enid Street, Tweed Heads subject to the following reasons:

The following attachments are provided:

- **Attachment A**: Draft Reasons for Refusal
- **Attachment B**: Apartment Design Guide Table
- **Attachment C**: DCP Compliance table – Section A1 Part C
- **Attachment D**: DCP Compliance table – Section B2

Attachment A: Reasons for Refusal

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the development does not exhibit design excellence and accordingly, consent cannot be granted pursuant to Section 6.10(2) of *Tweed City Centre Local Environmental Plan 2012.* In considering whether the development exhibits design excellence, the following matters have not been satisfied:

   (a) The external appearance of the proposed development does not improve the quality or amenity of the public domain as the high blank walls to the street, the lack of clearly defined and legible pedestrian access to the building and the inconsistency with the upper level and front setbacks result in an unsatisfactory interface to the street, pursuant to Section 6.10(3)(b);

   (b) The proposed development has the potential to impact on view corridors to the east towards the city centre and the coast for development to the west of the site, which has not been adequately considered in the application pursuant to Section 6.10(3)(c);

   (c) The proposed development is inconsistent with a number of the controls of the Tweed Development Control Plan 2008 pursuant to Section 6.10(3)(d);

   (d) The proposed development has not adequately addressed the following matters pursuant to Section 6.10(3)(e):

      (i) The relationship of the development with in terms of building separation, setbacks, amenity and urban form in that the proposed development has an unsatisfactory building separation with respect to the adjoining buildings as well as between the proposed buildings on the site (Section 6.10(3)(e)(iv));

      (ii) The bulk, massing and modulation of buildings in that the proposed building is unsatisfactory due to inconsistencies with the upper level and front building setbacks resulting in an adverse impact on the streetscape. The blank facades and high arches walls to the street also increase the bulk of the development from the street and lack an identified entry and pedestrian interface to the public domain (Section 6.10(3)(e)(v));

      (iii) The street frontage heights of the proposal does not achieve the upper-level setbacks contained in the street frontage controls of the DCP, which results in an adverse impact on the streetscape. The large blank walls to the street surrounding the car parking at ground level further exacerbate the bulk and scale of the building and contributes to the inhospitable pedestrian environment to the front of the building (Section 6.10(3)(e)(vi));

      (iv) The proposal has not adequately considered solar access to the proposed apartments arising from the overshadowing impact of the adjoining development to the north of the site, which is unsatisfactory (Section 6.10(3)(e)(vii));

      (v) The environmental impacts including overshadowing in that the proposal significantly overshadows the park to the south of the site which is unsatisfactory (Section 6.10(3)(e)(viii));

(vi) The pedestrian access requirements are unsatisfactory as they are deeply recessed into the façade, are not overlooked for surveillance and are not clearly legible from the street (Section 6.10(3)(e)(x)); and

(vii) The impact on, and any proposed improvements to, the public domain in that the proposal has an adverse impact to the public domain arising from the proposed large blank walls to the street, the lack of an adequate upper setback of the levels along the street and the inconsistencies with the front building setback (Section 6.10(3)(e)(xi)).

2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the consent authority cannot be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out as a Stage 2 Detailed Site Investigation has not been undertaken for the site, and the land is considered to be contaminated. Accordingly, consent cannot be granted pursuant to Section 4.6(1()(b) of *State Environmental Planning Policy (Resilience and Hazards) 2021*.

3. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as it has not adequately demonstrated that there are no potential safety risks arising from the proposed development as insufficient information has been provided to Essential Energy to enable a determination to be made on whether safe distances will be maintained by the development, contrary to Section 2.48(2)(b) of *State Environmental Planning Policy (Transport and Infrastructure*) 2021. Therefore, the proposed development is unsatisfactory.

4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with Section B2.5.5: Site Facilities and Services (utility services (t) and (u)) of the Tweed Development Control Plan 2008 in that adequate provision has not been made for all essential services including water, sewerage, electricity and stormwater drainage to the satisfaction of all relevant authorities, being Council and Essential Energy.

5. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the design quality of the proposal when evaluated in accordance with the design quality principles is unacceptable, contrary to Clause 28(2)(b) of *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* ('SEPP 65') and adequate regard has not been demonstrated to the design quality principles contrary to Clause 30(2)(a) of SEPP 65. In particular, the proposal is inconsistent with the following design quality principles:

(a) Principle 2: Built form and scale as the proposed building form is inconsistent with the setbacks, street frontage heights and building depth controls for the site and does not achieve a form which is appropriate to the desired future character of the street and surrounding buildings given the location of the building on the site and the large blank walls to the street framed by heavy concrete arches provides an unsatisfactory streetscape facade for the proposal.

(b) Principle 5: Landscaping as the proposed landscape design is considered to be unsatisfactory, with the main portion of landscaping adjoining the southern

boundary of the site, which does not assist with the streetscape appearance of the proposal or combine it with the usable communal open space.

(c) Principle 6: Amenity as the proposal does not achieve various elements of the *Apartment Design Guidelines* which are likely to impact on the amenity of the development, including communal open space, solar access to proposed units, potential visual and acoustic privacy concerns and the layout of some of the units with internal rooms and narrow windows.

(d) Principle 7: Safety as the proposal's interface with the public domain is unsatisfactory with deeply recessed entry areas and the lack of surveillance of the street entry points arising from the large blank walls to the street. There are also a number of safety concerns in the basement in relation to potential entrapment sites and concealment opportunities.

(e) Principle 8: Housing diversity and social interaction in that the proposal includes limited areas for social interaction between residents as the entry areas do not provide these opportunities and the communal spaces are largely the pool and other small areas of circulation spaces and planter boxes.

Consent must not be granted as the proposal does not demonstrate that adequate regard has been given to the design quality principles.

6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal does not comply with the building separation design criteria or the objectives of Part 3F-1 of the *Apartment Design Guide* given the separation between windows and balconies does not ensure visual privacy is achieved. Pursuant to Clause 30(2)(b) of *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*, consent cannot be granted as the proposal does not demonstrate that adequate regard has been given to the objectives specified in the Apartment Design Guide for the building separation (visual privacy) design criteria.

7. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as there are numerous inconsistencies with the *Apartment Design Guide* pursuant to Clause 28(2)(c) of *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* ('SEPP 65') which result in an unsatisfactory impact to amenity, adjoining properties and the streetscape, including the following:

(a) **Part 3B: Orientation** in that the significant overshadowing of the park adjoining the site to the south has will impact the amenity of the park and is unsatisfactory.

(b) **Part 3C: Public Domain Interface** in that there is no direct street entry to the building or to any proposed units, with a solid interface proposed to the public domain. There are minimal opportunities for casual surveillance of the street and the proposal does not address the street.

(c) **Part 3D: Communal Open Space** in that the proposed communal open space areas are unsatisfactory as including circulation areas, building entrances, raised planter boxes and clothes drying areas in the area calcualtions. These areas are also overshadowed for the majority of the day in midwinter and are not consolidated or well designed for a variety of uses to be undertaken.

(d) **Part 3E: Deep Soil Zones** in that the site is larger than 1,500m² and therefore 15% of the site area should be provided as deep soil zone as outlined in the design guidance. In underproviding deep soil zones, opportunities for reducing stormwater runoff, promoting growth of mature trees to assist in managing urban heat, ad providing shade and amenity on site are missed.

(e) **Part 3F: Visual Privacy** in that the proposal does not comply with the building separation distances and the proposed towers are orientated towards each other and to adjoining development with balconies and habitable room windows directly overlooking each other. Some apartments are also overlooked from the proposed communal areas and there is potential for privacy impacts to level three apartments from the communal areas.

(f) **Part 3G: Pedestrian access** and entries in that the entry areas are deeply recessed into the frontage which results in them being visually and physically separated from the street and being accessed by a convoluted series of pathways which adjoin blank walls of the ground level car parking and service areas. There is a poor relationship between the entry areas and the street.

(g) **Part 3J: Bicycle and car parking** in that the car park design and access is not considered to be safe and secure as the lift lobbies in the basement are difficult to access and are obstructed by bike storage areas, stairs and car parking spaces. The visual and environmental impacts of underground car parking are not minimised as the proposed ground level car parking results in 4 metre high blank stone walls to the street and park.

(h) **Part 4A: Solar and daylight access** in that the solar access analysis has not taken into account the overshadowing impacts from the Bay Grand development to the north and therefore the proposal will not achieve the required solar access to apartments.

(i) **Part 4D: Apartment size and layout** in that internal habitable rooms without windows are proposed and some apartments do not achieve the design guidance for distance to windows. Some apartments also rely on small, narrow windows to achieve compliance with the requirement for living areas and bedrooms to be located on the external face of the building.

(j) **Part 4E: Private Open Space** and balconies in that glass balustrades are proposed which will result in limited privacy from the street or communal areas.

(k) **Part 4H: Acoustic Privacy** in that there are several apartments located in close proximity to noise sources such as circulation and communal areas.

(l) **Part 4W: Waste Management** in that the proposed waste management and collection arrangements are unsatisfactory and the proposed waste rooms are not conveniently located.

8. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal is will to significantly overshadow an area of public open space (Jack Chard Park) throughout the day in midwinter.

9. The proposed development is considered unacceptable pursuant to the provisions of

s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with Section B2.3 (building form) of the *Tweed Development Control Plan 2008* in that the proposed building form is unsatisfactory having regard to:

(a) The proposal (north tower) is inconsistent with the street building alignment and setback objectives and controls pursuant to Section B2.3.1(a) of the TDCP 2008 and does not provide a clear and consistent definition of the public domain or provide a hierarchy of street edges for residential locations with landscaped setbacks. The proposed setback is considered to overwhelm the street in a residential context.

(b) The proposal is inconsistent with the upper setback control pursuant to Section B2.3.2(a) of the TDCP 2008 for both towers, which does not allow for a consistent or appropriate definition of the public domain or locate the bulk of the building away from the street to adequately define the public domain. The proposal also does not provide a comfortable street environment for pedestrians in terms of daylight, scale and sense of enclosure given the lack of an adequate upper setback which places a high proportion of the building's bulk at the street.

(c) The proposal is inconsistent with the building depth controls pursuant to Section B2.3.3(a) which results in a building which includes numerous apartments with internal rooms, adversely impacting on the internal amenity of the proposed apartments. This excessive building depth also increases the bulk and scale of the building form, particularly when viewed from adjoining properties and the public domain, and contributes to view loss for adjoining properties to the west. Overshadowing is also potentially increased due to the building depth exceeding 18 metres.

10. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the waste management objectives and requirements of Section A15: Waste Minimisation and Management of the Tweed *Development Control Plan 2008* in that the waste management plan and proposed waste management arrangements are unacceptable and does not adequately demonstrate compliance with the requirements including:

(a) The number and type of bins are inconsistent in the various documents submitted with the application;
(b) It is unclear if the area of the waste storage rooms is sufficient for the required number of bins;
(c) A bulky waste storage area has not been provided;
(d) The bin storage rooms are not conveniently located; and
(e) On-street collection of bins on this site is not supported due to the number and size of the bins required.

11. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with Section A2 and B2.5.3 of the *Tweed Development Control Plan 2008* in that the proposed car parking arrangements are unsatisfactory having regard to:

(a) The excessive number of tandem car spaces;
(b) The provision of small car parking spaces;

(c) The lack of accessible car parking spaces;
(d) The inconsistency with AS2890.1 for the dimension of car parking spaces;
(e) The lack of safety and security of the basement in relation to entrapment sites and concealment opportunities (Section B2.4.3 of the TNDCP 2008).

12. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the Impermeable Site Area requirements of Section A1, Part C (Design Control 2: Site Configuration - Impermeable Site Area (g)) of the *Tweed Development Control Plan 2008* in that the proposed impervious site coverage exceeds the maximum of 60% of the site area by 218.04m² and is inconsistent with the objectives of the control, which includes to allow for stormwater infiltration.

13. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the view loss considerations pursuant to Section A1, Part A Preliminaries and Part C (Design Control 1: Public Domain Amenity (public Views and Vistas (d)) and Design Control 7: Building Amenity (View Sharing – (a)) of the *Tweed Development Control Plan 2008* in that the proposal has not adequately considered and demonstrated that view sharing for buildings to the west of the site along Thomson Street has been minimised.

14. The proposed development is considered unacceptable pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* as the proposal is not in the public interest in that it will result in adverse impacts on the streetscape and amenity of immediately adjoining properties. The proposal also lacks good urban design and will negatively affect the character and nature of the neighbourhood.

Attachment B: Apartment Design Guide Table

ADG - DESIGN CRITERIA	PROPOSAL	COMPLY
Site Analysis (3A)		
Development proposals need to illustrate that design decisions are based on careful analysis of the site conditions and relationship to the surrounding context.	A site analysis has been prepared.	✓
Each element in the Site Analysis Checklist should be addressed.	The site analysis has been considered in the proposed design.	✓
Orientation (3B)		
3B-1: Building types and layouts respond to the streetscape and site while optimising solar access within the development.		
• Buildings along the street frontage define the street, by facing it and incorporating direct access from the street.	The proposed development is orientated towards the street frontages and there are direct pedestrian entry points to the site from the street.	✓
• Where the street frontage is to the east or west, rear buildings should be orientated to the north.	The proposal is orientated to a number of different aspects.	✓
• Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west	The street frontage is orientated to the east.	N/A
3B-2: Overshadowing of neighbouring properties is minimised during mid-winter. Design Guidance • Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access	Refer to Parts 3D and 4A.	**No**
• Solar access to living rooms, balconies and private open spaces of neighbours should be considered	Overshadowing of adjoining properties is minimised, except for the park which is to the south of the site.	**No**
• Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%	Only to residential	N/A
• If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy	The building separation of the south tower to the southern boundary to the park does not comply with Part 3F of the ADG.	**No**

• Overshadowing should be minimised to the south or downhill by increased upper level setbacks	Overshadowing to the south has not been minimised and the upper levels are not appropriately setback.	**No**
• It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development	The proposed southern tower has not been orientated at 90 degrees to the boundary and is approximately 30 metres long to this boundary.	**No**
• A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings	Not applicable.	N/A
Public Domain Interface (3C)		
3C-1: Transition between private and public domain is achieved without compromising safety and security.		
• Terraces, balconies and courtyard apartments should have direct street entry, where appropriate.	There is no direct street entry to any of the proposed units with the street façade comprising a high stone wall.	**No**
• Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings	The upper level balconies and windows overlook the street and entry areas.	✓
• Upper level balconies and windows should overlook the public domain.	Refer above.	✓
• Front fences and walls along street frontages should use visually permeable materials and treatments. The height of solid fences or walls should be limited to 1m.	A front stone wall greater than 1 metre high (approx. 4.8m) is proposed which is a solid interface with the public domain.	**No**
• Length of solid walls should be limited along street frontages.	Not achieved given the long, high wall proposed.	**No**
• Opportunities should be provided for casual interaction between residents and the public domain. Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.	There are minimal opportunities for casual surveillance of the street given the long, high wall proposed and the significant level changes between the street level and the podium level. The street level only contains the pedestrian entry, bicycle parking, manager's office and basement entry point.	**No**
3C-2: Amenity of the public domain is retained and enhanced.		
• Planting softens the edges of any raised terraces to the street, for example above sub-basement car parking.	The perimeter of the site provides some landscaping, however, is dominated by the high stone walls at street level.	**No**

• Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.	Mail boxes are proposed at the ground level, which is satisfactory.	✓
• Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view.	Services are largely at the street level including the service bays and substation.	**No**
• Where development adjoins public parks, open space or bushland, the design positively addresses this interface and uses a number of the following design solutions	Satisfactory.	✓
Communal and Public Open Space (3D)		
3D-1: An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping. Design Criteria **1. Communal open space has a minimum area equal to 25% of the site (907.38m²).**	The plans indicate that the communal open space ('COS') provided is 1.027sqm (28.2% of the site) comprising the following: • Ground level – adjoining the park and the entry areas form the street comprising 553m²; and • Podium level – pool, seating area and clothes drying area comprising 474m² These areas are unsatisfactory as COS as the majority comprise circulation areas, building entrances, raised planter boxes and clothes drying areas which are not usable communal open space. These COS areas are not well connected	**No**
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter). Design Guidance	The ground level space on the southern side of the building is essentially overshadowed all day in midwinter, with the exception of the southwestern corner at 3pm. The podium level COS is also significantly overshadowed throughout the day in midwinter being in shadow throughout the morning and to midday with the western and southern portions receiving sunlight between midday and 3pm.	**No**

• Communal open space should be consolidated into a well-designed, easily identified and usable area.	The COS is not consolidated or well designed with an easily identifiable area with the location split between 2 levels of the building and comprises circulation and entry areas which are not usable for communal open space.	**No**
• Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions.	The proposed pool area achieves this dimension as well as the southern area, however, the majority of the COS areas comprise small pockets of space in and around the circulation and entry areas to the buildings.	**No**
• Communal open space should be co-located with deep soil areas.	The communal open space is partially co-located with deep soil areas.	Partial ✓
• Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies.	Direct access to the podium level COS is provided from the stairs and lift lobbies however the ground level space is detached from the main areas of the building.	Partial ✓
• Where communal open space cannot be provided at ground level, it should be provided on a podium or roof.	Located on the ground and podium levels.	✓
3D-2: Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting		
• Facilities are provided within communal open spaces and common spaces for a range of age groups, incorporating some of the following elements: – seating for individuals or groups – barbecue areas play equipment or play areas. – swimming pools, gyms, tennis courts or common rooms	There is a lack of uses which can be undertaken in the communal open space as it is largely the pool and circulation, entry and planting areas, which is unsatisfactory.	**No**
• The location of facilities responds to microclimate and site conditions with access to sun in winter, shade in summer and shelter from strong winds and down drafts	This has not been considered given the communal areas are overshadowed for large parts of the day in midwinter and it is unknown whether there is shade in summer, which may require awnings or other sun protection.	**No**
• Visual impacts of services should be minimised, including location of ventilation duct outlets from basement car parks, electrical substations and detention tanks.	These services are not visible from the communal areas.	✓

<table>
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<tr><td>3D-3: Communal open space is designed to maximise safety.
• Communal open space and the public domain should be readily visible from habitable rooms and private open space areas while maintaining visual privacy.</td><td>The podium common area is overlooked by the proposed units and the public domain, while the southern area is overlooked by the south facing units in the south tower.</td><td>✓</td></tr>
<tr><td>• Communal open space should be well lit.</td><td>It is unclear if the communal areas are provided with lighting and whether such lighting will impact on the proposed apartments.</td><td>No</td></tr>
<tr><td>• Where communal open space/facilities are provided for children and young people they are safe and contained</td><td>There is no children’s play area, although this is not mandatory it highlights that a variety of uses cannot be undertaken in the communal areas on the site.</td><td>No</td></tr>
<tr><td>Deep Soil Zones (3E)</td><td></td><td></td></tr>
<tr><td>3E-1: Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality

• Deep soil zones are to meet the following minimum requirements:

<table>
<tr><th>Site Area</th><th>Minimum Dimension</th><th>Deep Soil Zone (% of site area)</th></tr>
<tr><td>650m² to 1,500m²</td><td>3m</td><td rowspan="2">7%</td></tr>
<tr><td>Greater than 1,500m²</td><td>6m</td></tr>
</table>

Design Guidance
• On some sites it may be possible to provide larger deep soil zones, depending on the site area and context:
15% of the site as deep soil on sites greater than 1,500m²

• Deep soil zones should be located to retain existing significant trees and to allow for the development of healthy root systems, providing anchorage and</td><td>Required DSZ = 7% of site = 254.065m².

332.7m² (9.16%) with minimum dimensions of 6m is provided along the southern boundary of the site. this is the only area on the site which is not covered by the basement.

The site is larger than 1500m² and therefore 15% of the site area should be provided as deep soil zone as oultined in the design guidance.

There are no significant trees on the site.</td><td>✓

No</td></tr>
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<td>stability for mature trees. Design solutions may include:
– basement and sub-basement car park design that is consolidated beneath building footprints
– use of increased front and side setbacks
– adequate clearance around trees to ensure long term health
– co-location with other deep soil areas on adjacent sites to create larger contiguous areas of deep soil

• Achieving the design criteria may not be possible on some sites including where:
– the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)
– there is 100% site coverage or non-residential uses at ground floor level

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved, and alternative forms of planting provided such as on structure</td>
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<td>Visual Privacy (3F)</td>
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<td>3F-1: Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

• Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table>
<tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr>
<tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr>
<tr><td>12m – 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr>
<tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr>
</table>
</td>
<td>Setbacks (bold indicates non-comply)
Up to Level 3 (12m)
• North (to Bay Grand RFB) – 0.5m (3m ground) to 6m (6m podium & L3)
• South (park) – 6m (3m ground) to 6m (6m podium & L3)
• West (Thomson Rd RFBs) – 0.5m (3m ground) to 6m (6m podium & L3)

<u>Level 4 to level 7</u> (up to 25m)
• North (to Bay Grand RFB) – 6m (9m)
• South (park) – 6m (9m)
• West (Thomson Rd RFBs) – 6m (9m)

<u>Level 8 to Level 11</u> (+25m)
• North (to Bay Grand RFB) – 6m (12m)
• South (park) – 6m (12m)</td>
<td>No

No

No</td>
</tr>
</table>

• **NOTE: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)**	• West (Thomson Rd RFBs) – **6m** (12m) Building Separation within the site (north to south towers) Up to Level 3 (12m – (6 x 2)) Podium: 16.75m to 18.26m Level 3: **10.83m,11.43m,**16.75m**,**18.26m Level 4 to level 7 (up to 25m) (18m –(9x2)) Level 4: **10.83m,11.43m,16.75m,**18.26m Level 5: **14.51m,17.38,16.75m,**18.26m Level 6: **14.51m,17.38,16.75m,**18.26m Level 7: **14.51m,17.38,16.75m,**18.26m Level 8 to Level 11 (+25m) (24m –(2x12)) Level 8: **14.51m,17.38,16.75m,18.26m** Level 9: **14.51m,17.38,16.75m,18.26m** Level 10: **14.51m,17.38,16.75m,18.26m** Level 11: **14.51m,17.38,16.75m,18.26m**	**No (level 3)** **No (levels 4-7)** Only western side complies **No (levels 8-11)**
• **Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.**	None proposed.	N/A
• Generally, one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance.	Complies, although the step up from the podium is large and exacerbates the bulk of the building from the street.	✓
• New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include: – site layout and building orientation to minimise privacy impacts (see also section 3B Orientation) – on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4)	The proposed towers are orientated towards each other with inadequate building separation between them.	**No**
• Direct lines of sight should be avoided for windows and balconies across corners.	Balconies and habitable room windows directly overlook each other.	**No**
• No separation is required between blank walls.	There are minimal blank walls proposed.	✓
3F-2: Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space. • Communal open space, common areas and	Proposed units N201, S202, S203, S204	**No**

access paths should be separated from private open space and windows to apartments, particularly habitable room windows.	are located adjoining the communal area and are likely to be overlooked and be subjected to noise from the pool area, which is unsatisfactory.	
• Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Proposed units N201, S202, S203, S204 are located adjoining the circulation areas for the proposed communal areas including habitable room windows and balconies.	**No**
• Balconies and private terraces should be located in front of living rooms to increase internal privacy	Complies	✓
• Windows should be offset from the windows of adjacent buildings	There is likely to be overlooking between the proposed western apartments with the existing development to the west of the site given there is inadequate building separation between sites.	**No**
• Recessed balconies and/or vertical fins should be used between adjacent balconies	There are some recessed balconies however, it appears from the 3D images that louvers are required to provide privacy between balconies, which is unsatisfactory.	**No**
Pedestrian Access and Entries (3G)		
3G-1: Building entries and pedestrian access connects to and addresses the public domain.		
• Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge. • Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries.	There are two (2) main entries to the building from the street, comprising the north lift lobby and the south lift lobby. These areas are accessed from Enid Street via four separate pedestrian entry points. The lift lobbies, however, are deeply recessed into the frontage which results in them being visually and physically separated from the street and being accessed by a convoluted series of pathways which adjoin blank walls of the ground level car parking and service areas. The lift lobby for the south tower is located approx. 27 metres into the site and is visually obscured from the street by the blank car park walls. Landscaping is also proposed at these entry points, which further reduces their visibility from the street. The entry paths into the recessed lift lobbies represent only approx. 13 metres	**No**

	of the 70 metre frontage to Enid Street, representing less than 20% of the street frontage. Therefore, it is considered that the proposed building entry areas are not clearly visible from the street and there is a resulting lack of pedestrian amenity for the entry area. There is a poor relationship between the entry areas and the street, which adversely impacts on the safety of these areas and interaction with the streetscape.	
3G-2: Access, entries and pathways are accessible and easy to identify • Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces.	As outlined above, the building entries are not clearly visible from the street given they are recessed into the building and adjoin service areas including switch/pump rooms, waste storage areas and blank walls of the ground level car parking area. There is also minimal surveillance of this area.	**No**
• The design of ground floors and underground car parks minimise level changes along pathways and entries.	There are no level changes between the street and the lift lobbies.	✓
• Steps and ramps should be integrated into the overall building and landscape design.	Not required.	N/A
3G-3: Large sites provide pedestrian links for access to streets and connection to destinations	Not required.	N/A
Vehicle Access (3H)		
3H-1: Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes Design Guidance • Car park access should be integrated with the building's overall facade.	The proposed basement access is integrated into the building's overall façade.	✓
• Vehicle entries should be located at the lowest point of the site minimising ramp lengths, excavation and impacts on the building form and layout.	The basement is proposed at the lowest point of the site.	✓
• Car park entry and access should be located on secondary streets or lanes where available.	Access can only be provided from Enid Street.	✓
	Complies	✓

<table>
<tr><td>

- Access point locations should avoid headlight glare to habitable rooms.

- Adequate separation distances should be provided between vehicle entries and street intersections.

- Garbage collection, loading and servicing areas are screened.

</td><td>

Adequate separation is provided between the vehicle entry and the intersection of Enid Street and Empire Lane.

Garbage area is behind the building facade.

</td><td>

✓

✓

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<tr><td>Bicycle and car parking (3J)</td><td></td><td></td></tr>
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3J-1: Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.

1. For development in the following locations:

- on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or
- on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre

the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less

The car parking needs for a development must be provided off street

<u>Design Guidance</u>

- Where a car share scheme operates locally, provide car share parking spaces within the development. Car share spaces, when provided, should be on site.

- Where less car parking is provided in a development, council should not provide on street resident parking permits

</td><td>

The site is located within 400m of land zoned B3 Commercial Core (now E2), therefore the *Guide to Traffic Generating Developments* applies ('GtTGD').

<table>
<tr><th>Unit</th><th>No</th><th>Required</th></tr>
<tr><td colspan="3">DCP</td></tr>
<tr><td>1 bed (1 space)</td><td>10</td><td>10 spaces</td></tr>
<tr><td>2 Beds (1.5 spaces)</td><td>48</td><td>72 spaces</td></tr>
<tr><td>3 beds (2 spaces)</td><td>50</td><td>100 spaces</td></tr>
<tr><td>4 beds (2 spaces)</td><td>2</td><td>4 spaces</td></tr>
<tr><td>Visitors (1/4)</td><td>110</td><td>28 spaces</td></tr>
<tr><td>Total required</td><td></td><td>214 spaces</td></tr>
<tr><td colspan="3">GtTGD (Sub-Regional)</td></tr>
<tr><td>1 bed (0.6)</td><td>10</td><td>6 spaces</td></tr>
<tr><td>2 beds (0.9)</td><td>48</td><td>43 spaces</td></tr>
<tr><td>3 beds (1.40)</td><td>52</td><td>73 spaces</td></tr>
<tr><td>1/5 (visitor)</td><td>110</td><td>22 spaces</td></tr>
<tr><td>Total required</td><td></td><td>144 spaces</td></tr>
</table>

Not provided

Not applicable

</td><td>

✓ Visitor parking

No

N/A

N/A

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3J-2: Parking and facilities are provided for other modes of transport.

<u>Design Guidance</u>

- Conveniently located and sufficient numbers of parking spaces should be provided for motorbikes and scooters.

</td><td>

Motorbike and bicycle spaces are provided.

Provided

</td><td>

✓

✓

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</table>

• Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas. • Conveniently located charging stations are provided for electric vehicles, where desirable.	Electric vehicle charging not provided	**No**
3J-3: Car park design and access is safe and secure. Design Guidance • Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces. • Direct, clearly visible and well-lit access should be provided into common circulation areas. • A clearly defined and visible lobby or waiting area should be provided to lifts and stairs.	The lift lobbies in the basement are difficult to access and are obstructed by bike storage areas, stairs and car parking spaces. Similarly on the ground floor, the lift lobbies are adjoining the waste storage rooms and there is no direct access between the car spaces and the lift with residents and visitor having to enter the lift lobby through doors between the car parking area and the entry areas. A clear path of travel to the lift areas is not provided. Therefore, there is limited surveillance of the car park or the lift lobby areas from people entering and leaving the car parking area.	**No**
3J-4: Visual and environmental impacts of underground car parking are minimised. Design Guidance • Excavation should be minimised through efficient car park layouts and ramp design	Satisfactory	Yes
• Car parking layout should be well organised, using a logical, efficient structural grid and double loaded aisles.	This has not been achieved by the proposal given there is no clear path of travel between the lift lobby areas and the car parking spaces and there is an excessive reliance on tandem parking (53% of the spaces) which is not supported. Pedestrian access to the lifts from the car spaces along the western wall of the basement is long and difficult, having to navigate through car spaces and narrow areas adjoining the stair wells and bike storage areas.	**No**
• Protrusion of car parks should not exceed 1m above ground level. Design solutions may include stepping car park levels or using split levels on sloping sites.	The proposed ground level car parking protrudes more than 1m above ground level across all elevations and results in 4 metre high blank stone walls to the street and park.	**No**
• Natural ventilation should be provided to basement and sub-basement car parking areas.	Natural ventilation does not appear to be proposed as the basement car park level is below the ground, however, it is unclear.	**Unknown**

3J-5: Visual and environmental impacts of on-grade car parking are minimised. Design Guidance • On-grade car parking should be avoided • Where on-grade car parking is unavoidable, the following design solutions are used: – parking is located on the side or rear of the lot away from the primary street frontage – cars are screened from view of streets, buildings, communal and private open space areas – safe and direct access to building entry points is provided – parking is incorporated into the landscape design of the site, by extending planting and materials into the car park space – stormwater run-off is managed appropriately from car parking surfaces – bio-swales, rain gardens or on site detention tanks are provided, where appropriate – light coloured paving materials or permeable paving systems are used and shade trees are planted between every 4-5 parking spaces to reduce increased surface temperatures from large areas of paving		N/A
3J-6: Visual and environmental impacts of above ground enclosed car parking are minimised. Design Guidance • Exposed parking should not be located along primary street frontages. • Screening, landscaping and other design elements including public art should be used to integrate the above ground car parking with the facade. Design solutions may include: – car parking that is concealed behind the facade, with windows integrated into the overall facade design (approach should be limited to developments where a larger floor plate podium is suitable at lower levels) – car parking that is 'wrapped' with other uses, such as retail, commercial or two storey Small Office/Home Office	Not proposed. On grade parking is proposed which results in an unsatisfactory streetscape to Enid Street and exacerbates the bulk and scale of the development at the street level and pedestrian scale. This on grade car parking also reduces the pedestrian entry and amenity to the building, making the entry areas obscured by large blank walls to the street. The recommended design solutions have not been implemented: • Cars are screened by large, high walls. • Safe and direct access to the building entry is not provided as the lift lobbies are obscured by the high blank walls	N/A **No**

(SOHO) units along the street frontage (see figure 3J.9)	surrounding the on grade car parking and are recessed into the building.	
• Positive street address and active frontages should be provided at ground level	A positive street address and an active frontage have not been provided at ground level, with high, blank walls provided to the street which enclose the on-grade car parking.	**No**
Part 4: Designing the Building		
Solar Access and Daylight (4A)		
4A-1: To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space. **1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.**	Not applicable to the site.	N/A
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter	The plans and the solar access report/diagrams indicate that 76 of the proposed apartments achieve 3 hours of solar access (69% of the units), however, it appears that this has not taken into account the overshadowing impacts from the Bay Grand development to the north given this is to the north of the subject site.	**No**
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter (max 16.5 units).	9 of 110 units (8.2%) receive no solar access all within the south tower.	Yes
Design Guidance • The design maximises north aspect and the number of single aspect south facing apartments is minimised.	Complies	Yes
• Single aspect, single storey apartments should have a northerly or easterly aspect.	There are 35 single aspect apartments proposed which are orientated either to the north or east.	Yes
• Living areas are best located to the north and service areas to the south and west of apartments	The service rooms are located on the internal side of the apartments so that they adjoin the hallways and stairwells, and the living areas benefit from solar access.	Yes
• To optimise the direct sunlight to habitable rooms and balconies a number of the following design features are used:	The majority of the proposed apartments are dual aspect (69%), with service areas	Yes

- dual aspect apartments - shallow apartment layouts - two storey and mezzanine level apartments - bay windows	located at the deepest parts of the apartments	
4A-2: Daylight access is maximised where sunlight is limited. • Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms. • Opportunities for reflected light into apartments are optimised through: - reflective exterior surfaces on buildings opposite south facing windows. - positioning windows to face other buildings or surfaces (on neighbouring sites or within the site) that will reflect light. - integrating light shelves into the design - light coloured internal finishes	Skylights are proposed for level 11 units on both towers.	N/A
4A-3: Design incorporates shading and glare control, particularly for warmer months • A number of the following design features are used: - balconies or sun shading that extend far enough to shade summer sun, but allow winter sun to penetrate living areas - shading devices such as eaves, awnings, balconies, pergolas, external louvres and planting - horizontal shading to north facing windows. - vertical shading to east and particularly west facing windows. - operable shading to allow adjustment and choice. - high performance glass that minimises external glare off windows, with consideration given to reduced tint glass or glass with a reflectance level below 20% (reflective films are avoided).	Balconies are provided which assist with shade to the proposed apartments in summer and sunshade screens are also proposed. The glazing in the proposal is consistent with BASIX requirements.	Yes
Natural Ventilation (4B)		
4B-1: All habitable rooms are naturally ventilated • The building's orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms.	The proposed development maximises and captures the prevailing breezes for natural ventilation through the location of windows and habitable rooms. Generally complies (refer to Part 4D)	Yes Yes

• Depths of habitable rooms support natural ventilation. • The area of unobstructed window openings should be equal to at least 5% of the floor area served • Light wells are not the primary air source for habitable rooms. • Doors and openable windows maximise natural ventilation opportunities by using the following design solutions: - adjustable windows with large effective openable areas - a variety of window types that provide safety and flexibility such as awnings and louvres. - windows which the occupants can reconfigure to funnel breezes into the apartment such as vertical louvres, casement windows and externally opening doors	Complies where windows are provided. Not proposed Complies	Yes N/A Yes
4B-2: The layout and design of single aspect apartments maximises natural ventilation • Apartment depths are limited to maximise ventilation and airflow. • Natural ventilation to single aspect apartments is achieved with the following design solutions: - primary windows are augmented with plenums and light wells (generally not suitable for cross ventilation) - stack effect ventilation / solar chimneys or similar to naturally ventilate internal building areas or rooms such as bathrooms and laundries - courtyards or building indentations have a width to depth ratio of 2:1 or 3:1 to ensure effective air circulation and avoid trapped smells	Complies Complies	Yes Yes
4B-3: The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents • **At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed (66 units).**	The application indicates that 88 of the 110 proposed apartments (80%) are naturally cross ventilated.	Yes

• **Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.**	The proposed cross through units do not exceed 18 metres deep.	Yes
• The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths.	76 (69%) proposed apartments are dual aspect, which are also corner apartments.	Yes
• In cross-through apartments external window and door opening sizes/areas on one side of an apartment (inlet side) are approximately equal to the external window and door opening sizes/areas on the other side of the apartment (outlet side).	Satisfactory	Yes
• Apartments are designed to minimise the number of corners, doors and rooms that might obstruct airflow • Apartment depths, combined with appropriate ceiling heights, maximise cross ventilation and airflow	Satisfactory	Yes
Ceiling Height (4C)		
Objective 4C-1: Ceiling height achieves sufficient natural ventilation and daylight access Design Criteria **1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:** • **Habitable rooms – 2.7m** • **Non-habitable – 2.4m** **These minimums do not preclude higher ceilings if desired.** Design Guidance • Ceiling height can accommodate use of ceiling fans for cooling and heat distribution	The space between floors is 3050, allowing for all habitable ceilings to be a minimum 2.7m and non-habitable are 2.4m.	✓
Objective 4C-2: Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.	Complies – refer above	✓
Apartment Layout (4D)		
4D-1: The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity. **1. Apartments are required to have the following minimum internal areas:** • **Studio - 35m²** • **1 Bedroom - 50m²** • **2 Bedroom - 70m²** • **3 Bedroom - 90m²**	All of the proposed apartments comply with the minimum internal areas.	✓

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.	All of the proposed apartments exceed the minimum internal areas by more than 5m².	✓
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	The proposed 4 bedroom units (Type N-4A and S-4A are 221m² and 254m² respectively.	✓
2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	There are 19 proposed apartments which contain Study rooms (habitable rooms) which do not have access to a window including the following: v) Type S-3A (South tower) x 10 vi) Type S-3C (South tower) x 9 In addition, the following proposed apartments (32 in total) rely on very small (snorkel-style) windows for natural ventilation which are considered too small to provide effective cross ventilation and daylight xiii) Type N-2B (North tower - 10 units) xiv) Type N-2D (North tower - 3 units) xv) Type N-3C (North tower - 9 units). xvi) Type S-2C (South tower – 1 unit) xvii) Type S-3B (South tower – 8 unit) xviii) Type S-4A (South tower – 1 unit)	**No**
• Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space).	There is a total of 51 (46.3%) proposed apartments which do not have sufficient windows to comply with this control.	
• A window should be visible from any point in a habitable room.	Proposed apartments S-3B and S-2C in the south tower include kitchens located in the circulation space/hallway.	**No**
• Where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space with realistically scaled furniture layouts and circulation areas. These circumstances would be assessed on their merits.	There are 19 units proposed with study rooms, which are habitable rooms, however, there are no windows provided to these rooms. Complies	✓

4D-2: Environmental performance of the apartment is maximised.		
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height (6.75m).	Appears to comply, with the exception of the study rooms (outlined above).	✓
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Apartment N-2C: 8.3m to back of kitchen to a window.	**No**
Design Guidance • Greater than minimum ceiling heights can allow for proportional increases in room depth up to the permitted maximum depths.	Ceiling heights are satisfactory.	✓
• All living areas and bedrooms should be located on the external face of the building.	Proposed apartment types S-3B, S-2C and S-4A comprise layouts which comprise bedrooms which rely on a very small, snorkel type window to achieve compliance with this control which is unsatisfactory.	**No**
• Where possible: - bathrooms and laundries should have an external openable window. - main living spaces should be oriented toward the primary outlook and aspect and away from noise sources.	Achieved	✓
4D-3: Apartment layouts are designed to accommodate a variety of household activities and needs.		
1. Master bedrooms have a minimum area of 10m² & other bedrooms 9m² (excluding wardrobe space).	Complies	✓
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Complies	✓
3. Living rooms or combined living/dining rooms have a minimum width of: • **3.6m for studio and 1 bedroom apartments** • **4m for 2 and 3 bedroom apartments**	Complies	✓
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Complies	✓

Design Guidance • Access to bedrooms, bathrooms and laundries is separated from living areas minimising direct openings between living and service areas.	Complies	✓
• All bedrooms allow a minimum length of 1.5m for robes	Complies	✓
• The main bedroom of an apartment or a studio apartment should be provided with a wardrobe of a minimum 1.8m long, 0.6m deep and 2.1m high	Complies	✓
• Apartment layouts allow flexibility over time, design solutions may include: - dimensions that facilitate a variety of furniture arrangements and removal - spaces for a range of activities and privacy levels between different spaces within the apartment - dual master apartments - dual key apartments *Note: dual key apartments which are separate but on the same title are regarded as two sole occupancy units for the purposes of the Building Code of Australia and for calculating the mix of apartments* - room sizes and proportions or open plans (rectangular spaces (2:3) are more easily furnished than square spaces (1:1)) - efficient planning of circulation by stairs, corridors and through rooms to maximise the amount of usable floor space in rooms.	Complies	✓
Private Open Space and Balconies (4E)		
4E-1: Apartments provide appropriately sized private open space and balconies to enhance residential amenity		
1. All apartments are required to have primary balconies as follows: • **Studio - 4m²** • **1 Bedroom - 8m² (Min depth 2m)** • **2 Bedroom - 10m² (Min depth 2m)** • **3 Bedroom - 12m² (Min depth 2.4m)**	The proposal involves the following primary balcony sizes:- <u>1 bed</u> N-1B: 14m² and min 2m deep <u>2 beds</u> N-2B: 21m² and min 2m deep N-2C: 31m² and min 2m deep N-2D: 31m² and min 2m deep N-2E: 21m² and min 2m deep N-2A: 36m² and min 2m deep	✓

	3 beds N-3C: 20m² and min 2.4m deep N-3A: 19m² and min 2.4m deep N-3B: 20m² and min 2.4m deep S-3A: 22m² and min 2.4m deep S-3B: 21m² and min 2.4m deep S-3C: 18m² and min 2.4m deep 4 beds N-4A: 43m² and min 2.4m deep S-4A: 54m² and min 2.4m deep	
Minimum balcony depth contributing to the balcony area is 1m.	Noted, complies.	✓
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.	N2-A, N-1B, N-2B, N-3A, N-2C, N-2D S-3A, S-2A, S-2B, S-2C, S-3C are located on the podium and comply with the minimum sizes.	✓
• Increased communal open space should be provided where the number or size of balconies are reduced	Private open space areas comply.	✓
• Storage areas on balconies is additional to the minimum balcony size	Adequate storage areas are provided in the building.	✓
• Balcony use may be limited in some proposals by: - consistently high wind speeds at 10 storeys and above - close proximity to road, rail or other noise sources - exposure to significant levels of aircraft noise - heritage and adaptive reuse of existing buildings In these situations, juliet balconies, operable walls, enclosed wintergardens or bay windows may be appropriate, and other amenity benefits for occupants should also be provided in the apartments or in the development or both. Natural ventilation also needs to be demonstrated.	Balcony use on the site is achievable.	✓
4E-2: Primary private open space and balconies are appropriately located to enhance liveability for residents		
• Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space	Complies.	✓

• Private open spaces and balconies predominantly face north, east or west	All balconies face either north, east or west.	✓
• Primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms	Complies	✓
4E-3: Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building		
• Solid, partially solid or transparent fences and balustrades are selected to respond to the location. They are designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony. Solid and partially solid balustrades are preferred	All of the balcony areas are proposed to have glass balustrades. The podium level apartments have no privacy from the street or the communal open space which is unsatisfactory.	**No**
• Full width full height glass balustrades alone are generally not desirable	This is proposed, which is unsatisfactory.	**No**
• Projecting balconies should be integrated into the building design and the design of soffits considered	Not proposed.	✓
• Operable screens, shutters, hoods and pergolas are used to control sunlight and wind	There are screens proposed for the other balconies.	✓
• Balustrades are set back from the building or balcony edge where overlooking or safety is an issue	Complies	✓
• Downpipes and balcony drainage are integrated with the overall facade and building design	Complies	✓
• Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design	Complies	✓
• Where clothes drying, storage or air conditioning units are located on balconies, they should be screened and integrated in the building design	Condition	✓
• Ceilings of apartments below terraces should be insulated to avoid heat loss	Conditions – BCA Conditions	✓

• Water and gas outlets should be provided for primary balconies and private open space		✓
4E-4: Private open space and balcony design maximises safety • Changes in ground levels or landscaping are minimised • Design and detailing of balconies avoids opportunities for climbing and falls	Complies	✓
Common Circulation Space (4F)		
4F-1: Common circulation spaces achieve good amenity and properly service the number of apartments **1. The maximum number of apartments off a circulation core on a single level is eight.**	• North tower – between 5 and 7 units per floor from two (2) lift cores. • South tower - between 4 and 5 units per floor from two (2) lift cores.	✓
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	The building is more than 10 storeys: • North tower - 61 units of 2 lift cores = 30-31 units per lift core; and • South tower – 49 units off 2 lift cores = 24 - 25 units per lift core	✓
<u>Design Guidance</u> • Greater than minimum requirements for corridor widths and/ or ceiling heights allow comfortable movement and access particularly in entry lobbies, outside lifts and at apartment entry door	Noted	-
• Daylight and natural ventilation should be provided to all common circulation spaces that are above ground	There is a window to the corridor for the South tower, with the North tower having no access to daylight.	✓
• Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors	Refer above	✓
• Longer corridors greater than 12m in length from the lift core should be articulated. Design solutions may include: - a series of foyer areas with windows and spaces for seating - wider areas at apartment entry doors and varied ceiling heights	The corridors in both towers are satisfactory.	✓
• Design common circulation spaces to maximise opportunities for dual aspect apartments, including multiple core apartment buildings and cross over apartments	Refer above	✓
• Achieving the design criteria for the number	Achieved	✓

of apartments off a circulation core may not be possible. Where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated, including: - sunlight and natural cross ventilation in apartments - access to ample daylight and natural ventilation in common circulation spaces - common areas for seating and gathering - generous corridors with greater than minimum ceiling heights - other innovative design solutions that provide high levels of amenity		
• Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level	Achieved	✓
• Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled	Achieved	✓
Storage (4G)		
Objective 4G-1: Adequate, well designed storage is provided in each apartment.		
1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • **Studio - 4m³** • **1 Bedroom - 6m³** • **2 Bedroom - 8m³** • **3 Bedroom - 10m³**	Each of the apartments achieves well-designed storage including internal storage and additional storage within the basement.	✓
At least 50% of the required storage is to be located within the apartment.	Provided	✓
Design Guidance • Storage is accessible from either circulation or living areas	Complies	✓
• Storage provided on balconies (in addition to the minimum balcony size) is integrated into the balcony design, weather proof and screened from view from the street.	None proposed	-
• Left over space such as under stairs is used for storage	None proposed	-

Objective 4G-2: Additional storage is conveniently located, accessible and nominated for individual apartments. Design Guidance • Storage not located in apartments is secure and clearly allocated to specific apartments. • Storage is provided for larger and less frequently accessed items • Storage space in internal or basement car parks is provided at the rear or side of car spaces or in cages so that allocated car parking remains accessible • If communal storage rooms are provided they should be accessible from common circulation areas of the building • Storage not located in an apartment is integrated into the overall building design and is not visible from the public domain.	Complies	✓
Acoustic Privacy (4H)		
Objective 4H-1: Noise transfer is minimised through the siting of buildings and building layout. Design Guidance • Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses	Not provided – refer to Part 3F	-
• Window and door openings are generally orientated away from noise sources	Complies	✓
• Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas	Refer below	✓
• Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	Complies	✓
• Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms	There are numerous units which include bedrooms within 3m of adjoining noise sources including: ix) Adjoining the communal open space – Units N201, N206, S202, S203 and S204 (x 5units) x) Adjoining stairwells in the South tower – Units S201 to S1101 (x10); xi) Adjoining stairwells in the North tower Units N301 to N1101 (x9) and Units N307, N407, N506 to N1006	**No**

	(x8) and N1105 (1 unit); xii) Adjoining lift cores in the South tower – Units S205 to S1001 (x9);	
Objective 4H-2: Noise impacts are mitigated within apartments through layout and acoustic treatments. Design Guidance • Internal apartment layout separates noisy spaces from quiet spaces, using a number of the following design solutions: – rooms with similar noise requirements are grouped together – doors separate different use zones – wardrobes in bedrooms are co-located to act as sound buffers • Where physical separation cannot be achieved noise conflicts are resolved using the following design solutions: – double or acoustic glazing – acoustic seals – use of materials with low noise penetration properties – continuous walls to ground level courtyards where they do not conflict with streetscape or other amenity requirements	Satisfactory Noted	✓ ✓
Noise Pollution (4J)		
To minimise impacts the following design solutions may be used: • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry	Satisfactory	✓
Apartment Mix (4K)		
Objective 4K-1: A range of apartment types and sizes is provided to cater for different household types now and into the future. Design Guidance • A variety of apartment types is provided. • The apartment mix is appropriate, taking	A range of unit sizes are provided comprising 2, 3 and 4 bedroom units comprising the following:	✓

into consideration: – the distance to public transport, employment and education centres – the current market demands and projected future demographic trends – the demand for social and affordable housing – different cultural and socioeconomic groups	• 10 x 1 bedroom units (9.1%) • 46 x 2 bedroom units (41.8%) • 52 x 3 bedroom units (47.3%) • 2 x 4 bedroom units (1.8%)	✓
• Flexible apartment configurations are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households	Satisfactory	
Objective 4K-2: The apartment mix is distributed to suitable locations within the building. <u>Design Guidance</u> • Different apartment types are located to achieve successful facade composition and to optimise solar access (see figure 4K.3).	Satisfactory	✓
• Larger apartment types are located on the ground or roof level where there is potential for more open space and on corners where more building frontage is available	The proposed 4 bedrooms units are located on level 11.	✓
Ground Floor Apartments (4L)		
4L-1: Street frontage activity is maximised where ground floor apartments are located		
• Direct street access should be provided to ground floor apartments	There are no ground floor apartments proposed due to the at grade parking in association with the basement parking level.	N/A
• Activity is achieved through front gardens, terraces and the facade of the building. Design solutions may include: - both street, foyer and other common internal circulation entrances to ground floor apartments - private open space is next to the street - doors and windows face the street	Not achieved.	✓
• Retail or home office spaces should be located along street frontages	Not proposed.	N/A
• Ground floor apartment layouts support	Not proposed.	N/A

small office home office (SOHO) use to provide future opportunities for conversion into commercial or retail areas. In these cases, provide higher floor to ceiling heights and ground floor amenities for easy conversion		
4L-2: Design of ground floor apartments delivers amenity and safety for residents • Privacy and safety should be provided without obstructing casual surveillance. Design solutions may include: - elevation of private gardens and terraces above the street level by 1-1.5m (see figure 4L.4) - landscaping and private courtyards - window sill heights that minimise sight lines into apartments - integrating balustrades, safety bars or screens with the exterior design • Solar access should be maximised through: - high ceilings and tall windows - trees and shrubs that allow solar access in winter and shade in summer	Not proposed.	N/A
Facades (4M)		
4M-1: Building facades provide visual interest along the street while respecting the character of the local area <u>Design Guidance</u> • Design solutions for front building facades may include: – a composition of varied building elements – a defined base, middle and top of buildings – revealing and concealing certain elements – changes in texture, material, detail and colour to modify the prominence of elements • Building services should be integrated within the overall facade • Building facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale. Design solutions may include: - well composed horizontal and vertical elements - variation in floor heights to enhance the human scale	The proposed front building façades provides for the following: • a composition of varied building elements; • a defined base, middle and top; • revealing and concealing certain elements; • changes in texture, material, detail and colour to modify the prominence of elements. Satisfactory Satisfactory	✓

- elements that are proportional and arranged in patterns - public artwork or treatments to exterior blank walls - grouping of floors or elements such as balconies and windows on taller buildings		
• Building facades relate to key datum lines of adjacent buildings through upper level setbacks, parapets, cornices, awnings or colonnade heights	Satisfactory	
• Shadow is created on the facade throughout the day with building articulation, balconies and deeper window reveals	Satisfactory	
4M-2: Building functions are expressed by the facade		
• Building entries should be clearly defined	The building entries are not clearly defined as outlined in Part 3C.	**No**
• Important corners are given visual prominence through a change in articulation, materials or colour, roof expression or changes in height	There are no important corners on the site.	✓
• The apartment layout should be expressed externally through facade features such as party walls and floor slabs	Complies	✓
Roof Design (4N)		
Roof treatments are integrated into the building design and positively respond to the street	Satisfactory.	✓
Open space is provided on roof tops subject to acceptable visual and acoustic privacy, comfort levels, safety and security considerations	Provided at ground level.	N/A
Roof design incorporates sustainability features	Skylights are proposed for the level 11 units, however, no other measures are provided. The proposal complies with BASIX requirements.	N/A
Landscape Design (4O)		
Landscape design is viable and sustainable. Landscape design contributes to the streetscape and amenity	Satisfactory	✓
Planting on Structures (4P)		
Appropriate soil profiles are provided Plant growth is optimised with appropriate selection and maintenance Planting on structures contributes to the quality and amenity of communal and public open spaces	Satisfactory.	✓
Universal Design (4Q)		

4Q-1: Universal design features are included in apartment design to promote flexible housing for all community members <u>Design Guidance</u> • Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	LHD Silver Level (22 apartments = 20%) comprising: • Type N-2B x 10 • Type N-3A x 9 • Type N-2D x 3	✓
Objective 4Q-2: A variety of apartments with adaptable designs are provided <u>Design Guidance</u> • Adaptable housing should be provided in accordance with the relevant council policy • Design solutions for adaptable apartments include: – convenient access to communal and public areas – high level of solar access – minimal structural change and residential amenity loss when adapted – larger car parking spaces for accessibility – parking titled separately from apartments or shared car parking arrangements	The DCP only requires 10%. There is only one (1) accessible car parking space provided.	✓ **No**
Objective 4Q-3: Apartment layouts are flexible and accommodate a range of lifestyle needs. <u>Design Guidance</u> • Apartment design incorporates flexible design solutions which may include: – rooms with multiple functions – dual master bedroom apartments with separate bathrooms – larger apartments with various living space options – open plan 'loft' style apartments with only a fixed kitchen, laundry and bathroom	Provided.	✓
Mixed Use (4S)		
Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	Not proposed.	N/A
Awnings and Signage (4T)		
Awnings are well located and complement and integrate with the building design	Not proposed.	N/A

Awnings should be located over building entries for building address and public domain amenity		
Energy Efficiency (4U)		
Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	Complies with BASIX and incorporates solar.	✓
Water Management and Conservation (4V)		
Potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design.	Addressed on stormwater plans (detention) and BASIX.	✓ ✓
Waste Management (4W)		
4W-1: Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents		
• Adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park	The proposed waste management arrangements are unsatisfactory arising from the adverse impact on the streetscape from the on-street collection proposed of large bins.	**No**
• Waste and recycling storage areas should be well ventilated	Provided in the basement which will be ventilated.	✓
• Circulation design allows bins to be easily manoeuvred between storage and collection points.	To be undertaken by the Building Manager.	✓
• Temporary storage should be provided for large bulk items such as mattresses	Not provided.	**No**
• A waste management plan should be prepared	Provided	✓
4W-2: Domestic waste is minimised by providing safe and convenient source separation and recycling		
• All dwellings should have a waste and recycling cupboard or temporary storage area of sufficient size to hold two days' worth of waste and recycling	Provided	✓
• Communal waste and recycling rooms are in convenient and accessible locations related to each vertical core	The proposed waste rooms are not conveniently located given the long distances to them from car parking areas (on the ground floor while the majority of car parking is provided in the basement).	**No**
• For mixed use developments, residential waste and recycling storage areas and	Not proposed.	N/A

access should be separate and secure from other uses • Alternative waste disposal methods such as composting should be provided	Not proposed.	N/A
Building Maintenance (4X)		
Building design detail provides protection from weathering Systems and access enable ease of maintenance Material selection reduces ongoing maintenance costs	Satisfactory	✓

Attachment C: Compliance Table - Section A1 Part C of the TDCP 2008

REQUIREMENTS	PROPOSAL	COMPLY
Chapter 1: Building Types		
Block edge residential flat building Objectives • ***To ensure larger developments are well proportioned and scaled.*** • *To provide more compact housing in proximity to centres.* • *To create an urban building form and strong built edge along the street.* • *To define the street space.*		
Block edge residential flat building a. Maximum building and elevation length along the street is 35m.	Building length along the street: • North tower – 30m • South tower – 20m	✓
b. Minimum lot size 2000m².	Site area is achieved (3,629.5m²)	✓
c. The buildings street elevation is to be articulated to have a base, middle and top.	Satisfactory.	✓
d. Front doors, windows and entry areas are to face the street.	Provided	✓
e. Ground level dwellings with a street frontage are to have a pedestrian access from the street.	There are no ground floor units proposed.	N/A
f. Front fencing and landscaping is to be provided within the front setback and is to enhance the character of the street and the building.	There is no front fencing proposed, and landscaping is proposed.	✓
g. Car parking areas are located to the rear or the centre of lots away from the street front or underground.	Car parking is provided at the street level which adversely impacts on the streetscape façade of the building. The proposal involves a 4.1m high wall on the site which does not enhance the streetscape or the building.	**No**
h. Block Edge Residential Flat Buildings must comply with the Controls found in this Part.	Noted	✓
Chapter 2: Site and Building Design Controls		
Design Control 1: Public Domain Amenity		
<u>Streetscape</u> a. Site design, building setbacks and the location and height of level changes are to consider the existing topographic setting of other buildings and sites along the street, particularly those that are older and more established.	While the existing building to the north is located on a zero setback, a greater setback is required on this site given it adjoins an area of public open space and is within an established residential area.	**No**
b. The design of the front deep soil zone and boundary interface to the public domain is to complement or enhance streetscape character by:	A deep soil zone is located along the common boundary to the park which is	Yes

– providing for landscaping; lawn, trees or shrubs characteristic with existing properties or of such design as to enhance the quality and appearance of the dwelling and surrounding area, – reflecting the character and height of fences and walls along the street, or of such design as to enhance the quality and appearance of the dwelling and surrounding area, – reflecting the character and layout of established front gardens of other allotments in the street, particularly older and well established garden landscapes, – retaining, protecting or replacing existing vegetation and mature trees,	appropriate. Some landscaping is proposed along the Enid Street frontage.	
c. Carports and garages visible from the public street are to; – be compatible with the building design, including roofs, – be setback behind the dwellings front elevation.	Not applicable to the proposal.	N/A
d. Minimise driveways and hardstand areas to increase the area for deep soil zones and landscaping and to reduce the visual impact of driveways and hard surfaces from the street.	Complies	Yes
e. Facades visible from the public domain are to be well designed by: – having important elements such as front doors and building entry areas prominent in the building facade and clearly identifiable from the street, – coordinating and integrating building services, such as drainage pipes, with overall facade design, – integrating the design of architectural features, including stairs and ramps, and garage/carport entries with the overall facade design, and by locating car parking structures on secondary streets where possible, – ensuring corner buildings have attractive facades which address both streets frontages, including the careful placement and sizing of windows, – ensuring entrance porticos are single storey.	The proposal does not provide for prominent entry areas in the building façade given they are recessed deep into the building and are not visible from the street.	**No**
<u>Public Views and Vistas</u> a. The location and height of new developments is not to significantly diminish the public views to heritage items, dominant landmarks or public buildings from public places.	Achieved	Yes
b. The location and height of new development is to be designed so that it does not unnecessarily or unreasonably obscure public district views of major natural features such as the water, ridgelines or bushland.	Achieved	Yes

c. The location and height of new development is to be designed so that it does not unnecessarily or unreasonably obscure public view corridors, for example, down a street.	Achieved	Yes
d. The location and height of new development is to be designed to minimise the impact on public views or view corridors between buildings.	The proposal has not adequately considered and demonstrate view sharing for buildings to the west of the site along Thomson Street.	**No**
DESIGN CONTROL 2 – Site Configuration		
Deep Soil Zones a. Deep Soil Zones must be provided for all new developments and existing development, except on non-urban land with site areas greater than 5000m² and development with ground level commercial floor space.	DSZ to be provided on the site.	Yes
b. All sites are to provide two Deep Soil Zones, one to the rear and one to the front of the property.	Not provided – only along the side boundary. Covered in the ADG	**No**
c. Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 4m. Greater than 8m may be provided if desirable.	….	
d. Rear Deep Soil Zones are to have soft landscaping; refer to Landscaping Section.	Not provided.	
e. Front Deep Soil Zones are to be the width of the site boundary minus the driveway width and the pathway width by the front setback depth.	Not provided or required	
f. Front Deep Soil Zone areas are to have soft landscaping, vegetation and at least one tree.	There is some landscaping along the front elevation.	
g. Deep Soil Zones cannot be covered by impervious surfaces such as concrete, terraces, outbuildings or other structures.	Noted	
h. Deep Soil Zones cannot be located on structures such as car parks or in planter boxes.	Noted	
i. The Deep Soil Zone is to be included in the total permeable area for the allotment.	Noted	
Impermeable Site Area a. An allotment's runoff shall be dispersed onto grassed, landscaped or infiltration areas, of the allotment, unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land.	Provided to DSZ and street system.	Yes
b. The concentration, collection and piping of runoff to the street gutter or underground stormwater system	Provided	Yes

shall be minimised unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land. c. Rain water shall be collected in tanks and reused. d. Site surface depressions in landscaping are to be utilised for on-site detention and infiltration unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land. e. Runoff is to be minimised, delayed in its passage and where possible accommodated within the landscape of the development site unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land. f. A schedule of the breakdown/calculation of impermeable site area must be submitted with the development application. The maximum areas for impervious surfaces are: - 60% of the allotment - on lot sizes >750m².	Referral Referral Referral Referral The proposal involves a total of 66% (2,393.94m²) of impervious site coverage exceeding the 60% consistent with this control by 218.04m².	Yes Yes Yes Yes **No**
External Living Area a. External living areas are best located adjacent to the internal living (dining rooms, living room, or lounge room) areas so as to extend the overall living space. b. External living areas should be suitably screened to achieve visual privacy if located less than 4m from a side boundary. c. External living areas are to be no closer to the side boundaries than 900mm. d. External living areas are to be designed to ensure water does not enter the dwelling. External living areas should be oriented to north where possible.	Refer to ADG	N/A
Above Ground External Living Spaces, Balconies and Terraces	Refer to ADG	N/A
<u>Communal Open Space</u> a. Communal open space must be provided for with any developments of more than 10 dwellings to provide recreational or relaxation uses for residents. b. Communal open space is not to be located such that solar access, privacy and outlook to dwellings are reduced. c. The design of communal open space must demonstrate how it achieves specific functions that enhance the livability and residential amenity of the development and how it will serve the needs and number of people within the development. d. The location and design of communal open space must not compromise achieving the minimum separation distances and minimum areas for external living areas. Communal open space is to be designed such that its size and dimensions allow for particular uses.	Provided Privacy to proposed dwellings on the site will be compromised by the COS. The proposed COS does not provide the required level of amenity given it is largely comprised of entry and circulation areas. Satisfactory Refer above	Yes **No** **No** Yes **No**

Landscaping a. Retain existing landscape elements on sites such as natural rock outcrops, watercourses, dune vegetation, indigenous vegetation and mature trees. b. On lots adjoining bushland, protect and retain indigenous native vegetation and use native indigenous plant species for a distance of 10m from any lot boundaries adjoining bushland. c. Locate and design the building footprint to enable the retention of existing trees. d. Buildings are not to be sited under the drip line of an existing tree. e. Provide useful outdoor spaces for liveability by coordinating the design of external living areas, driveways, parking areas, communal drying areas, swimming pools, utility areas, deep soil areas and other landscaped areas with the design of the dwelling. f. Where the ground floor level of a dwelling is above the finished external ground level reached through a door or doorways, there is to be a physical connection made between these levels. Examples of a physical connection include stairs, terraces, and the like. g. Provide a landscaped front garden. h. A pathway with a minimum width of 900mm is to be provided along one side of the dwelling so as to provide pedestrian access from the front garden to the rear yard. This access is not to be blocked by such things as landscaping features, rainwater tanks, hot water heaters and retaining walls. The pathway does not need to be provided on allotments which have rear lane access. i. Landscape elements in front gardens such as plantings are to be compatible with the scale of development. j. The front garden is to have at least 1 canopy tree with a minimum mature height of 10 metres. k. Where the backyard does not have a mature tree at least 15m high, plant a minimum of one large canopy tree in the back yard. The tree is to be capable of a mature height of at least 15m and is to have a spreading canopy. Locate and design landscaping to increase privacy between neighbouring dwellings.	Satisfactory	Yes
Planting on Structures a. Planting on structures is not to occur in areas that cannot be easily accessed either from dwelling external living areas or communal areas. Optimise plant growth by: - providing soil depth, soil volume and soil area appropriate to the size of the plants to be established, - providing appropriate soil conditions and irrigation methods, - providing appropriate drainage.	Satisfactory	Yes

Topography, Cut and Fill a. Building siting is to relate to the original form of the land. b. Alternatives to slab on ground construction are to be encouraged where it is obvious that due to the gradient and characteristics of the site, major excavation or filling as a result of raft slab, construction would be inappropriate. Example of alternative construction includes: Bearer and joist construction; Deepened edge beam; Split level design; Suspended slab design. c. On sloping sites step buildings or utilise site excavation and suspended floors to accommodate changes in level rather than leveling the site via cut and fill. d. Dwellings must not be designed to be on a contiguous slab on ground type if the building site has a slope of greater than 10%. Development on such land is to be of pole or pier construction or multiple slabs or the like that minimise the extent of cut and fill. e. Site excavation / land reforming is to be kept to a minimum required for an appropriately designed site responsive development. f. The maximum level of cut is 1m and fill is 1m except for areas under control j. g. Retaining walls maximum 1.2m. 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. i. Cut and fill batters shall not exceed a slope of 1:2 (v:h) unless geotechnical reports result in Council being satisfied with the site stability. All batters are to be provided with both short term and long term stabilisation to prevent soil erosion. j. Excavations in excess of one metre within the confines of the building and on driveways may be permitted, to allow for basement garages providing the excavations are adequately retained and drained, in accordance with engineering details. k. Filled areas are to be located where they will not impact on the privacy of neighbours. l. Stormwater or surface water runoff shall not be redirected or concentrated onto adjoining properties so as to cause a nuisance and adequate drainage is to be provided to divert water away from batters. The top of any battered cut (or retaining wall) and the toe of any battered fill (or retaining wall) is not to be closer than 900mm to any property boundary, where the overall height at any point exceeds 500mm.	Proposed excavation for the basement is satisfactory and the ground level is at the same level of the street	Yes
DESIGN CONTROL 3 – Setbacks		
Front Setbacks (Building Lines)	Not relevant to the site.	N/A

a. In new areas Shop-top Housing and Shop-top Residential Flat Buildings are to be built to the street boundary.	Street setback of 4 metres in Section B2.	N/A
b. In new areas Residential Flat Buildings are to have a street setback of 6m.	Not relevant to the site.	N/A
c. On corner sites in new and existing areas the setback along the secondary street (the street to which the dwelling has its secondary frontage) is 3m.	Not relevant to the site.	N/A
d. Where a site has dwellings with frontages to two or more streets, the street setbacks for these frontages are to be considered as front setbacks and there be 6m.	Not relevant to the site.	N/A
e. In established areas Shop-top Housing and Shop-top Residential Flat Buildings are to be built to the street boundary.	Street setback of 4 metres in Section B2.	N/A
f. In established areas Residential Flat Buildings are to be setback from the street boundary by 6m with a variance of up to plus or minus 1m (i.e.. between 5m to 7m).	The basement is located forward of the building footprint and street setback of 4m.	**No**
g. Basement garages cannot be located forward of the building footprint. On grade parking must be located a minimum of 6m setback from the buildings front elevation or to the rear of the site.	The on grade parking is enclosed however the resulting façade to the street are blank stone walls which are unsatisfactory.	**No**
<u>Side Setbacks</u>		
a. Shop-top Housing and Shop-top Residential Flat Buildings must have zero side setbacks for at least 5m back from the street boundary.	Not relevant to the site.	N/A
b. Residential Flat Buildings can have minimum of 1.5m setbacks. Primary windows of living rooms facing the side boundaries	Greater side setbacks are provided.	Yes
c. Shop-Top Housing with walls containing the primary windows of living rooms facing the side boundaries are to be setback a minimum of 4m from the boundary and be screened.	Not relevant to the site.	N/A
Shop top Residential Flat Buildings and Residential Flat buildings with the primary windows of living rooms facing the side boundaries are to be setback a minimum of 6m and meet the distances as set out in the Separation Controls.	Complies	Yes
<u>Garages and basement parking</u>		
d. Garages may be located within 450mm of a side boundary.	Not relevant to the site.	N/A
e. Carports may be located adjacent to a side boundary.	Not relevant to the site.	N/A
f. Basement garages are to be set back a minimum of 1.5m from the side boundaries but preferably in line with the building above.	Not relevant to the site.	N/A
Driveways may be located adjacent to the side boundaries only where front fences have 60% openness ratio for the first 2m along the boundary adjacent to the driveway to achieve sight lines as set out in AS2890.	The proposed driveway does not adjoin the side boundary.	Yes

Rear Setbacks 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.	Rear setback is 6m.	**No**
b. For Shop-top Housing and Shop-top Residential Flat Buildings the rear setback can be a minimum of zero.	Not proposed.	N/A
c. For Residential Flat Buildings existing mature trees within 6m of the rear boundary are to be retained. d. Garages and carparking may be located adjacent to the rear setback.	There are no existing mature trees on the site.	Yes
Canal Frontages d. The setback from a canal frontage is: - 5.5m where the boundary is on the canal side of a revetment wall, or 3.4m from the revetment wall where the wall is on the boundary, except: (i) For those allotments with canal frontages and facing Gollan Drive and Jacaranda Avenue, Tweed Heads West where the setback line to the canal frontage shall be 2.5m, (ii) Lots 1, 2 3 and 4 Crystal Waters Drive, Tweed Heads West where normal building setbacks shall apply along the canal frontage	Not relevant to the site.	N/A
e. No structures are to be built in the setback area other than fences to 1.2 metres high, swimming pools, retaining walls, suspended decks that do not exceed the level of the allotment at the top of the batter and boat ramps except: (i) For those allotments with canal frontages and facing Gollan Drive and Jacaranda Avenue, Tweed Heads West where the setback line to the canal frontage shall be 2.5m (ii) Lots 1, 2 3 and 4 Crystal Waters Drive, Tweed Heads West where normal building setbacks shall apply along the canal frontage.	Not relevant to the site.	
The underside of any suspended deck fronting a canal is to be suitably screened, except in cases where giving effect to this control would result in adverse impact to flood waters.	Not relevant to the site.	
DESIGN CONTROL 4 - Carparking and Access		
Carparking Generally a. Carparking is to be in accordance with Section A2 of the Tweed Shire Development Control Plan.	Refer to Section A2 assessment.	N/A
b. Carparking number concessions may be given to small sites to allow carparking to be fully under the buildings footprint.	Noted	N/A
c. Carparking can be either in an enclosed structure (a garage or basement) or an open roofed structure (a carport).	Noted	N/A
d. Carparking cannot be located within the front setback.	Noted	N/A
e. Car park entries are to be located off secondary streets and laneways where these occur.	Not available on the site.	N/A
f. The driveway width from the street to the property boundary is to be minimised.	Complies	Yes
g. Vehicular movement and parking areas are to be designed to minimum dimensions; - to reduce hard	Complies	Yes

surfaces on the lot, and - to increase the area available for landscaping. On grade carparking cannot occur within 12m of the primary street boundary for flat buildings and 6m for Shop- top.	On grade parking is proposed, although enclosed, which results in adverse impacts to the streetscape arising from the blank walls which enclose the car parking along the frontage of the site.	**No**
Basement Carparking a. Basement carparking cannot extend more than 1m above ground where it faces a public street or public space, 1.5m above ground level can be achieved to the side and the rear of the lot where it does not face a public street or public space. b. A ramp entering off a public street must start behind the boundary. Ramps cannot be located on public land. c. Ramps are to be minimised in width. The walls of basement carparks are best located in line with the buildings footprint. Basement carparking is not to extend outside the external line of terraces, balconies and porches.	Complies – the basement is below ground level. Complies Complies Complies	Yes
DESIGN CONTROL 5 – Building Footprint and Attics, Orientation and Separation		
Building Footprint and Attics a. For buildings that only have daylight access to two and opposite sides of the building the back wall of a room cannot be greater than 10 metres from a window. b. Attic spaces cannot be more than 50% of the building footprint. The majority of the volume of an attic is to be contained within the roof space.	Refer to ADG Not proposed Not proposed	N/A N/A N/A
Building Orientation a. All dwellings with a street frontage(s) are to be oriented to and address the street(s). b. Ensure that the pedestrian entry to the development is clearly visible and accessible from the street. c. Where possible orientate bathroom, laundry and other ancillary room windows to the side boundaries. d. Where possible orient the primary windows of living rooms to the front or the rear of lots. Orient living areas to employ passive solar design principles.	Complies This has not been provided by the proposal as oultined in the ADG assessment. These areas are generally located adjoining the corridors and stairwells, which is appropriate. Refer above Satisfactory	Yes **No** Yes
Building Separation	Refer to ADG	N/A
DESIGN CONTROL 6 – Height		
Building Height Ceiling height	Refer to LEP Refer to ADG	N/A N/A
DESIGN CONTROL 7 – Building Amenity		

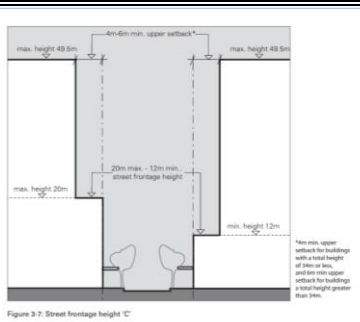
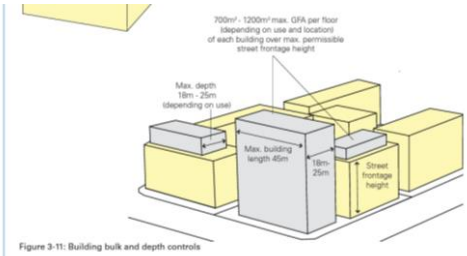
Sunlight Access a. Living spaces are to be located predominantly to the north where the orientation of the allotment makes this possible.	Refer to ADG	N/A
b. Dwellings on allotments which have a side boundary with a northerly aspect are to be designed to maximise sunlight access to internal living areas by increasing the setback of these areas. In these cases a minimum side setback of 4 metres is required.	Refer to ADG	N/A
c. Private open space of the subject dwelling is to receive at least two hours sunlight between 9am and 3pm on June 21.	Refer to ADG	N/A
d. Windows to north-facing habitable rooms of the subject dwelling are to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of their surface.	Refer to ADG	N/A
e. For neighbouring properties ensure: – sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and – windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.	Complies – western adjoining properties (to the rear) have solar access throughout the day with minor overshadowing at 9am, while the properties to the east are overshadowed in the afternoon during midwinter.	Yes
Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.	Complies	Yes
<u>Visual Privacy</u> a. Terraces and balconies off living areas are generally not to be located above ground floor if they overlook neighbours.	Refer to ADG	N/A
b. Living room and kitchen windows, terraces and balconies are avoid a direct view into neighbouring dwellings or neighbouring private open space.	Refer to ADG	N/A
c. Side windows are to be offset by distances sufficient to avoid direct visual connection.	Refer to ADG	N/A
windows of the subject dwelling and those of the neighbouring dwelling.	Refer to ADG	N/A
<u>Acoustic Privacy</u> a. The noise of an air conditioner, pump, or other mechanical equipment must not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item. This may require the item to have a sound proofed enclosure.		N/A
b. Dwellings located on designated or classified roads are to have double glazed windows where these windows face the road and provide light to living rooms or bedrooms. This is the case whether or not the dwelling has a solid masonry wall to the arterial road.		

Dwellings located on arterial roads are to have an acoustic seal on the front door to reduce noise transmission.		
View Sharing Building siting is, as far as it is practical, to be designed to minimise the impact on view sharing between properties.	This has not been adequately demonstrated for the adjoining properties to the west of the site along Thomson Street.	**No**
Natural Ventilation	Refer to ADG	N/A
DESIGN CONTROL 8 – Internal Building Configuration		
Use Permanent and temporary accommodation uses are interchangeable throughout all building types covered in this Part.	Noted	N/A
Dwelling Layout and Design Storage Internal Circulation	Refer to ADG	N/A
DESIGN CONTROL 9 - External building elements		
Roofs, Dormers and Skylights a. Relate roof design to the desired built form by articulating the roof, - providing eaves, - using a compatible roof form, slope, material and colour to adjacent buildings; and - ensuring the roof height is in proportion to the wall height of the building. b. The main roof is not to be a trafficable terrace. Skylights are: - not to reduce the structural integrity of the building or involve structural alterations, - to be adequately weatherproofed, - to be installed to the manufacturer's instructions.	A flat roof is proposed which is compatible with existing development in the area. A non-trafficable roof is proposed. No skylights are proposed.	Yes N/A N/A
Elevations Visible from the Public Domain a. Design important elements such as front doors and building entry areas to have prominence in the building elevation and to be clearly identifiable from the street. b. Use proportions, materials, windows and doors types that are residential in type and scale. c. Design elevations to reflect the orientation of the site using elements such as sun shading, light shelves and bay windows as environmental controls. d. Coordinate and integrate building services, such as drainage pipes, with overall elevation and balcony design. e. Coordinate grills/screens, ventilation louvres, carpark entry doors with the elevation. Integrate the design of garage entries with the building elevation design.	This has not been achieved by the proposal. Complies Complies Complies Complies Complies	**No** Yes Yes Yes Yes Yes
DESIGN CONTROL 10 – Building Performance	Satisfactory	Yes
DESIGN CONTROL 11 – Floor Space Ratio (FSR)	Refer to LEP.	Yes

Attachment D: Compliance Table - Section B2 of the TDCP 2008

REQUIREMENTS	PROPOSAL	COMPLY
2.0: City Centre Character Areas - City Centre Core Precinct		
The City Centre Core Precinct is the 'heart of the city' and is well located to accommodate the bulk of future residential and business development necessary to fulfil the regional centre role of Tweed Heads while connecting with the existing urban form of Tweed Heads and Coolangatta. The future character of the City Centre Core Precinct will be of a dynamic centre with a mix of land uses comprising retail uses at ground level activating the street frontage and podium levels comprising commercial offices topped by residential high rise buildings ranging from 10 to 14 storeys in height. The main two streets in the precinct are Bay Street and Wharf Street. The visual and functional character of Bay Street and Wharf Street will be improved through enhancements to the public domain in the form of integrated planting, paving, lighting and street furniture schemes framed by high quality buildings. Streets will have continuous awnings to provide weather protection to pedestrian street activity.	The proposal is generally consistent with this statement.	Yes
3: Building Form		
3.1: Building Alignment and Setbacks		
Objectives *12)* **To provide a clear and consistent definition of the public domain**. ***13)*** **To provide a hierarchy of street edges from commercial core with no street setbacks to residential locations with landscaped setbacks.** ***14)*** **To establish the desired spatial proportions of the street and define the street edge.** ***15)*** **To create a clear transition between public and private space.** *16)* To locate active uses, such as shopfronts, closer to pedestrian activity areas. *17)* To assist in achieving visual privacy to dwellings from the street. ***18)*** **To create good quality entry spaces to lobbies, foyers or additional dwelling entrances.** ***19)*** **To allow an outlook to, and surveillance of, the street.** ***20)*** **To allow for street landscape character, where appropriate.** *21)* To maintain shared views to the ocean and Tweed River. *22)* To maintain sun access to the public domain.	The proposal does not comply with the required front setback which results in an excessive bulk and scale to the street and a poor relationship between the entry areas and the street. This inconsistency with the front setback is contrary to the objectives of this control in that: • a clear and consistent definition of the public domain is not provided as the proposed balconies extend to the street on the podium level; • a hierarchy of street edges from commercial core with no street setbacks to residential locations with landscaped setbacks is not established; • the desired spatial proportions of the street and definition of the street edge is not achieved by the proposal; • there is no clear transition between public and private space on the site;	**No**

	• there is a lack of good quality entry spaces to lobbies and foyers as the building incorporates excessive areas forward of the lift lobbies arising from the inconsistency with the front setback control; and • an outlook to, and surveillance of, the street is not achieved given the large areas of building forward of the front setback.	
a) Street building alignment and setbacks requirements are to comply with Figures 3-1 and 3-2. **4 metres – predominant building line**	The proposal is setback from the street between: • North tower - 0 – 1m • South tower – 4m The first floor balconies extend into the front boundary line.	**No – north tower**
b) The external façade of buildings are to be aligned with the streets that they front.	Complies.	Yes
c) Balconies may project up to 1.2m into the front building setback in the Medium Density Residential Zone and up to 600mm in all other zones, provided that the cumulative width of all balconies at that particular level has a total of no more than 50% of the horizontal width of the building façade, measured at that level.	The front balconies can be setback to 2.8m (4.0-1.2), however, the balconies extend to the front boundary line.	**No**
d) Minor projections into front building lines and setbacks for sun shading devices, entry awnings and cornices are permissible (see also Building Design and Materials at Section 3.5 of this Plan).	These are not proposed.	N/A
e) Notwithstanding the setback controls, where development must be built to the street alignment (see Figures 3.1 and 3.2), it must also be built to the site boundaries (0m setback) where fronting the street. The minimum height of development built to the site boundary must comply with the minimum street frontage height requirement.	This control does not apply to the site.	N/A
3.2: Street Frontage heights		
a) Buildings are to comply with Figure 3-4 street frontage heights and as illustrated in Figures 3-5 to 3-10. • Figure 3.4 - Street Frontage Height C applies (See Figure 3.7) • Street frontage height – 12m to 20m • Upper setback (buildings total height >34m) – 6m	<u>Street frontage height</u> • North tower - 13.950 metres • South tower – 10.90 metres <u>Upper setback</u> • North tower – **0m** (level 5) to **1m** (level 6) • South tower – **4m** (podium to level 11)	Yes **No**

 Figure 3-7: Street frontage height 'C'		
3.3: Building Depth and Bulk		
a) The maximum floor plate size and depth of buildings are specified in Table 3-1 and illustrated in Figure 3-11. <u>Residential zones</u> (all uses) – above SFH – • max GFA/Floor – 700m² • max building depth (excl balconies) – 18m • max building length – 45m (Figure 3-11)  Figure 3-11: Building bulk and depth controls	<u>North tower</u> – • GFA/floor above level 5 (SFH) – 695m² (level 5), 693 (levels 6-10) and 684m² (level 11) • Building depth – 18m to **24m** (level 11) • Building length – 30m (approx.) <u>South tower</u> – • GFA/floor above level 5 (SFH) – 632m² (level 5), 632 (levels 6-10) and 616² (level 11) • Building depth – 10m to **20m** (level 11) • Building length – 30m (approx.)	**No** (building depth)
b) Notwithstanding control (a) above, no building above 24 metres in height in the Commercial Core and 22 metres in height in all other zones, is to have a building length in excess of 45 metres.	Building length does not exceed 45 metres.	Yes
c) Where no street frontage is specified in Figure 3-4 and the building height exceeds 22 metres, the maximum GFA per floor must comply with Table 3-1.	Complies with max GFA per floor.	Yes
d) All points on an office floor should be no more than 10 metres from a source of daylight (e.g. windows, atria or light wells in buildings less than 24 metres in height, and no more than 12.5 metres from a window in buildings over 24 metres in height.	Not proposed.	N/A
e) Use atria, light wells and courtyards to improve internal building amenity and achieve cross ventilation and/or stack ventilation.	Not proposed.	N/A
Side and rear building setbacks and building separation (3.2.1)		
a) The minimum building setbacks from the front, side and rear property boundaries are specified in Table 3-2, and the associated explanatory notes, and illustrated generically in Figure 3-12. Note: The explanatory notes outline development that may	The site is not located in the B3 or mixed use zone or Minjungbal Drive.	N/A

depart from the minimum setback distances outlined in Table 3-2.		N/A
b) In mixed use buildings, setbacks for the residential component are to be the distances specified in the table below for residential development in the specified zone.	Not proposed.	
c) If the specified setback distances cannot be achieved when an existing building is being refurbished or converted to another use, appropriate visual privacy levels are to be achieved through other means. These will be assessed on merit by the consent authority.	Not proposed.	N/A
d) In exceptional circumstances where the required setback distances are not possible, proposals for tall buildings (over 40 metres in height) may be considered on merit by the consent authority so long as the minimum separation distance between these buildings, or potential future tall buildings are adhered to.	Refer to ADG assessment.	N/A
3.5: Building Design and Materials		
a) Adjoining buildings are to be considered in the design of new buildings in terms of: • Appropriate alignment and street frontage heights, • Setbacks above street frontage heights, • Appropriate materials and finishes selection, • Façade proportions including horizontal or vertical emphasis, and • The provision of enclosed corners at street intersections.	The proposal has been designed to be on a reduced front setback to match the Bay Grand development to the north of the site, however, the controls are for a larger street setback for this site, which assists in providing for a residential context for the site consistent with its zoning. The proposal has a reduced front setback and setback above the street frontage height, which results in an adverse impact to the streetscape arising from the large building mass of the proposed building and overwhelms the street in a residential context.	**No**
b) Balconies and terraces should be provided, particularly where buildings overlook parks and on low rise parts of buildings. Gardens on the top of setback areas of buildings are encouraged.	Provided – refer to ADG assessment.	Yes
c) Articulate façades so that they address the street and add visual interest. Buildings are to be articulated to differentiate between the base, middle and top in design.	The facades are articulated and provide visual interest through the use of balconies, screens and glazed areas.	Yes
d) External walls should be constructed of high quality and durable materials and finishes with 'self-	Satisfactory.	Yes

cleaning' attributes, such as face brickwork, rendered brickwork, stone, concrete and glass.	Satisfactory	Yes
e) Finishes with high maintenance costs, those susceptible to degradation or corrosion from a coastal or urban environment or finishes that result in unacceptable amenity impacts, such as reflective glass, are to be avoided.		
f) To assist articulation and visual interest, avoid expanses of any single material.	Satisfactory	Yes
g) Limit opaque or blank walls for ground floor uses to 30% of the street frontage.	The proposed ground floor largely consists of high stone walls which enclose the at grade car parking which results in limited interaction with the street. This also reduces the pedestrian amenity for the building in that entry areas are recessed from the street and are obscured by the large stone walls, 4 metres in height.	**No**
h) Maximise glazing for retail uses, but break glazing into sections to avoid large expanses of glass.	Not relevant to this proposal.	N/A
i) Highly reflective finishes and curtain wall glazing are not permitted above ground floor level (see Section 6-4 of this Plan).	Complies	Yes
j) A material sample board and schedule is required to be submitted with applications for development over $1 million or for that part of any development built to the street edge.	Oultined in the architectural plans.	Yes
k) Minor projections up to 450 millimetres from building walls in accordance with those permitted by the Building Code of Australia may extend into the public space providing it does not fall within the definition of gross floor area and there is a public benefit, such as: • Expressed cornice lines that assist in enhancing the streetscape, and • Projections such as entry canopies that add visual interest and amenity.	Not proposed.	N/A
l) The design of roof plant rooms and lift overruns is to be integrated into the overall architecture of the building.	Complies	Yes
m) Communication towers, such as mobile phone towers (but not satellite dishes), are not to be located on residential buildings or mixed use buildings within residential zones.	Not proposed.	N/A

3.6: Landscape Design		
a) Provide shade to all outdoor spaces through the use of shade trees, pergolas, shade cloth and other shading measures.	Provided	Yes
b) Remnant vegetation must be maintained throughout the site wherever practicable, particularly significant trees.	There are no significant trees on the site.	Yes
c) Landscaped areas are to be irrigated with recycled water.	Provided	Yes
d) To enhance the subtropical character of landscaping, the planting of native tree and palm species and subtropical understorey is encouraged.	Provided	Yes
e) A long-term landscape concept and management plan must be provided for all private landscaped areas in residential flats and multi-housing developments. This plan must outline how landscaped areas are to be maintained for the life of the development.	Can be conditioned	Yes
f) All developments, including commercial and retail developments, are to incorporate landscape planting into accessible outdoor spaces.	Complies	Yes
g) Relevant Council landscape guideline documents must be considered for site planning and landscape design.	Complies	Yes
h) Council's Tree Preservation Order outlines requirements for the protection of trees.	No significant trees on the site.	Yes
i) For residential flat building developments, the minimum area of communal open space should be 30% of the site area.	Refer to ADG	N/A
j) For residential flat building developments, a minimum 25% of the open space area of a site shall be a deep soil zone.	Refer to ADG	N/A
3.7: Planting On Structures		
a) Design for optimum conditions for plant growth by: • providing soil depth, soil volume and soil area appropriate to the size of the plants to be established, • providing appropriate soil conditions and irrigation methods, and • providing appropriate drainage. b) Design planters to support the appropriate soil depth and plant selection by: • ensuring planter proportions accommodate the largest volume of soil possible and soil depths to ensure tree growth, and	Satisfactory	Yes

• providing square or rectangular planting areas rather than narrow linear areas. c) Increase minimum soil depths in accordance with: • the mix of plants in a planter for example where trees are planted in association with shrubs, groundcovers and grass, • the level of landscape management, particularly the frequency of irrigation, • anchorage requirements of large and medium trees, and • soil type and quality. d) Provide sufficient soil depth and area to allow for plant establishment and growth. The minimum standards in Table 3-3 are recommended:		
4: Pedestrian Amenity		
4.1: Permeability		
a) Through site links, arcades, shared ways and laneways are to be provided as shown in Figures 4-1 and 4-2.	The site is not identified in Figure 4-1 for any shared paths etc.	N/A
b) Where possible, existing dead end lanes are to be extended through to the next street as redevelopment occurs.	There are no dead end lanes on the site.	N/A
c) New through site links should be connected with existing and proposed through block lanes, shared zones, arcades and pedestrian ways, and opposite other through site links.	Not required on this site.	N/A
d) Existing publicly and privately owned lanes are to be retained.	There are no lanes on the site.	N/A
4.2: Active Street Frontages		
<u>Active street frontages</u> a) Active frontage uses are defined as one of a combination of the following at street level: • entrance to retail and shopfront (with clear glazing), • glazed entries to commercial and residential lobbies occupying less than 50% of the street frontage, to a maximum of 12 metres frontage, • café or restaurant if accompanied by an entry from the street, • active office uses, such as reception, if visible from the street, and •public building if accompanied by an entry.	Noted	N/A
b) Active street frontages are required on the ground level of all areas identified in Figures 4-5 and 4-6, including adjacent through site links.	An active street frontage is not required on the site.	N/A
c) In the Commercial Core and Mixed Use zones and within the Minjungbal Drive Enterprise Corridor Precinct, active street frontages are required in the form of non-residential uses on the ground level. In addition to the ground level, non-residential active	The site is not located in these areas.	N/A

uses are also required at the first floor level in the Commercial Core and along Wharf Street.		
d) Active ground floor uses are to be at the same general level as the footpath and be accessible directly from the street.	Not required on the site.	N/A
e) Restaurants, cafés and the like are to consider providing permeable shopfronts.	Not required on the site.	N/A
f) Only open grille or transparent security shutters (at least 50% visually transparent) are permitted on retail frontages.	Not required on the site.	N/A
<u>Street Address</u> g) Street address is defined as entries, lobbies, and habitable rooms with clear glazing to the street not more than 1.2m above street level where habitable rooms do not have to be raised due to flooding concerns. Where habitable rooms are raised about ground level due to flooding concerns, opportunities for casual surveillance from the building to the street must be maintained, and the visual impact at street level of the raised ground level minimised.	Noted	N/A
h) Street address is required on the ground level of buildings as identified in Figures 4-5 and 4-6.	Street address is required for the site (Fig 4-5), however, this has not been provided as there are no habitable rooms with clear glazing or entry and lobby areas visible from the street frontage.	**No**
i) Residential developments are to provide a clear street address and direct pedestrian access off the primary street frontage, and allow for residents to overlook all surrounding streets.	The proposed development does not provide a clear street address and direct pedestrian access of Enid Street is not provided as a result of the high blank stone walls proposed at ground level enclosing the at grade car parking.	**No**
j) Provide multiple entrances for large developments including an entrance on each street frontage.	There are multiple entrances to the proposed building however they are obscured by the high walls and are recessed into the building such that a legible entry from the street is not provided.	**No**
k) Provide direct 'front door' access from ground floor residential units.	There are no ground floor apartments proposed.	N/A
l) Residential buildings are to provide not less than 65% of the lot width as street address.	Street address is defined by this control as entries, lobbies, and habitable rooms with clear glazing. The proposed building does not provide any of these features at the street frontage of the building at ground level, with only entry paths visible form the street which lead to recessed lift lobbies. These entry paths represent only approx. 13 metres	**No**

	of the 70 metre frontage to Enid Street, comprising less than 20% of the street frontage. There is no habitable rooms with clear glazing or entry and lobby areas visible from the street frontage.	
4.3 Safety and Security		
a) Address 'Safer-by-Design' principles to the design of public and private domain, and in all development (in accordance with the NSW Police 'Safer by Design': Crime Prevention Through Environmental Design (CPTED) guidelines.	The proposal is considered to result in some entrapment sites in the basement and ground floor parking area, which is unsatisfactory.	**No**
b) Ensure that the building design allows for passive surveillance of public and communal space, accessways, entries and driveways.	There is adequate casual surveillance of the communal area and the street as well as the driveway. **There is limited surveillance of the entry areas which are deeply recessed into the building with no habitable or usable areas surrounding these areas.**	**No**
c) Avoid creating blind corners and dark alcoves that provide concealment opportunities in pathways, stairwells, hallways and carparks.	The proposed basement level provides some entrapment areas/concealment opportunities including: • the entry to the south lift lobby which is located along the southern wall adjoining a bike storage area • the north lift lobby which faces away from the larger part of the car park limiting casual surveillance of this area. • Storage areas in the NE corner of the basement • Bicycle parking in the SE corner The bicycle storage area in the SW corner of the ground floor parking area The waste storage rooms are also a potential entrapment site.	**No**
d) Maximise the number of residential 'front door' entries at ground level.	None provided.	N/A
e) Provide entrances which are in visually prominent positions and which are easily identifiable, with visible numbering.	Visible entrances have not been provided given they are deeply recessed into the building and away from the street edge of the site.	**No**
f) Clearly define the development boundary to strengthen the transition between public, semi-private and private space. This can be actual or symbolic and can include landscaping, fences, changes in paving material, etc.	Complies	Yes
		Yes

g) Provide adequate lighting of all pedestrian accessways, parking areas and building entries.	This can be conditioned	Yes
h) Provide clear lines of sight and well-lit routes throughout the development.	The pathway along the southern boundary can be overlooked by the balconies above.	Yes
i) Where a pedestrian pathway is provided from the street, allow for casual surveillance of the pathway.	Complies	Yes
j) For large scale retail and commercial development with a gross floor area of over 5,000 square metres, provide a 'safer by design' assessment in accordance with the CPTED guidelines from a suitably qualified consultant.	Provided	
4.4 Front Fences and Boundary Treatments		
	None proposed.	N/A
4.5 Awnings		
	Not required on this site.	N/A
4.6 Vehicle Footpath Crossings		
<u>Location of vehicle access</u>		
a) One vehicle access point only (including the access for service vehicles and parking for non-residential uses within mixed use developments) will be generally permitted.	Complies	Yes
b) Vehicular access is to be limited from major streets including Wharf Street and Bay Street. Where practicable, vehicle access is to be from lanes and minor streets rather than primary street frontages or streets with major pedestrian activity.	Complies	Yes
c) Where practicable, adjoining buildings are to share or amalgamate vehicle access points. Internal on-site signal equipment is to be used to allow shared access. Where appropriate, new buildings should provide vehicle access points so that they are capable of shared access at a later date.	Not proposed or required	Yes
<u>Design of vehicle access</u>		
d) Wherever practicable, vehicle access is to be a single lane crossing with a maximum width of 2.7 metres over the footpath, and perpendicular to the kerb alignment. In exceptional circumstances, a double lane crossing with a maximum width of 5.4 metres may be permitted for safety reasons (refer to Figure 4-12). e) Ensure vehicle entry points are integrated into building design. f) Vehicle access ramps parallel to the street frontage will not be permitted. g) Doors to vehicle access points are to be roller shutters or tilting doors fitted behind the building façade.	A 6m wide crossing is proposed.	Yes

h) Vehicle entries are to have high quality finishes to walls and ceilings as well as high standard detailing. No service ducts or pipes are to be visible from the street.		
Porte cochères 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. k) In exceptional circumstances for buildings with one street frontage only, an indented porte cochère with separate entry and exit points across the footpath may be permitted, as long as: • It is constructed entirely at the footpath level, • Provides active street frontage uses in addition to any hotel entry or lobby at its perimeter, • Is of high quality design and finish and • Provides for safe and clear pedestrian movement along the street.	Not proposed.	Yes
5: Access, Parking and Servicing		
5.1: Pedestrian Access and Mobility		
a) Main building entry points should be clearly visible from primary street frontages and enhanced as appropriate with awnings, building signage or high quality architectural features that improve clarity of building address and contribute to visitor and occupant amenity.	This has not been provided – refer to ADG.	**No**
b) The design of facilities (including car parking requirements) for disabled persons must comply with the relevant Australian Standard (AS 1428 Pt 1 and 2, AS 2890 Pt 1, or as amended) and the Disability Discrimination Act 1992.	Only one (1) accessible parking space has been provided.	**No**
c) Barrier free access is to be provided to not less than 20% of dwellings in each development and associated common areas.	Check	Yes
d) The development must provide at least one main pedestrian entrance with convenient barrier free access in all developments to at least the ground floor.	Complies – level paths to lift from the street.	Yes
e) The development must provide continuous access paths of travel from all public roads and spaces as well as unimpeded internal access.	Complies – level paths to lift from the street.	Yes
f) Pedestrian access ways, entry paths and lobbies must use durable materials commensurate with the standard of the adjoining public domain (street) with	Can be provided.	Yes

	appropriate slip resistant materials, tactile surfaces and contrasting colours.		
5.2: Vehicular Driveways And Manoeuvring Areas			
a)	Driveways should be: • provided from the lanes and secondary streets rather than the primary street, wherever practical, • located taking into account any services within the road reserve, such as power poles, drainage inlet pits and existing street trees, • located a minimum of 6 metres from the perpendicular of any intersection of any two roads, and • located to minimise noise and amenity impacts on adjacent residential development.	Complies	Yes
b)	Vehicle access is to be integrated into the building design so as to be visually recessive.	Complies – traffic referral	Yes
c)	All vehicles must be able to enter and leave the site in a forward direction without the need to make more than a three point turn.	Complies – traffic referral	Yes
d)	Design of driveway crossings must be in accordance with Council's standard Vehicle Entrance Designs. Works within the footpath and road reserve will be subject to an approval under section 138 of the Roads Act 1993.	Can be conditioned	Yes
e)	Driveway widths must comply with the relevant Australian Standards.	Complies – traffic referral	Yes
f)	Car space dimensions must comply with the Australian Standards 2890.1.	Council's engineers are concerned that the spaces are to be 5.5 metres long (and not 5m).	**No**
g)	Driveway grades, vehicular ramp width/ grades and passing bays must be in accordance with the relevant Australian Standard (AS 2890.1).	Complies – traffic referral	Yes
h)	Vehicular ramps less than 20m long within developments and parking stations must have a maximum grade of 1 in 5 (20%). Ramp widths must be in accordance with AS 2890.1.	Complies – traffic referral	Yes
i)	Accessways to underground parking should be sited to minimise noise impacts on adjacent habitable rooms, particularly bedrooms.	Complies	Yes
j)	For development in Medium and Low Density Residential zones, use semipervious materials for all uncovered parts of driveways and parking areas to assist with stormwater infiltration.	Can be conditioned	Yes
5.3: On-Site Parking			

General (all development) a) Car parking rates for land uses are to be provided for in accordance with the Table 5-1. Residential (not attached or detached dwellings) – refer to Section A2 of DCP.	Refer to Part A2 – 192 spaces provided including 10 visitor spaces. GtTGD applies.	Yes
b) Car parking and associated internal manoeuvring areas provided over and above that required by this DCP and the Tweed Local Environment Plan is to be calculated towards gross floor area.	The additional car parking has been included in the GFA calculations.	Yes
c) On-site parking must meet the relevant Australian Standard (AS 2890.1 2004 – Parking facilities, or as amended).	No – refer above re length of spaces	**No**
d) A minimum of 2% of the required parking spaces, or minimum of 1 space per development, (whichever is the greater) is to be appropriately designated and signposted for use by persons with a disability.	No – only 1 accessible space is provided when 4 are required (2% of 192 spaces).	**No**
e) Bicycle parking is to be provided in accordance with Table 5.1, in secure and accessible locations, with weather protection. Where no rates are specified, bicycle parking is to be provided at a rate of 1 space per 200m2 of GFA.	Bicycle spaces – 1 space/200m² = 72 spaces required – 220 provided.	Yes
f) Motorcycle parking is to be provided in accordance with Table 5.1.	Refer to A2 – not provided in A2 – 8 spaces provided	Yes
g) Council may require the provision of a supporting geotechnical report prepared by an appropriately qualified professional as information to accompany a development application to Council.	Provided	Yes
h) Natural ventilation should be provided to underground parking areas where possible, with ventilation grilles and structures: • Integrated into the overall façade and landscape design of the development, • Not located on the primary street façade, and • Oriented away from windows of non-habitable rooms and private open space areas.	This information has not been provided.	**Unclear**
<u>Parking above ground level</u> i) All car parking is to be below ground level, except where site physical constraints prevent all of the required parking to be provided below ground level. Where parking is demonstrated to be required to be provided above ground level due to site physical constraints, above ground car parking may be excluded from gross floor area calculations, where development complies with the built form controls in section 3.0 of this Plan.	Car parking is proposed within a basement as well as on the ground level, and there are no site constraints to providing all of the parking in the basement. The proposed ground level car parking results in an adverse street frontage to Enid Street and is unsatisfactory (refer to ADG assessment). There is also an oversupply of car parking which exacerbates this adverse impact to the street, notwithstanding that these additional car spaces have been added to the GFA calculations for the proposal.	**No**

j) Above ground parking is not to address the primary street frontage where active street frontages are required under this Plan.	The above ground car parking addresses the primary street frontage to Enid Street.	**No**
k) Above ground parking structures are to comply with rear setbacks where relevant as shown in Figures 5-3 and 5-4.	Figures 5-3 and 5-4 do not apply to the proposal as exposed car parking is not proposed and the site is not for a commercial or mixed use development.	N/A
l) Above ground parking structures are to be artistically and imaginatively screened from view from the public domain (refer to Figures 5-5, 5-6 and 5-7 for examples).	The proposed ground level car parking results in large blank walls to the street which is unsatisfactory.	**No**
m) Car parking above ground level is to have a minimum floor to ceiling height of 2.7m so it can be adapted to another use in the future.	Ceiling level of the ground floor (level 1) is 4.05m.	Yes
n) Within the Commercial and Mixed Use Zones, exposed, but screened natural parking ventilation may be permitted fronting onto service lanes if agreed to by Council.	Not applicable to the site.	N/A
o) The impact of any at-grade parking is to be minimised by: • locating parking on the side or rear of the lot away from the street frontage, • provision of fencing or landscape to screen the view of cars from adjacent streets and buildings, • allowing for safe and direct access to building entry points, and • incorporating car parking into the landscape design of the site (such as plantings between parking bays to improve views, selection of paving material and screening from communal and open space areas).	These matters have not been satisfied by the above ground car parking on the site.	**No**
5.4: Developments in other zones		
The impact of any on-grade car parking is to be minimised by: • Locating parking on the side or rear of the lot away from the street frontage, • Provision of fencing or landscaping screen the view of cars from adjacent streets and buildings, • Allowing for safe and direct access to building entry points, or • Incorporating car parking into landscaping design of the site (such as plantings between parking bays to improve views, selection of paving material and screening from communal and open space areas).	This has not been provided.	**No**
5.5: Site Facilities and Services		

Mail boxes		
a) Provide mailboxes for residential buildings and/or commercial tenancies in one accessible location adjacent to the main entrance to the development.	Complies	Yes
b) Mailboxes should be integrated into a wall where possible and be constructed of materials consistent with the appearance of the building.	Complies	Yes
c) Mailboxes are to be secure and large enough to accommodate articles such as newspapers.	Complies	Yes
Communication structures, air conditioners and service vents		
d) Locate satellite dish and telecommunication antennae, air conditioning units, ventilation stacks and any ancillary structures: •away from the street frontage, •integrated into the roof scape design and in a position where such facilities will not become a skyline feature at the top of any building, and •adequately setback from the perimeter wall or roof edge of buildings.	Satisfactory	Yes
e) A master antenna must be provided for residential apartment buildings. This antenna shall be sited to minimise its visibility from surrounding public areas.	Satisfactory	Yes
Waste (garbage) storage and collection General (all development)		
f) All development is to adequately accommodate waste handling and storage on-site. The size, location and handling procedures for all waste, including recyclables, is to be determined in accordance with Council waste policies and advice from relevant waste handling contractors.	This has not been satisfactorily addressed as oultined in Section A15 of the DCP.	**No**
g) Access for waste collection and storage is preferred from rear lanes, side streets or rights of ways.	Not possible on this site.	N/A
h) Waste storage areas are to be designed to: • ensure adequate driveway access and manoeuvrability for any required service vehicles, • located so as not to create any adverse noise impacts on the existing developments or sensitive noise receptors such as habitable rooms of residential developments, and • screened from the public way and adjacent development that may overlook the area.	Waste storage located in the basement, however, on-street collection is proposed which is unsatisfactory.	**No**
i) The storage facility must be well lit, easily accessible on grade for movement of bins, free of obstructions that may restrict movement and servicing of bins or containers, and designed to minimise noise impacts.	Complies	Yes
j) Waste storage areas are to be designed to: • Ensure adequate driveway access and manoeuvrability for any required service vehicles,	Refer above	N/A

• Located so as not to create any adverse noise impacts on existing development or sensitive noise receptors such as habitable rooms of residential developments, and • Screened from the public way and adjacent development that may overlook the area.		
<u>Location requirements for waste storage areas and access</u> k) Where waste volumes require a common storage and handling area, this is to be located: • for residential flat buildings, enclosed within a basement or enclosed car park, • for multi-unit housing, at ground behind the main building setback and façade, or within a basement or enclosed car park, and • for commercial, retail and other development, on-site in basements or at ground within discrete service areas not visible from main street frontages. l) An above ground collection storage area is to be provided within the property boundary situated to provide easy access for the collection vehicles designed in accordance with the requirements of this Plan. m) Where a mobile compaction vehicle is required to enter the site, the access and circulation area shall be designed to accommodate a vehicle with the dimensions in Table 5-2. n) Provide adequate space within any new development for the loading and unloading of service/delivery vehicles. o) Screen all service doors and loading docks from street frontages and from active overlooking from existing developments. p) Design circulation and access in accordance with AS 2890.1.	Provided None provided, bins are to be lined up on the street. On street collection proposed, which is not supported. Refer above Satisfactory Satisfactory	Yes
<u>Fire service and emergency vehicles</u> q) For developments where a fire brigade vehicle is required to enter the site, vehicular access, egress and manoeuvring must be provided to, from and on the site in accordance with the NSW Fire Brigades Code of Practice – Building Construction – NSWFB Vehicle Requirements. r) Generally, provision must be made for NSW Fire Brigade vehicles to enter and leave the site in a forward direction where: • NSW Fire Brigade cannot park their vehicles within the road reserve due to the distance of hydrants from the building or restricted vehicular access to hydrants, or • The site has an access driveway longer than 15m.	Servicing from the road.	Yes

Utility Services s) The provision of utility services and access for regular servicing and maintenance must be considered at the concept stage of site development.	This has not been adequately demonstrated.	**No**
t) Development must ensure that adequate provision has been made for all essential services including water, sewerage, electricity and telecommunications and stormwater drainage to the satisfaction of all relevant authorities.	This has not been adequately demonstrated.	**No**
u) The applicant must liaise with the relevant power authority with regard to the need for a conduit to be installed within the footway area for the future provision of an underground power supply and extension of the conduit up to the wall of the existing or proposed building.	Objections have been received from Essential Energy.	**No**
v) The development must ensure that ready connection of the building(s) can be made in future when underground power is installed and the overhead line connection is replaced with a connection to the underground line.	Can be provided	Yes
w) The applicant must liaise with the power authority with regard to the retention, relocation, or removal of any existing power pole.	Refer above	N/A
6: Environmental Management		
6.6: Waste and Recycling		
a) All development must comply with Council's building site waste management policy. Non-residential development b) . c) ... Residential development d) Provision must be made for the following waste generation:		
• In developments not exceeding six dwellings, individual waste storage facilities may be permitted.	Not applicable	
• In development of more than six units or dwellings, or where the topography or distance to the street collection point makes access difficult for individual occupants, a collection and storage area is required. The storage area must be located in a position which is: - not visible from the street, - easily accessible to dwelling occupants, - accessible by collection vehicles (or adequately managed by the body corporate to permit relocation of bins to an approved collection point), - has water and drainage facilities for cleaning and maintenance, and	Storage area is provided in the basement.	Yes

- does not immediately adjoin private open space, windows or clothes drying areas. e) Subject to Council collection policy, common garbage storage areas must be sized to either accommodate the number of individual bins required or to accommodate sufficient larger bins with the minimum dimensions in Table 6-1. 660L – 1070 x 910 x 635mm 240L – 1180 x 740 x 570mm f) The size and number of the waste bins shall be determined having regard to the need for either on-site access by collection vehicles or the requirement for bins to be wheeled to the street for collection by a contractor. If transferred to the street for collection, the body corporate or a caretaker must be responsible for the movement of bins to their collection point		
7: Residential Development Controls		
7.2: Housing Choice and Mix		
j) To achieve a mix of living styles, sizes and layouts within each residential development, comply with the following mix and size: • studio and one bedroom units must not be less than 10% of the total mix of units within each development, • three or more bedroom units must not be less than 10% of the total mix of units within each development, and • For smaller developments (less than six dwellings) achieve a mix appropriate to the locality.	1 beds – 9.09% (minor non-compliance satisfactory) 2 beds – 43.65% 3+ beds – 47.27% Not relevant.	Yes
k) For development built by (or on behalf of) the Department of Housing, an alternative mix of unit types may be approved, subject to housing needs being demonstrated by the Department.	Not relevant	N/A
l) For residential apartment buildings and multi-unit housing, 10% of all dwellings (or at least one dwelling) must be designed to be capable of adaptation for disabled or elderly residents. Dwellings must be designed in accordance with the Australian Adaptable Housing Standard (AS 42991995), which includes “pre-adaptation” design details to ensure visitability is achieved.	The plans indicate unit type 2-A is capable of being adaptable which is 10 units.	Yes
m) Where possible, adaptable dwellings shall be located on the ground floor, for ease of access. Dwellings located above the ground level of a building may only be provided as adaptable dwellings where lift access is available within the building. The lift access must provide access from the basement to allow access for people with disabilities.	Refer above	Yes

n) The development application must be accompanied by certification from an accredited Access Consultant confirming that the adaptable dwellings are capable of being modified, when required by the occupant, to comply with the Australian Adaptable Housing Standard (AS 4299-1995). o) Car parking and garages allocated to adaptable dwellings must comply with the requirements of the relevant Australian Standard for disable parking spaces.	An Access Report has not been provided. Only 1 adaptable space has been provided, which is unsatisfactory.	**No** **No**
8: Controls for Special Areas		
Controls for 4 special areas.	The site is not identified in this section.	N/A