



**Planning  
Panels**



## **COUNCIL ASSESSMENT REPORT TO PANEL**

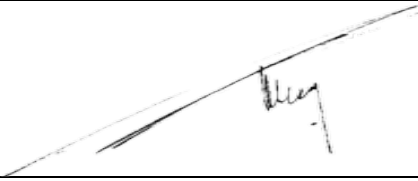
### **NORTHERN REGIONAL PLANNING PANEL**

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSNTH-268 – Kempsey – DA2300926 – Phillip Drive, South West Rocks
<b>PROPOSAL</b>	Concept Development Application approval is sought for residential flat buildings, serviced apartments, shops and food and drink premises.
<b>ADDRESS</b>	Phillip Drive, South West Rocks
<b>APPLICANT</b>	Mr Daniel Pszczonka
<b>OWNER</b>	Rise South West Rocks Pty Ltd
<b>DA LODGEMENT DATE</b>	14 November 2023
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Capital Investment Value > \$30M
<b>CIV</b>	\$127,832,372.00 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	NIL
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"><li>• State Environmental Planning Policy (Housing) 2021</li><li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li><li>• State Environmental Planning Policy (Planning Systems) 2021</li><li>• State Environmental Planning Policy (Sustainable Buildings) 2022</li><li>• State Environmental Planning Policy (Transport and Infrastructure)</li></ul>



	<p>2021</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)</li> <li>• State Environmental Planning Policy (Industry and Employment) 2021</li> <li>• Kempsey Local Environmental Plan 2013</li> </ul>
<b>AGENCY REFERRALS</b>	<ul style="list-style-type: none"> <li>• Department of Planning and Environment – Biodiversity &amp; Conservation</li> <li>• National Parks and Wildlife Service</li> <li>• Rural Fire Service</li> <li>• Essential Energy</li> <li>• Department of Planning and Environment - Water</li> <li>• Transport for NSW</li> </ul>
<b>UNIQUE SUBMISSIONS</b>	<p>The Council received 479 unique submissions in response to the public exhibition. The submissions comprised 475 objections and four submissions in support of the proposal.</p>
<b>KEY ISSUES IN SUBMISSIONS</b>	<ul style="list-style-type: none"> <li>• Building Heights</li> <li>• Over Development</li> <li>• Character</li> <li>• Habitat and Endangered Species</li> <li>• Visual Impacts</li> <li>• Economy</li> <li>• Infrastructure Capacity</li> <li>• Traffic</li> <li>• Flooding and Groundwater</li> <li>• Contamination/Acid Sulfate Soils</li> <li>• Nearby Wetlands</li> <li>• Cultural Heritage</li> <li>• Amenity Impacts</li> <li>• Climate Change</li> <li>• Bushfire</li> <li>• Inadequate consultation</li> <li>• Inconsistency with local strategic planning</li> </ul>



<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Refer to the documents listed in <b>Annexure A</b> .
<b>PREVIOUS BRIEFINGS</b>	13 <sup>th</sup> December 2023 and 17 <sup>th</sup> April 2024
<b>ASSESSMENT STATUS</b>	A review of the submitted documentation, agency referrals, internal referrals and exhibition submissions has been completed, and the application is recommended for refusal.
<b>PLAN VERSION</b>	Refer to the documents listed in <b>Annexure B</b> .
<b>PREPARED BY</b>	 Stephen Connelly Partnership Principal PLANNERS NORTH (S_1969.4774)
<b>DATE OF REPORT</b>	19 <sup>th</sup> August, 2024



## 1. PREAMBLE

The author of this report is Stephen Connelly, RPIA (Fellow) CEnvP-IA of PLANNERS NORTH. PLANNERS NORTH has been engaged by Kempsey Shire Council to provide Town Planning advice with respect to the evaluation of Development Application DA2300926 concerning land owned by Rise South West Rocks Pty Ltd located at Phillip Drive, South West Rocks, being Lot 2 in DP1091323.

Annexures applicable to this assessment include:

- List of documentation uploaded to the Planning Portal (For ease of cross-referencing, these Planning Portal Documents have been numbered **PPD1 to 103**);
- Development Control Plan considerations; and
- Extracts from the Architectural plan set

## 2. THE SITE

The subject site is described in Real Property terms as Lot 2 DP1091323. The site has an area of 4.819ha and is irregular in shape. The site is composed of four (4) precincts<sup>1</sup>. Those precincts and their areas are described below:

- Stage 1 is that part of the site the subject of approved DA 2200404 (14,350m<sup>2</sup>);
- Stage 2 is that part of the site adjacent to Phillip Drive and south of the internal access roadway for Stage 1 (11,003m<sup>2</sup>);
- Stage 3 is that part of the site north of the access road servicing Stage 1 (20,227m<sup>2</sup>); and
- The environmental precinct in the western triangular portion of the site (2,615m<sup>2</sup>).

Access to the site is via Phillip Drive, South West Rocks.

The site is vacant, save for some odd bits of plant and equipment.

A concise summary of the key constraints and opportunities applicable to the land is as follows:

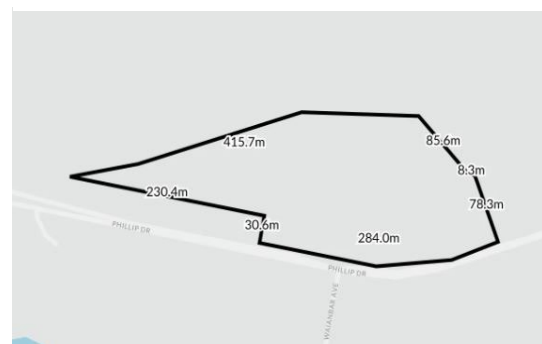
### Locality Land use

Heavily vegetated and ecologically sensitive Crown Land is located to the north. Saltwater Creek lies within this Crown Land. Further north of the Crown Land is the Arakoon National Park. The National Park is located within 70m of the parcel at the site's northeastern boundary. Further north is Front Beach. The Front Beach and the Trial Bay area to the north and north east of the site are also heavily vegetated and contain the historic Trial Bay Gaol at the top of the headland. **Graphic 2** broadly illustrates the land use in the locality of the subject site.

On the south western side of the subject site, sixteen (16) low-density residential dwellings on ~460 m<sup>2</sup> lots are located. These houses all front Phillip Drive.

On the southern side of Phillip Drive is low-density residential development, generally single storey in scale, with a mix of lot sizes from ~500m<sup>2</sup> to ~1000m<sup>2</sup>. Further to the south east is the saltwater lagoon, which is also part of the Arakoon National Park Lands.

**Graphic 1: Site Diagram**



Sourced: Landchecker

<sup>1</sup> Areas taken from information provided in relation to Development Application DA2400974



A larger lot ~4000m<sup>2</sup> in area and zoned R5 - Large Lot Residential abuts the site on the east.

#### Flooding

The northern portion of the site is flood-prone. The flood report submitted with the Development Application (**PPD14**) specifies a minimum floor level of RL 3.34m AHD (being the 1% AEP plus 500mm freeboard). The PMF is said to be approximately RL 4.65m AHD. About 2.1ha of the site is above the PMF, and safe egress to the South West Rocks CBD via Phillip Drive is available.

#### Services

The site is not currently connected to any services. However, all key utility services are available in the immediate vicinity, and the Council understands that sufficient capacity is available within the existing infrastructure to cater to the residential utilisation of the land.

#### Biodiversity

The western triangular portion of the site is mapped on the Biodiversity Conservation Act Biodiversity (BV) Map. A slither of land in the northeastern part of the site is also mapped as wetlands pursuant to the Resilience and Hazards SEPP. In large part, the remainder of the site is cleared.

#### Mosquitoes

The site is located adjacent to Saltwater Creek and in close proximity to coastal wetlands, the habitat for a range of mosquito species.

#### Bushfire

The land is mapped as bushfire prone, being largely mapped as Category 2 and some smaller areas towards the east of the property as Category 1 (see **Graphic 3**). The vegetation on the site has largely been cleared, and the site would generally be characterised as “managed land”. The vegetation surrounding the site to the north consists of a mixture of sclerophyll forest and swamp forest.

#### Preliminary Site Investigation

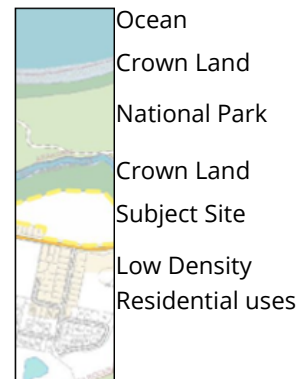
Site investigation reporting has been completed for the property (**PPD6**). Based on the historic land uses of the locality and sample testing, the site has a low potential for contaminants, and according to the expert report accompanying the Development Application, it is suitable for residential use. The site has been subject to historical groundwater and contamination but was understood to have been remediated in 1998. EPA advice accompanying the Development Application notes that PFAS is present in the groundwater.

**Graphic 2: Locality Land Use**

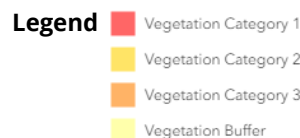
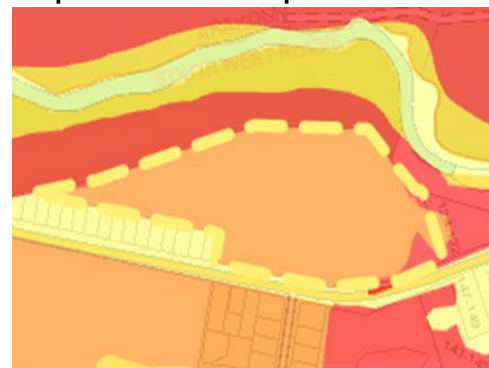


(Source: Six Maps)

#### **Legend**



**Graphic 3: Bushfire Map**





### Visual Considerations

Comprehensive visual analysis work accompanies the Development Application (**PPD82 and 93**). A number of views were analysed, including those from the Trial Bay Gaol and the beach adjacent to the Town Centre. The existing vegetation adjacent to Saltwater Creek and within the Arakoon National Park blocks the majority of views to the proposed development site. Views from Phillip Drive and nearby residential development to the site will change significantly, given the land is currently in an undeveloped state. Buildings of the style for which Concept Development Application approval is sought would be clearly visible at tall residential flat buildings from the road network adjoining the development and private property in the immediate vicinity.

### Cultural Heritage

A Cultural Heritage Assessment report accompanies the Development Application. That report observes that no Aboriginal sites were identified during site inspections by the Aboriginal stakeholders. The Kempsey LALC had no specific objections to the proposal and noted the requirement for site monitors for early works on the elevated dune along the southern portion of the land. The South West Rocks Figtree Aboriginal Corporation has not supported the proposal on the grounds of the impact on the cultural landscape and environmental impacts generally.

### Easements

The property is subject to the following easement notations on the land title:

- DP244025 easement to drain water 1.83 metre(s) wide, affecting the part shown so burdened in the title diagram;
- Y718759 easement for rising main 5 & 10 wide affecting the part shown in the title Diagram 3773025 vested in Kempsey Shire Council GAZ.29.11.1996 FOL.7802; and
- AQ309102 easement for Asset Protection Zone 33.15 wide affecting the part designated (a) in plan with AQ309102.

## **3. SITE HISTORY**

A brief summary of the development history of the subject site is set out in **Table 1** below.

**Table 1: Summary of Development Applications applicable to the land**

DA	Date	Description
T4-91-195	Approved 24/2/1993	Resort complex comprising 180 residential units (being 6 x 4 bed, 87 x 2 bed and 59 x 1 bed), together with a commercial and administration complex comprising shops, bar areas, conference auditoriums, restaurants/ dining areas and administrative areas together with support car parking, recreation facilities and landscaping. Prior to its surrender, this consent was confirmed as active via Land and Environment Court Appeal (case no. 2022/88745).
DA2200473	Approved 13/09/2022	Temporary fencing and on-site security cameras.
DA2200355	Approved 27/05/2022	Construction of fencing and signboard.
DA2200404	Approved 15/08/2023	Deferred commencement consent for a two storey (about 8m high) multi-dwelling housing, neighbourhood shops and take away food & drink premises. The Deferred Commencement consent required the surrender of the approval for T4-91-195. This consent was surrendered on 21 <sup>st</sup> February 2024.



DA2300643	Lodged 23/12/2022  Withdrawn 18/9/2023	Designated subdivision development for 2 lots – withdrawn.
DA2300926	Lodged 27/10/2023	<i>The subject application</i> - Staged concept development for residential and serviced apartments x 9 (5-6 storeys) with a mix of commercial premises.
DA2400974	Lodged 22/12/2023	Designated Development Community Title Subdivision of one (1) Lot into 30 Lots.

#### 4. THE PROPOSAL

Section 3.2 of the Applicant Statement of Environmental Effects (SEE) describes the proposal in the following terms:

*“The proposal is for a concept development application for a mixed use residential and serviced apartment redevelopment with ancillary shops and food and drinks premises, including:*

*Stage 2, including four Residential Flat Buildings;*

- *Providing 10% affordable units by GFA (approximately 1,150m<sup>2</sup> GFA)*
- *Approximately 108 units, with a mix of 1 to 4 bedroom typologies*
- *Driveways and basement car parking*
- *Maximum buildings heights ranging from 16.5m to a maximum RL of 24.95m*
- *Approximately 5 storeys*

*Stage 3, including 5 buildings of a mix of Residential, Serviced Apartments, shops and food and drink premises;*

- *Provision of approximately 175 units, with a mix of 1 to 3 bedroom typologies*
- *Driveways and basement car parking*
- *Maximum buildings heights ranging from 19m to a maximum RL of 27.7m*
- *Approximately 6 storeys*
- *Associated landscaping; and*
- *Basement carparking.*

*The Concept Proposal seeks to secure the following elements:*

- *Building envelopes for Stages 2 and 3, as shown in the Architectural Plans*
- *Maximum Building Heights for Stage 2 of RL 24.95m*
- *Maximum Building Heights for Stage 3 of RL 27.7m*
- *Maximum GFA for Stage 2 of 12,000m<sup>2</sup>*
- *Maximum GFA for Stage 3 of 21,000m<sup>2</sup> for residential purposes*
- *Minimum non-residential Gross Floor Area (GFA) of 3,000sq.m<sup>2</sup>*
- *Minimum 50% open space/ landscaping provision, including minimum deep soil planting of 20% of site area.*

<sup>2</sup> The SEE refers to this area as 300m<sup>2</sup> but the Architectural plans show 3000m<sup>2</sup>.



- *Minimum tree planting of 40 trees across Stages 2 & 3*

*Car parking rates as follows:*

- *205 parking spaces for Stage 2 (maximum)*
- *386 parking spaces for Stage 3 (maximum)*

The Development Application is interpreted to seek consent for the land uses:

- Residential Flat Building,
- Serviced Apartments,
- Shops, and
- Food and Drink Premises.

A concept Development Application is quite different to the usual Development Application. To assist the Panel, Sections 4.22 and 4.23 from the *Environmental Planning and Assessment Act* (the Act) relating to concept development applications are recited below.

*"4.22 Concept development applications*

*(1) For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*

*(2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.*

*(3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*

*(4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless;*

*(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*

*(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

*The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.*

*(5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

*4.24 Status of concept development applications and consents*

*(1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.*

*(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.*

*(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application."*



Because of the concept nature of the application, there are no comprehensive plans that permit the ready calculation of the usual development statistics. The development metrics compiled from the various submitted documents are tabulated below:

**Table 2: Development Data**

Control	Proposal			
Gross site area	Stage 2	11,003m <sup>2</sup>	Stage 3	20,227m <sup>2</sup>
Net site area	Stage 2 <sup>3</sup>	10,673m <sup>2</sup>	Stage 3 <sup>4</sup>	11,147m <sup>2</sup>
GFA	Stage 2	12,000m <sup>2</sup>	Stage 3	24,000m <sup>2</sup>
FSR	Stage 2	1.09:1	Stage 3	1.19:1
No of apartments	Stage 2	108	Stage 3	175
Site density (Gross site area)	Stage 2	1/102m <sup>2</sup> (98 d/ha)	Stage 3	1/115m <sup>2</sup> (87 d/ha)
Site density (Net site area)	Stage 2 <sup>3</sup>	1/99m <sup>2</sup> (101 d/ha)	Stage 3 <sup>4</sup>	1/62m <sup>2</sup> (159 d/ha)
Architectural Drawings Maximum Height (excluding lift overruns and the like) <sup>5</sup>	Stage 2	18.55m	Stage 3	21.30m
Assessed Maximum Height <sup>6</sup>	Stage 2 <sup>6</sup>	19.43m	Stage 3 <sup>7</sup>	26.05m
Landscaped Area	Overall ~24,115m <sup>2</sup>			
Car Parking spaces	Stage 2	205 spaces	Stage 3	386 spaces
Road Setbacks	Stage 2	14-20m	Stage 3	3.6m

<sup>3</sup> The net area of stage 2 has been calculated by deducting from the gross site area the land required for Asset Zone Protection, (being about 330m<sup>2</sup>).

<sup>4</sup> The net area of stage 3 has been calculated by deducting from the gross site area the land required for Asset Zone Protection, (being about 9080m<sup>2</sup>).

<sup>5</sup> Drawing DA-CST 2 & 3 – 05.08B

<sup>6</sup> Stage 2 lowest ground level is about RL 5.52m AHD and the Architectural Plans show a height of RL 24.95m AHD.

<sup>7</sup> Stage 3 lowest ground level is about RL 1.65m AHD and the Architectural Plans show a height of RL 27.7m AHD.



## 5. APPLICATION CHRONOLOGY

Details in relation to key events relevant to the subject Development Application are set out in **Table 3** below.

**Table 3: Chronology of the DA**

Date	Event
20/9/2023	Pre lodgement meeting with Council
14/11/2023	DA uploaded to the Planning Portal
23/11/23 to 20/12/2023	Exhibition of the application
11/12/2023	DA referred to external agencies.
13/12/2023	Panel briefing
22/12/23	Request for Information from Council to applicant
22/12/2023	Request for information refused
28/2/2024	Further documentation was supplied by the proponent (see <b>PPD84 - 96</b> ). This further documentation was submitted in response to matters raised by Government Department referrals and public exhibition submissions. No changes to the proposal as submitted were sought in this further documentation.
6/6/2024	Request for Additional Information sent from the Council to the applicant. No response was received regarding this request.
9/7/2024	Appeal filed with Land Environment Court

## 6. PLANNING CONTROLS

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

### 6.1. LOCAL ENVIRONMENTAL PLANS

Name: Kempsey Local Environmental Plan 2013, (KLEP13)

*Application in Subject Case:*

The subject site is zoned R3 Medium Density Residential in accordance with the provisions of KLEP13 (see **Graphic 4**).

#### Concurrence:

No requirement for concurrence is triggered by the proposal.

#### Arrangements:

No special arrangements are required before consent can be granted under KLEP13.

#### Special Provisions Applicable:

The following provisions of KLEP13 are applicable to the Panel's consideration of the subject proposal.

#### ***"Clause 2.3 Zoning Objectives and Land Use Table***

*Zone R3 Medium Density Residential*

*1 Objectives of zone*



- 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.
- To encourage urban infill and redevelopment in areas that surround existing or proposed facilities and services.

## 2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations

## 3 Permitted with consent

Attached dwellings; Boarding houses; Centre-based child care facilities; Community facilities; Group homes; Home industries; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Respite day care centres; Roads; Seniors housing; Tank-based aquaculture; Any other development not specified in item 2 or 4

## 4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Camping grounds; Caravan parks; Cemeteries; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Exhibition villages; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Local distribution premises; Marinas; Mooring pens; Mortuaries; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Wholesale supplies"

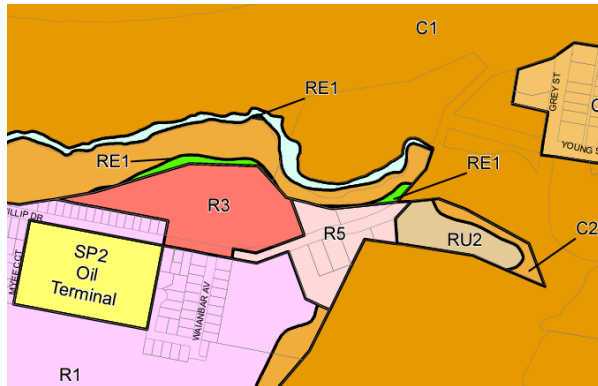
The proposed land uses:

- Residential Flat Buildings,
- Serviced Apartments,
- Shops, and
- Food and Drink Premises

are permissible with consent pursuant to the Land Use Table in Clause 2.3 or the Additional Permitted Uses Clause.

Under KLEP13 Clause 2.3(2), the Panel must have regard to the objectives for development in a zone when determining a Development Application. The proposal is considered to be inconsistent with these zone objectives. The R3 objectives seek to achieve housing to meet the needs of the community "within a medium density residential environment". Examples of medium density housing include duplexes, triplexes, townhouses, row houses, detached homes with garden suites and walk-up apartment style buildings. The development form

**Graphic 4: Zoning Map**



(Source: KLEP13 Land Zoning Map Sheet LZN\_013B)

### Legend R3 - Medium Density Residential

#### Other nearby planning zones

- C1 - National Parks And Nature Reserves
- C2 - Environmental Conservation
- R1 - General Residential
- R5 - Large Lot Residential
- RE1 - Public Recreation
- SP2 - Infrastructure
- W1 - Natural Waterways



proposed is much taller than conventional “walk-up” apartments. Further, the density proposed is much greater than would ordinarily be encountered in medium density residential environment.

The Residential Density Guide published by Landcom<sup>8</sup> states:

*“There is no state or national standard where density measures are defined. Policy regulators like local councils and state authorities sometimes also apply different standards. In NSW, the Growth Centres Commission has nominated the following net residential density ranges.”*

**Graphic 5** illustrates the density ranges. Please note that the term “net residential density” is the ratio of the number of dwellings to the area of land they occupy, including internal public streets, plus half the width of adjoining access roads that provide vehicular access to dwellings.<sup>9</sup>

In the circumstances of DA 2300926, the net residential density of Stages 2 and 3 is 64 dwellings per hectare, which is some 60% greater than the maximum density under the Landcom guideline.

Having regard to the size, bulk and scale of the development, it is considered that the proposal does not conform with the character of a medium density development and is appropriately characterized as “high density development”. High density development is at odds with the zone objectives for the R3 medium density residential zone. This issue was raised in the Request for Further Information (RFI) of 6<sup>th</sup> June 2024, but no response has been received.

KLEP13 also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

**Graphic 5 – Net residential density ranges**

NET DENSITY	NUMBER OF DWELLINGS PER HECTARE
Residential component in mixed use configurations	66 dwellings per hectare
High density development	40 dwellings per hectare
Medium density development	20-40 dwellings per hectare
Low density development	12.5-20 dwellings per hectare


Density range 1 Minimum net residential density ranges from the Growth Centres Development Code, Section 2, pA-4.

<sup>8</sup> The Residential Density Guide published by Landcom Project Teams


<sup>9</sup> AMCORD Practice Note 6 dated 1997




Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
<p>Additional Permitted Uses (CI 2.5)</p> <p><b>Graphic 6: Additional Permitted Uses Map</b></p>  <p>(Source: Planning Portal)</p> <p><b>Legend</b> ■ Additional Permitted Uses Map</p>	<p>(1) <i>This clause applies to land at Phillip Drive, South West Rocks, being Lot 2, DP 1091323, and identified as "Item 10" on the Additional Permitted Uses Map.</i></p> <p>(2) <i>Development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation is permitted with development consent.</i></p>	The proposal includes uses permitted under the Additional Uses Clause.	Yes
Building Height (CL 4.3)	<p><i>The site has a Height of Building control of 8.5m under Clause 4.3, but savings provisions under Clause 1.8A(3) exempt Concept Development Application DA2300926, or a Development Application made after the commencement of Amendment No 33 if the development application is subsequent to, and made in reliance on, Concept Development Application DA2300926.</i></p>	The proposal has a maximum height of 26.05m plus lift overrun.	N/A
Flood planning (CI 5.21)	<p><i>The objectives of this clause are as follows—</i></p> <p><i>(a) to minimise the flood risk to life and property associated with the use of land,</i></p> <p><i>(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,</i></p> <p><i>(c) to avoid adverse or cumulative impacts on</i></p>	Development consent must not be granted to development within a flood planning area unless the consent authority is satisfied the development will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties. The flood assessment report	Yes



	<p><i>flood behaviour and the environment,</i></p> <p><i>(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.</i></p>	<p>(PPD14) acknowledges that there is an increase in flood levels of 10 – 20 mm upstream of the site that occurs across an area of approximately 6ha (to the northeast of the site boundary). Although this is a relatively large area, the increase in flood level is somewhat negligible. Further, the additional inundation occurs on vacant crown land. Given the Concept Development Application nature of the proposal, it is considered that the flooding report (PPD14) lodged with the Development Application satisfies the flood function and behaviour requirements of Clause 5.21 to a concept application standard.</p>	
<p>Acid sulfate soils (CI 7.1)</p> <p><b>Graphic 7: Acid Sulfate Soils Map</b></p>  <p>(Source: Planning Portal)</p> <p><b>Legend</b> ■ Class 2 ■ Class 4</p>	<p><i>The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</i></p>	<p>Given the Concept Development Application nature of the proposal, it is considered that ASSMP (PPB16) lodged with the Development Application to satisfy the requirements of Clause 7.1.</p>	Yes
<p>Earthworks (CI 7.2)</p>	<p><i>The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural</i></p>	<p>It is considered that insufficient information has been lodged with the Development Application to satisfy the requirements of Clause 7.2(3)(g) relating to the potential adverse impacts on an</p>	No



	<i>or heritage items or features of the surrounding land.</i>	environmentally sensitive area. The ecological impact of about 6ha of changed inundation occurring on land to the northeast and the impacts of car park excavation and dewatering have not been adequately assessed. This issue was raised in the RFI 6th June 2024, but no response has been received.	
<p>Koala Habitat (CI 7.4)</p> <p><b>Graphic 8: Koala Management Plan Map</b></p>  <p>(Source: Planning Portal)</p> <p><b>Legend</b> <span style="display: inline-block; width: 10px; height: 10px; background-color: #92d050; border: 1px solid black; margin-right: 5px;"></span> Area Subject to Koala Management Plan</p>	<p><i>The objective of this clause is to effectively manage koala habitat, including—</i></p> <p><i>(a) minimising the potential for adverse impacts within current and future areas of core koala habitat, and</i></p> <p><i>(b) ensuring that preferred koala food trees are effectively managed and conserved across all land where possible.</i></p>	<p>Given the Concept Development Application nature of the proposal, it is considered that sufficient information has been lodged with the Development Application to satisfy the requirements of Clause 7.4.</p>	Yes
Essential Services (CI 7.9)	<p><i>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</i></p> <p><i>(a) the supply of water,</i></p> <p><i>(b) the supply of electricity,</i></p> <p><i>(c) the disposal and management of sewage,</i></p>	<p>Given the Concept Development Application nature of the proposal, it is considered that sufficient information has been lodged with the Development Application to satisfy the requirements of Clause 7.9.</p>	Yes



	<p><i>(d) stormwater drainage or on-site conservation,</i></p> <p><i>(e) suitable vehicular access.</i></p>		
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## 6.2. STATE ENVIRONMENTAL PLANNING POLICIES (SEPP'S)

The following SEPPs are applicable to the proposed development:

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Planning Systems) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Sustainable Buildings) 2022
- SEPP (Transport and Infrastructure) 2021
- SEPP No 65—Design Quality of Residential Apartment Development

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

Chapter 4 – Koala Habitat Protection 2021 is of relevance to the proposed development. Kempsey Shire Council has adopted a Comprehensive Koala Plan of Management (CKPoM). Clause 4.8 of the SEPP requires that a Development Application must be consistent with the approved CKPoM that applies to the land.

The subject site is identified as containing a Secondary (Class A) preferred Koala habitat. Most of the site has been cleared of vegetation, and previous investigations across the subject site have not recorded any koalas or evidence of koalas. Further, the Concept Development Application proposal does not propose the removal of any trees. The landscape strategy considers the use of native plant and tree species, including koala food tree species.

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

Chapter 2 of the Planning Systems SEPP identifies state or regionally significant development. Pursuant to Clause 2.19 of the Planning Systems SEPP. A development that has a Capital Investment Value (CIV) of more than \$30 million is declared a regionally significant development. The QS Report submitted (**PPD9**) shows the proposed development exceeds the \$30 million threshold and, therefore, the application is classified as a regionally significant development.



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

The site abuts Coastal Wetlands to the north (see **Graphic 9a**) and a fraction of the site in the north east includes mapped Coastal Wetlands (see **Graphic 9b**).

Pursuant to SEPP Clause 2.7, the carrying out of any of the following—

- (i) earthworks (including the depositing of material on land),
- (ii) constructing a levee,
- (iii) draining the land,
- (iv) environmental protection works,
- (d) any other development.

is Designated Development for the purposes of the Act. Plans submitted with the application indicate no works are proposed in the mapped Wetland area of the site.

Pursuant to SEPP Clause 2.8, development consent must not be granted to development on land identified as “proximity area for coastal wetlands” on the Coastal Wetlands Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—

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

It is considered that inadequate information has been supplied with the application to enable the Panel to be satisfied that there will be no significant impact on the adjoining wetlands' biophysical, hydrological or ecological integrity. This issue was raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

The whole site is mapped as a Coastal Environment Area (see **Graphic 10**).

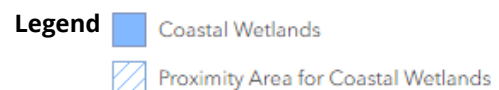
Pursuant to SEPP Clause 2.10, development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) coastal environmental values and natural coastal processes,

**Graphic 9a: Coastal Wetlands and Littoral Rainforest Map**



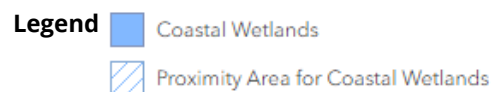
(Source: NSW Planning Portal)



**Graphic 9b: Coastal Wetlands Map**



(Source: NSW Planning Portal)





- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,

Pursuant to Clause 2.10(2), Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

It is considered that inadequate information has been supplied with the application to satisfy the Panel that there will be no significant impact in accordance with the requirements of SEPP Clause 2.10. This issue was raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

The site is wholly mapped as a Coastal Use Area (see **Graphic 10**), pursuant to Clause 2.11. Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following—
  - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that—
  - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

**Graphic 10: Coastal Environment Area Map**



(Source: NSW Planning Portal)

**Legend** ■ Coastal Environment Area Map

**Graphic 11: Coastal Use Area Map**



(Source: NSW Planning Portal)

**Legend** ■ Coastal Use Area Map



- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

It is considered that inadequate information has been supplied with the application to satisfy the Panel that there will be no significant impact in accordance with the requirements of SEPP Clause 2.11. This issue was raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

Pursuant to SEPP Clause 4.6, contamination and remediation must be considered in determining development application and 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
- (3) The applicant for development consent must carry out the investigation required 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.

The reports **PPD5** and **6** are considered to satisfy the requirements of this clause to a level sufficient for the purposes of a Concept Development Application. If the development application was recommended for approval, specific construction management protocols would need to be implemented to minimise contact and exposure and prevent mobilisation of PFAS.

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

Chapter 2 – Standards for residential development – BASIX generally applied to residential development.

Given the Concept Development Application nature of the proposal, it is considered that the rigour of requiring a BASIX certificate should not apply. Any future DA would require an assessment against Chapter 2 of the Sustainable Buildings SEPP and would provide a relevant BASIX certificate to ensure the delivery of sustainable buildings on the subject site.

Chapter 3 - Standards for non-residential development Any future DA would require an assessment against Chapter 3 of the Sustainable Buildings SEPP where the proposal is not for residential development. Future applications are considered capable of ensuring a highly sustainable built form outcome.

#### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

Stages 2 and 3 propose a maximum of 283 residential units, which do not meet the threshold of 300 dwellings under Schedule 3 of the Transport and Infrastructure SEPP. Accordingly, the proposal does not trigger the traffic generating development referral under Clause 2.122 of this SEPP.

#### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

The Concept Development Application incorporates some 280 residential units and is over 3 storeys in height. As such, the proposal triggers considerations under State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65). Given the Concept Development Application nature of the application, it is not practical to complete a full assessment of the Apartment Design Guide (ADG) matters. A review, to concept plan level, of the proposal against the ADG has been undertaken and a Design Verification Statement is provided (**PPD12**). The concept plans supplied do not allow for the ready testing of the verification statement.

### **6.3. DEVELOPMENT CONTROL PLANS**

Applicable components of Kempsey Development Control Plan (KDCP13) are assessed at **Annexure C**.

Having regard to the analysis at **Annexure C**, the proposal is at odds with provisions relating to:

- Cl C1(5)(a) Residential densities,



- Cl B2(b) Parking standards;
- Cl 4D Protection of the unique character of South West Rocks, and
- Cl 5.1(D02) Street setbacks for buildings in Stage 3.

#### 6.4. THE REGULATIONS

No specific provisions of the Environmental Planning & Assessment Regulation are of particular relevance to the subject application.

#### 6.5. INTEGRATED DEVELOPMENT CONSIDERATIONS

The following integrated approvals pursuant to Section 4.46 apply to this development application.

Act	Provision	Approval
<a href="#">Rural Fires Act 1997</a>	s 100B	Authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes.
<a href="#">Water Management Act 2000</a>	ss 89, 90, 91	Water use approval, water management work approval or activity approval under Part 3 of Chapter 3.

#### 7. SUBMISSIONS

The Council received a total of 479 submissions in response to the public exhibition. I consider 424 of the submissions to be unique in their nature. The submissions comprised 420 objections and four submissions in support of the proposal. The issues raised in these submissions are considered in **Table 5**.

**Table 5: Community Submissions**

Issue	No. of mentions	Council Comments
Submissions raised concern the development will adversely impact the locality for the reasons set out in the left hand side column.		
<b>Building Heights</b>		
<ul style="list-style-type: none"> <li>• Too high</li> <li>• Visible from key view points</li> <li>• Overshadowing from height</li> <li>• Negative impact on the scenery/ natural beauty</li> <li>• Departure from the structure</li> </ul>	<p>Very High</p> <p>High</p> <p>Low</p> <p>High</p> <p>Very High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• there is no current height restriction on the site</li> <li>• the concept proposal considers a range of heights across the site, with the taller buildings stepping towards the rear of the site.</li> <li>• the visual impact assessment has considered the visibility of the proposal from key view points.</li> </ul>



Issue	No. of mentions	Council Comments
<ul style="list-style-type: none"> <li>• Sets a precedence from high rise development</li> </ul>	High	<ul style="list-style-type: none"> <li>• a Design Guide has been prepared to ensure that future development would be in keeping with the surrounding character.</li> <li>• future applications would consider the potential overshadowing to surrounding areas and internally to the other development on the site.</li> <li>• while Stage 3 may protrude above the tree line, this would likely only be from small roof elements such as rooftop plant or lift overrun.</li> <li>• the proposal is some 350m away from the beach and it is not considered that given this distance, there is the opportunity for detrimental overlooking issues to this area.</li> <li>• each proposal would be considered based on the merit of the application and compliance with legislative requirements at the time.</li> <li>• the proposal does not aim to set a precedence for height in the area, and acts to optimise the opportunity of a large land parcel for additional housing.</li> </ul> <p><u>Assessment consideration:</u> It is considered that the development does not accord with the zoning objectives. Further, a concept proposal is inconsistent with the structure planning undertaken by Council in the South West Rocks locality. For these reasons, the building height objections are considered to be sound.</p>
<b>Over Development</b>		
<ul style="list-style-type: none"> <li>• Over crowding in the area</li> <li>• Gold Coast style development</li> <li>• Gross over development of the site</li> </ul>	<p>Low</p> <p>High</p> <p>Low</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• the proposal considers the infrastructure and servicing capacity of the area.</li> <li>• there is already a shortage in residential accommodation, and that additional dwellings are required to meet current and future demand.</li> <li>• the proposal offers an alternative dwelling typology.</li> <li>• the heights proposed are not comparable to towers such as on the Gold Coast.</li> <li>• the proposal has considered the capacity of the site, considering existing and future infrastructure and servicing.</li> <li>• the higher density would reduce the need for additional land to be used for housing in the future.</li> <li>• the proposal adheres to the statutory standards of the planning framework.</li> </ul>



Issue	No. of mentions	Council Comments
		<u>Assessment consideration:</u> It is considered that having regard to the density of development proposed, the zoning of the land, which seeks to achieve only a medium density of development and the strategic planning for the village of South West Rocks, the over-development objections raised have merit. Refer to Section 10 of this report for further discussion concerning this aspect.
<b>Character</b>		
<ul style="list-style-type: none"> <li>• The proposal is out of character with South West Rocks</li> <li>• Proposal would ruin the coastal feel/ character of the area</li> <li>• Ruin the unique character of SW Rocks</li> </ul>	<p>Very High</p> <p>High</p> <p>High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• the Design Guide has been prepared to ensure that development is compatible with the character of the area.</li> <li>• future detailed development applications would provide greater detail around the colours and materiality.</li> <li>• The proposal aims to retain the coastal environment and lifestyle while offering alternative dwelling types.</li> <li>• the character of SW Rocks has changed over time, with new developments ongoing. The proposal aims to ensure that the future building and landscape design reflects the character of the area.</li> <li>• the proposal seeks consent for up to 283 new dwellings, it is not considered that this would result in a significant increase in population.</li> </ul> <p><u>Assessment consideration:</u> It is considered that the style of development proposed is out of character due to the low scale and low intensity nature of general residential subdivisions in South West Rocks. The design guidelines (<b>PPD88</b>) and other documentation provided in support of the application are not considered to be sufficient to guarantee the protection of the character of this locality.</p>
<b>Habitat and Endangered Species</b>		
<ul style="list-style-type: none"> <li>• Removal of habitat, both marine and land</li> <li>• Environmental damage and impacts</li> <li>• Stress to local flora and fauna</li> <li>• Loss of native species</li> <li>• Impacts of lighting on wildlife</li> <li>• Impacts to koala habitat and feed trees</li> </ul>	<p>High</p> <p>High</p> <p>Low</p> <p>High</p> <p>High</p> <p>High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• the proposal does not seek consent to remove any additional vegetation.</li> <li>• future applications would require native species to be planted</li> <li>• Considering the impacts on and off-site have been undertaken at a high level, and it is expected that many of these impacts will be further investigated and detailed mitigation and management measures prepared as part of future development applications.</li> </ul>



Issue	No. of mentions	Council Comments
<ul style="list-style-type: none"> <li>Replacement planting would be insufficient/not mature enough</li> </ul>	Low	<ul style="list-style-type: none"> <li>the proposal retains trees along Phillip Drive and has a setback from the adjoining Council bushland to allow the continuation of wildlife areas into the site.</li> <li>replacement planting would be undertaken across the site, where possible and the opportunity for more mature species to be selected can be considered in the future.</li> </ul> <p><u>Assessment consideration:</u> It is considered that the application satisfactorily addresses site biodiversity. However, it does not have sufficient regard to the very sensitive nature of land in the immediate vicinity. Because of this, further onsite planting and the retention of trees along Phillip Drive, whilst laudable, may not satisfactorily compensate for the potential habitat impact.</p>
<b>Visual Impacts</b>		
<ul style="list-style-type: none"> <li>Views have been selected and do not show a true representation of impacts</li> <li>Impacts on scenic values</li> </ul>	Low  High	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>the visual impact analysis undertaken has been considered key views and locations</li> <li>the proposal is in concept only so no renders of the development are available.</li> <li>the project will not be overly visible from key views or sensitive locations and as such the scenic value of the coastline would be retained.</li> </ul> <p><u>Assessment consideration:</u> It is considered that the proponent has carried out a comprehensive analysis of the impact of the development on the scenic character of the locality. That said, the scale of the development, as evident from the Phillip Drive frontage, is sufficient for the project to be of concern from a landscape and scenic impact stand point.</p>
<b>Economy</b>		
<ul style="list-style-type: none"> <li>Proposed housing would not be affordable</li> <li>Additional dwellings would be sold to city property investors and used as holiday rentals</li> <li>Tourism will decline due to the change to the village</li> <li>Detrimental to local businesses</li> </ul>	Low Low High Low	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>a portion of the housing is proposed to be an affordable product.</li> <li>any additional housing supply would assist in lowering overall market prices.</li> <li>the 10% affordable provision ensures the development is still viable.</li> <li>the proposal may increase the provision of tourist accommodation to support an increased tourist economy.</li> </ul>



Issue	No. of mentions	Council Comments
		<ul style="list-style-type: none"><li>the proposal would continue to support local businesses through increased population and may assist in providing accommodation to local workers.</li><li>the proposal seeks a small portion of commercial space which would be ancillary to existing local businesses and services.</li></ul> <p><u>Assessment consideration:</u> It is considered that the proposal would have a positive impact in terms of the availability of housing in the locality and the offer to provide 10% affordable housing is laudable and supported.</p>
Infrastructure Capacity		
<ul style="list-style-type: none"><li>Insufficient infrastructure to cope with any additional development</li><li>Already lacking social infrastructure such as schools/ doctors/ hospitals which would be exacerbated by additional dwellings</li><li>Impacts of sewerage spill into nearby wetlands area</li><li>Lack of existing capacity of the roads</li><li>Lack of water to support more development in SW Rocks</li></ul>	<div>Very High</div> <div>High</div> <div>High</div> <div>High</div> <div>Low</div>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"><li>Initial assessment of infrastructure has considered that there is capacity for the development.</li><li>additional dwellings would be required to pay taxes and the developer would pay relevant contributions which would assist in provision of services.</li><li>sewage would be appropriately managed on site that there would not be any risk of seepage or spill into nearby wetlands.</li><li>as this is concept stage application only, there is no detailed consideration of infrastructure and services. Further detail would be provided in the future.</li><li>contributions are required by all development which would go towards infrastructure and services.</li></ul> <p><u>Assessment consideration:</u> Based on the referrals of Kempsey Shire Council, there appears to be sufficient capacity within the municipal infrastructure to carry out the development.</p>
Traffic		
<ul style="list-style-type: none"><li>Significant truck movements</li><li>Impacts of construction traffic</li><li>Increased congestion</li><li>Safety concerns with increased traffic</li></ul>	<div>High</div> <div>High</div> <div>Low</div> <div>Low</div>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"><li>detailed consideration of traffic movements would form part of a future development application.</li><li>the development would require servicing of the residential apartments, from a waste contractor and minor servicing to commercial spaces.</li><li>construction traffic would be managed accordingly to minimise traffic movements.</li></ul> <p><u>Assessment consideration:</u> It is considered that, having regard to the traffic assessment by the proponent and commentary provided by the relevant officers of Council, there appears to be sufficient capacity in the network to satisfactorily deal with</p>



Issue	No. of mentions	Council Comments
		the quantum of traffic generated by the development. That said, if the development was to be approved, conditions would be required in relation to appropriate intersection treatments and the like.
<b>Flooding and Groundwater</b>		
<ul style="list-style-type: none"> <li>• Risks of flooding from infill of the site and the impacts to other land/ development</li> <li>• Flood emergency risks/evacuation</li> <li>• Basement impacted by ground water</li> <li>• Water table rise caused by development</li> <li>• Coastal inundation/flooding</li> <li>• Stormwater run off impacts</li> </ul>	<p>Very High</p> <p>High</p> <p>High</p> <p>High</p> <p>Low</p> <p>High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• a flood study has been undertaken and the proposal could proceed without significant impacts to flooding.</li> <li>• an emergency evacuation plan would be required for the site.</li> <li>• the basement will require a controlled activity approval for any water removal and would be considered as part of a future application.</li> <li>• the water table would not be impacted by the proposal.</li> <li>• Coastal inundation/ flooding from the nearby creek has been considered within the flood study.</li> <li>• stormwater would be appropriately managed and treated to ensure that it is a high quality than the creek it enters.</li> </ul> <p><u>Assessment consideration:</u> Insufficient information has been provided with the application to properly assess it in relation to the impact of the basement carparking on the water table and the impact of flood waters on the adjoining sensitive coastal environment. Other matters raised by the objectors in terms of aspects like flood emergency evacuation and the like would ordinarily be dealt with at the next level of Development Application assessment.</p>
<b>Contamination/ Acid Sulfate Soils</b>		
<ul style="list-style-type: none"> <li>• Presence of PFAFs in ground water and impacts of disturbance of these</li> <li>• Land likely contaminated due to proximity to Oil Container</li> <li>• Presence and handling of acid sulfate soils on the site on the surrounding environment/wetland</li> </ul>	<p>High</p> <p>Low</p> <p>High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• there has been considerable investigation into the presence of PFAS and it is not considered that these present a risk to the site.</li> <li>• Investigations have been undertaken and consider the site is not likely to be contaminated.</li> <li>• acid sulfate soils may be present on the site and a management plan has been prepared for all future works.</li> </ul> <p><u>Assessment consideration:</u> It is considered that appropriate documentation has been submitted with the application to confirm the general suitability of the site, at a "concept approval level" with respect to the requirements of Councils LEP has been provided in relation to Acid Sulfate Soil</p>



Issue	No. of mentions	Council Comments
		management. Insufficient details have been provided in relation to the potential for Acid Sulfate Soils to, for example with the construction of the car park, adversely impact on the sensitive local environment, but it is considered this level of assessment is not required for concept DA purposes.
<b>Nearby Wetlands</b>		
<ul style="list-style-type: none"> <li>Impacts on the Back Creek/ Saltwater Creek/ Lagoon catchments and fish hatcheries</li> <li>Impacts on sensitive wetland ecology</li> </ul>	<p>High</p> <p>High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>impacts during construction would be appropriately managed.</li> <li>landscaping and stormwater treatment would ensure minimal impacts on the catchment.</li> <li>landscaping species and control of discharge into surrounding wetland ecosystems would ensure there are no impacts to the wetland.</li> </ul> <p><u>Assessment consideration:</u> The proposal relies upon “business as usual” practice in an urban context for managing impacts such as stormwater quality, erosion and the like. It is considered that the proponent has not had full regard to the sensitive environment immediately adjoining the land, and reliance upon conventional practice in an urban context is not sufficient in the circumstances, even with regard to the concept approval nature of the application.</p>
<b>Cultural Heritage</b>		
<ul style="list-style-type: none"> <li>Impacts historical heritage</li> <li>Lack of consultation with local Dunghutti community and flawed Aboriginal Heritage Consultation</li> <li>Loss of cultural values</li> </ul>	<p>High</p> <p>Low</p> <p>High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>the proposal will not have any detrimental impacts on heritage, as the proposal would not be seen from nearby heritage items.</li> <li>The ACHAR prepared followed due procedure. Further consultation will be undertaken during future stages.</li> <li>any additional commentary from the indigenous community would be welcomed and considered.</li> </ul> <p><u>Assessment consideration:</u> It is considered that an appropriate due diligence type examination has been undertaken in relation to Aboriginal heritage. That work is considered satisfactory for concept approval purposes.</p>
<b>Amenity Impacts</b>		
<ul style="list-style-type: none"> <li>Potential for wind tunnels</li> <li>Light and noise pollution</li> </ul>	<p>Low</p> <p>Low</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>the proposal will not result in wind tunnels.</li> <li>The proposal will require appropriate management to minimise light pollution.</li> </ul>



Issue	No. of mentions	Council Comments
<ul style="list-style-type: none"> <li>• Overlooking and loss of privacy</li> <li>• Noise and vibration impacts during construction</li> <li>• Overshadowing and restricted solar access</li> <li>• Increased risk of crime if shops were vacant</li> </ul>	<p>Low</p> <p>Low</p> <p>Low</p> <p>High</p>	<ul style="list-style-type: none"> <li>• appropriate acoustic attenuation will be employed.</li> <li>• future development applications would consider overlooking and privacy.</li> <li>• construction management and mitigation measures would be employed.</li> <li>• crime prevention techniques would be employed and can be considered during a future development application.</li> </ul> <p><u>Assessment consideration:</u> It is considered that the proposal will have some amenity impacts but the concerns about wind tunnelling, light and noise pollution, overlooking loss of privacy and the like are considered to be overstated.</p>
<b>Climate Change</b>		
<ul style="list-style-type: none"> <li>• No consideration of climate change in the submission</li> <li>• Concerns over location and impacts of climate change in terms of sea level rise</li> <li>• Coastal erosion</li> </ul>	<p>High</p> <p>High</p> <p>Low</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• future development applications would be required to consider sustainability measures to be incorporated.</li> <li>• the site is located back from the dunes and is not a risk of coastal erosion.</li> </ul> <p><u>Assessment consideration:</u> It is considered that satisfactory consideration has been provided in relation to climate change.</p>
<b>Bushfire</b>		
<ul style="list-style-type: none"> <li>• Bushfire emergency evacuation</li> <li>• Fire fighting capabilities</li> </ul>	<p>High</p> <p>Low</p>	<p>Submissions by the proponent alleges:</p> <ul style="list-style-type: none"> <li>• an Emergency Evacuation Plan would be required as part of any future development.</li> <li>• a Bush Fire Strategy has been developed across the site and continued detail will be worked up and considered in consultation with the RFS.</li> </ul> <p><u>Assessment consideration:</u> It is considered that for concept approval purposes, fully documented emergency evacuation plans and the like are not overly appropriate. However, there is a fundamental issue with the proposal as currently drafted concerning the proposed mix of "serviced apartment" land uses within the development but those uses were not initially supported by a well-documented bushfire assessment. Subsequently, a further assessment was provided (see <b>PPD96</b>). That assessment indicates that only part of the subject site is suitable for serviced apartment uses.</p>
<b>Consultation</b>		
<ul style="list-style-type: none"> <li>• Insufficient consultation with the community</li> </ul>	<p>High</p>	<p>Submissions by the proponent note community consultation was undertaken, as detailed in the attached consultation</p>



Issue	No. of mentions	Council Comments
		<p>report. The public exhibition process provides a further opportunity for consultation.</p> <p><u>Assessment consideration:</u> It is considered that based on the number of submissions received concerning the subject application, it would seem that sufficient exhibition opportunities have been provided to the local community.</p>
<b>Strategic Plans</b>		
<ul style="list-style-type: none"> <li>• Inconsistent with the R3 medium density residential</li> <li>• Inconsistent with the Structure Plan</li> </ul>	<p>High</p> <p>Very High</p>	<p>Submissions by the proponent note:</p> <ul style="list-style-type: none"> <li>• the proposal is consistent with the R3 zone as it provides a medium to high density residential environment and provides a diverse array of housing options.</li> <li>• the proposal is also consistent with higher order strategic documentation including the North Coast Regional Plan and Kempsey Local Growth Management Strategy.</li> <li>• the structure plan aims to provide a long term strategy for development across South West Rocks. The proposal seeks to provide a diverse array of housing options for the future population and manage delivery of development within zoned land.</li> <li>• the Structure Plan was commenced in 2021, with the draft released in 2022. Early engagement with Council had already taken place regarding the future of the Site, however the Structure Plan did not take into consideration the initial discussions.</li> </ul> <p><u>Assessment consideration:</u> It is considered that the submissions concerning strategic planning are well founded in that the proposal is at odds with the medium density residential description of the site and inconsistent with the adopted structure plan.</p>
Submissions raised concerning development being supportive of housing and the local economy are listed for the reasons set out in the left hand side column.		
<ul style="list-style-type: none"> <li>• Benefits to the local economy</li> <li>• Affordable housing</li> </ul>	<p>Low</p> <p>Low</p>	<p>Submissions by the proponent note that the proposal would support an increase in job creation through construction and operation, which would boost the local economy.</p> <p>Also, the proponent notes that the proposal would provide affordable housing, which is needed within South West Rocks.</p> <p><u>Assessment consideration:</u> It is considered that development involving the provision of local housing and affordable housing would have a job-creating effect and would have the effect of potentially easing the strain on housing affordability in the South West Rocks locality.</p>



## 8. EXTERNAL REFERRALS

The concept Development Application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act. Responses are outlined below in **Table 6**. The outstanding issues raised by Agencies are considered in the Key Issues section of this report.

**Table 6: Concurrence and Referrals to agencies**

Agency	Comments	Resolved
<b>Department of Planning and Environment – Biodiversity &amp; Conservation</b>		
<p><u>Impacts to biodiversity have not been appropriately assessed</u></p> <p>Section 5.15 of the Statement of Environmental Effects (Willow Tree Planning, October 2023) indicates the site includes land on the NSW Biodiversity Values (BV) Map, which is not being impacted by the proposed development. We note, the development proposal includes construction of a footpath through an area in the north-western portion of the subject land that is mapped on the BV Map.</p> <p>In accordance with Part 7 of the Biodiversity Conservation Regulation 2017, any clearing of native vegetation or prescribed impacts associated with a local development (assessed under part 4 of the Environmental Planning and Assessment Act 1979) that occur on an area of land mapped on the Biodiversity Values Map, exceeds the Biodiversity Offsets Scheme threshold and subsequently, a Biodiversity Development Assessment Report is required to accompany the proposal.</p> <p>BCD Recommendation:</p> <p>1. A Biodiversity Development Assessment Report be prepared for the development proposal in accordance with Part 6, Division 3 of the Biodiversity Conservation Act 2016.</p>	<p>It is noted that Rise Projects has responded directly to BCD.</p> <p>In response to BCD comments, the proponent relies heavily on a Biodiversity Assessment Report (BAR) (<b>see PPD86</b>) that has been provided in support of the application. The BAR notes that:</p> <ul style="list-style-type: none"> <li>the Development Site contains areas of Biodiversity Values in the far west of the site but that all areas of Biodiversity Value are to be retained.</li> <li>the site has an approved historical Development Application that allowed for the clearing of native vegetation present on the site.</li> <li>the site in its current state had very little native vegetation present. Large areas were devoid of vegetation and were largely exposed soil and mulched vegetation.</li> </ul> <p><u>Assessment consideration:</u> It is considered that the BAR report that has been submitted (<b>see PPD86</b>) satisfactorily documents the ecological values of the development site and considerations concerning the Test of Significance pursuant to Section 7.3 of the Biodiversity Conservation Act 2016 for a Concept Application.</p>	Yes
<p><u>Assessment of impacts on adjoining coastal wetland</u></p> <p>A large area of the subject land is positioned within the mapped coastal wetlands proximity area under the State Environmental Planning Policy (Resilience and Hazards) 2021. Sufficient information has not been provided with the concept development application to enable the consent authority to be satisfied the</p>	<p>The proponent points to Section 7 of the BAR (<b>PPDP86</b>) as addressing the BCD concerns and states no direct impact will occur on the Coastal Wetland, with the developable footprint designed to provide protective buffers.</p> <p><u>Assessment consideration:</u> It is considered that the proponent has not had full regard to</p>	No



Agency	Comments	Resolved
<p>proposed development will not significantly impact on:</p> <p>a. The biophysical, hydrological, or ecological integrity of the adjacent coastal wetland, or</p> <p>b. The quantity and quality of surface and groundwater flows to and from the adjacent coastal wetland.</p> <p>BCD Recommendation</p> <p>2. Additional information be provided by the proponent for the consent authority to assess whether the proposal accords with the requirements of the State Environmental Planning Policy (Resilience and Hazards) 2021.</p>	<p>the ecological sensitivity of the adjoining Crown Land as:</p> <ul style="list-style-type: none"> <li>no comprehensive ground water change analysis has been completed in relation to the impact of the excavation for the car park.</li> <li>no information has been provided in relation to the characteristics of the receiving waters.</li> <li>no comprehensive assessment had been made as to the consequences of discharge proposed from the development site to the ecology of the adjoining land.</li> <li>no analysis has been conducted in relation to the potential for adverse impacts from changes to the flooding regime associated with filling the land.</li> </ul> <p>Accordingly, at this time, it is not possible to satisfactorily affirm that the development will not significantly impact the biodiversity, hydrology, and ecological integrity of the adjacent wetland. Further, it is not possible at this time to quantify the surface and ground water changes to the adjacent wetland.</p>	
<b>National Parks and Wildlife Service</b>		
<p>Assessment of potential impacts to the adjacent NPWS estate NPWS is the park authority and manager of Arakoon National Park ('the park') which is located close to Lot 2 DP1091323, the site subject to the current concept development application.</p> <p>At its nearest point, the park is less than 60 metres from the boundary of Lot 2, separated only by Saltwater Creek. NPWS considers it is disingenuous for the SEE to describe the park as being 'approximately 1km to the east' (ref: 2.1 Site location and characteristics, p.13) when it is so close to the subject site, and the amenity afforded by the park is used in the applicant's marketing of their development.</p> <p>We remind the Kempsey Shire Council there are published guidelines for planning and consent authorities which identify the priority</p>	<p>In response to the NPWS observations, the proponent has provided an assessment against the NSW NPWS <i>'Development adjacent to National Parks and Wildlife Services Lands'</i> Guideline (<b>see PPD91</b>).</p> <p><u>Assessment consideration:</u> In summary terms, the proponent relies on current "business as usual practice" in terms of erosion control and stormwater management to ensure no adverse impact on the National Park. This approach is appropriate in a general urban context. However, there seems to be a lack of appreciation of the highly sensitive nature of the Crown Land adjoining to the north and no acknowledgement of the need to undertake analysis beyond the usual urban context best practice. Without this additional assessment,</p>	No



Agency	Comments	Resolved
<p>environmental considerations for impact assessments adjacent to lands reserved or acquired under the National Parks and Wildlife Act 1974.</p> <p>NPWS understands the concept development application (DA2300926) covers Stages 2 and 3 of the proposal, with further detail to be provided on certain elements of Stage 3 as part of its detailed application. However, we expect that all environmental impacts of both stages should be considered as part of this proposal to the extent required for the council to be assured the cumulative impact of both stages, including on nearby national parks, will not be significant.</p> <p>NPWS Recommendation</p> <p>3. Council refers to and is guided by the published guideline, Developments adjacent to National Parks and Wildlife Service lands (DPIE-NPWS 2020), when considering the potential for environmental impacts of the development on the nearby national parks.</p>	<p>it is not possible to ensure that the impacts are fully understood and properly mitigated.</p>	
<p><u>Access to conservation lands through Arakoon National Park</u></p> <p>The consultants for the applicant approached NPWS in 2021 regarding a proposal to supplement the current development application with a pedestrian bridge constructed across Saltwater Creek and a new walking track across Crown land and Arakoon National Park linking to Fishos Trail.</p> <p>In all discussions with the applicant and their consultants, NPWS has consistently identified that such a proposal is contrary to the adopted plan of management for the park, and that NPWS was not supportive of enabling a new public access point in this locality to be created, given there are alternative public access points to the beach located nearby.</p> <p>NPWS highlights its concerns that:</p> <ul style="list-style-type: none"> <li>assessments related to this proposal included areas of Arakoon National Park without NPWS approval.</li> <li>the Applicant's website and social media posts promote the development as being</li> </ul>	<p>The proponent has responded to these observations by noting that the proposal seeks only concept masterplan approval for uses, building envelopes and heights. The proponent contends that it has considered the overall site context and the potential future broader site connections, but the application does not seek approval for any works associated with any access boardwalk or paths entering or leaving the site. Faced with direct NPWS criticism, the proponent has not sought to amend the submitted landscape architectural plans that show access to the adjacent Crown Land and Arakoon National Park.</p> <p><u>Assessment consideration:</u> It is considered disingenuous to suggest that no approval is being sought when the submitted plans clearly indicate an intention for access to the National Park over Crown Land. This issue was raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.</p>	<p>No</p>



Agency	Comments	Resolved
<p>'located on Trial Bay Front Beach' (see, for example, <a href="https://www.riseprojects.com.au/projects/the-rocks/">https://www.riseprojects.com.au/projects/the-rocks/</a>).</p> <p>With respect to the current proposal, we note Drawing No. DA-CST2&amp;3-04.01 in the SEE's Appendix 3 (copied as Figure 6 in the SEE) identifies and labels the potential for this future access to the beach via connection to Fishos Trail. Several other drawings also indicate this future pathway.</p> <p>The current beach access points that should be promoted to future residents of the development include the established route along the boundary of the national park (230m west of the subject site and linked by a proposed track in Stage 3 that enters Crown land behind number 58 Phillip Drive) or the Fishos Trail entry pathway from Phillip Drive (500m to the east). NPWS confirms it is not supportive of creating additional access routes through the national park in this locality given alternative public access points nearby.</p> <p>The lands between the subject site and the national park include the southern riparian corridor of Saltwater Creek which is a mapped coastal wetland and is currently zoned C2 Environmental Conservation. It would be appropriate for this area to be fenced to aid in its protection from future encroachments, both during construction works and following the establishment of the subdivision.</p> <p>We consider the proposed 4-metre wide buffer identified in the site plan is insufficient to protect riparian values given the level of fill and earthworks proposed on the site during Stage 3.</p> <p>NPWS Recommendation</p> <p>4. Revision of drawings DA-CST2&amp;3-05.02, DA-CST2&amp;3-05.03, DA-CST2&amp;3-05.04, DA-CST2&amp;3-05.05, DA-CST2&amp;3-05.06, DA-CST2&amp;3-05.07, DA-CST2&amp;3-04.01, DA-CST2&amp;3-04.02, DA-CST3-01.01, DA-CST3-01.02 and DA-CST3-01.03 be undertaken to exclude mention or indication of a potential future access path leaving the subject site and its potential connection to Fishos Trail.</p>		



Agency	Comments	Resolved
<p>5. The following be included in Conditions of consent if the Regional Planning Panel decides to grant approval:</p> <p>i. This consent does not permit, approve, or otherwise authorise any activities, works, investigations or access on lands reserved or acquired under the National Parks and Wildlife Act 1974. Any unauthorised activities, works, investigations or access will be considered a breach under that Act.</p> <p>ii. The Construction Environmental Management Plan shall require the physical marking of the boundary of the subject site with temporary barrier fencing or highly visible flicker tape (or similar) and shall apply a 10-metre-wide buffer for all construction activities and storage of materials, vehicles and plant, along the interface with conservation zoned lands.</p> <p>iii. The Developer shall submit a revised Landscape Plan depicting permanent boundary fencing to clearly mark the interface between the subject site and neighbouring conservation lands. This fencing is to be constructed and installed within the subject site at the Developer's expense.</p>	<p><u>Assessment consideration:</u> It is considered that the conditions of the type suggested by NPWS are not appropriate to the concept approval that is sought. Conditions of this type would ordinarily relate to the next phase when a development application would be lodged pursuant to any concept approval.</p>	Yes
<p><u>Proximity of coastal wetlands</u></p> <p>The SEE notes a small portion of the subject site is mapped as a coastal wetland and Figure 8 identifies that most of the site lies in the proximity area for coastal wetlands under SEPP (Resilience and Hazards) 2021. These coastal wetlands are centred on Saltwater Creek (part of which extends into Arakoon National Park) and Saltwater Lagoon (in Hat Head National Park).</p> <p>NPWS considers the SEE is confusing when referring to the potential for the development (including the construction of the fill pad and excavation for the proposed basement carparks) to adversely affect the hydrology of the area. NPWS considers the council has not been provided with sufficient information to determine whether the development will satisfy the requirements of section 2.8 of the SEPP (Resilience and Hazards) 2021. That is, that the development will not significantly</p>	<p>The proponent suggests that the SEE has had full regard to the requirements under the SEPP and the Coastal Management Act 2016, stating that the concept masterplan does not seek approval for any physical works, including fill pad or excavation and suggesting that further detailed assessment would occur and be provided as part of the future development application for each future stage.</p> <p><u>Assessment consideration:</u> It is considered that the documentation submitted has not provided sufficient assessment to properly conclude that the car parking basement will not adversely affect the hydrology of the coastal wetlands adjoining.</p>	No



Agency	Comments	Resolved
impact on either the biophysical, hydrological, or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows.		
<p>For example:</p> <p>The SEE identifies that an aquifer interference permit will be required. The magnitude of that interference is unclear and there is not clear assessment of whether this may lead to significant changes to groundwater flows.</p>	<p>The proponent concedes that an aquifer interference permit would be required for any future development application involving basement but says the concept masterplan does not seek approval for any physical works.</p> <p><u>Assessment consideration:</u> It is considered that as Concept Development Application approval is sought for the basement work it is appropriate that an assessment be made of the magnitude of any interference with groundwaters both in terms of short-term construction interference and in terms of long-term impact on the adjoining wetlands system.</p>	No
<p>The Flood Impact Assessment (Appendix 7) identifies the need to construct a fill pad to bring floor heights to the required level, and that this will result in increased velocity of floodwater flows in Saltwater Creek. This potential impact is not mentioned in the SEE. In fact, the SEE fails to acknowledge any need for fill on the subject site despite it being currently subject to flooding.</p>	<p>The proponent suggests that the Flood Impact Assessment has considered a fully developed worst-case scenario site, and notes that the concept masterplan does not seek approval for any cut and fill on the site at this time.</p> <p><u>Assessment consideration:</u> It is considered that as Concept approval is sought for the basement work it is appropriate that an assessment be made of the ecological implications of any changes flooding on the adjoining Crown Land with this application.</p>	No
<p>The Ground Water Monitoring Report (Appendix 10) provides plots of water level in 8 groundwater bores only in terms of AHD – but not in terms of its proximity to current ground levels. Groundwater levels in the low-lying northernmost bores are close to the surface. The SEE does not document how levels or other attributes of the groundwater may change following the addition of fill to the site which may move the seepage zone to the northern edge of the subject site.</p>	<p>The proponent observes that the SEE considers the concept masterplan only and does not detail any impacts of fill and dewatering.</p> <p><u>Assessment consideration:</u> It is considered that as Concept Development Application approval is sought for the basement work it is appropriate that an assessment be made of the magnitude of any interference with groundwaters.</p>	No
<p>The Acid Sulfate Soil Management Plan (ASSMP - Appendix 9) flags that excavation with dewatering of the subject site may need to occur as the basement excavation will extend</p>	<p><u>Assessment consideration:</u> An Acid Sulfate Soils Management Plan (ASSM) has been prepared and is satisfactory. The observations by NPWS concerning the need</p>	Yes



Agency	Comments	Resolved
below the natural groundwater levels. The need for appropriate groundwater control systems to maintain the surrounding groundwater table at existing levels is stated to be a requirement to avoid significant impacts.	for appropriate groundwater control systems would be appropriate as conditions if this application were recommended to be approved.	
<p>NPWS is concerned about the ground disturbance associated with Stage 3. The only Erosion and Sediment Control Plan provided as part of the proposal appears to be on the last page of the ASSMP and refers to site clearing works that have already been carried out. This indicates a sediment basin close to the northern boundary of the subject site and immediately adjacent to the conservation lands. There are no details of this basin, in terms of whether the ASSMP was implemented during its construction, or with respect to its ongoing management, monitoring and treatment of retained water.</p> <p>The northern half of the subject site is known to contain Acid Sulfate Soils (ASS) and the ASSMP identifies that 234 tonnes of lime will be required to treat the ASS materials proposed to be excavated. The proposed treatment area is described in the ASSMP to require bunding and lining with several layers of heavy-duty plastic. NPWS recommends this treatment area be located a considerable distance from the boundary of neighbouring conservation lands.</p>	<p><u>Assessment consideration:</u> The ASSMP submitted is considered satisfactory for the purposes of concept approval consideration. With any detailed Development Application lodged for specific works, a further ASS assessment would be required.</p>	Yes
NPWS is also concerned that the development may mobilise the groundwater PFAS contamination plume known to be present in the subject site (as per the advice from the Environment Protection Authority (EPA) in Appendix 11). There appears to be no consideration of the potential impacts should that contamination plume be mobilised to such an extent that it leaches into Saltwater Creek.	<p>The proponent indicated that the site is not considered to contain PFAS contamination at a high risk level and as such the development of the site does not pose a concern to the nearby Saltwater Creek.</p> <p><u>Assessment consideration:</u> It is noted that traces of PFAS have been found in the western edge of the site. These samples have been identified as being below the safe drinking water standards. It is considered that the work associated with PFAs submitted with the DA is appropriate for the nature of concept approval assessment.</p>	Yes
In the event of floods, it is likely the proposed basement carparks and service areas will be flooded as they will be below the 1% AEP flood	The proponent advises as basements and service areas have not been developed in detail, there is no consideration of the	Yes



Agency	Comments	Resolved
<p>level. There seems to be no consideration of how those waters will be treated or filtered before being pumped out and disposed of via the stormwater management system into Saltwater Creek, noting they will be contaminated by oils and other chemicals and will be used to store waste.</p> <p>NPWS is concerned that any adverse impacts to Saltwater Creek will affect the natural values of the nearby national parks.</p> <p>NPWS Recommendation</p> <p>6. Further assessment and description of the following elements of the proposal be provided:</p>	<p>treatment, “however it is anticipated that all waters would be treated prior to being discharged or removed from site”.</p> <p><u>Assessment consideration:</u> As identified elsewhere in this assessment, the approach of deferring the assessment of sensitive impacts to a detailed development application is considered inappropriate.</p> <p>The ASSMP considers the potential overall implications and soil treatment options and is satisfactory for the purposes of this concept approval assessment.</p>	
<p>a. the fill pad required to ensure new development is at required flood planning levels and any batters or retaining walls surrounding the pad.</p> <p>b. management of excavated ASS and whether they are likely to be used onsite to create the fill pad.</p> <p>c. groundwater management during excavation of the basement.</p> <p>d. the predicted long-term influence of the fill pad on groundwater attributes.</p> <p>e. the management of flood waters in the basement carparks and service areas.</p>	<p>A letter has been submitted by the proponent from Regional Geotechnical Solutions (<b>see PPD92</b>) commenting on the management of groundwater during the temporary construction phase in the broad terms possible at the concept DA stage. The proponent contends that it would be appropriate to assess groundwater impacts in future detailed stage DA proposals, once detailed designs are developed.</p> <p><u>Assessment consideration:</u> Given the sensitive context of this site, it is considered that an accurate assessment of groundwater impacts and construction dewatering should form part of the subject Development Application.</p>	
<p><u>Visual impacts</u></p> <p>The Visual Analysis Report (Appendix 5) and the summary in DA- CST2&amp;3-02.01 (Appendix 3) include analysis of the potential for the development to be viewed from Trial Bay Gaol located in Arakoon National Park and from part of the nearby beach.</p> <p>NPWS agrees that views from the beach are likely to be blocked by current intact vegetation growing on the foredune in the national park. Future protection and stability of the dune vegetation are implied assumptions for this analysis to remain valid.</p> <p>The photomontage from the gaol selectively shows a view that is currently blocked by</p>	<p>In response to this criticism, further clarification has been provided in a Visual Analysis Letter (<b>PPD82</b>), which details the RLs at the top of the buildings and further considers the viewpoints selected and the location of photos.</p> <p><u>Assessment consideration:</u> It is considered the analysis provided is satisfactory for consideration of the development application and no further additional information is required concerning this aspect.</p>	Yes



Agency	Comments	Resolved
<p>vegetation growing near the gaol. This is considered misleading as:</p> <ul style="list-style-type: none"> <li>views from other nearby vantage points from within the State Heritage listed site are not similarly blocked, and</li> <li>the vegetation is scheduled for pruning consistent with the Trial Bay Gaol, Breakwater and Environs Conservation Management Plan.</li> </ul> <p>The Visual Analysis Report lacks any data on the relative heights of each viewpoint and the proposed development. While some data are provided in Appendix 3 on DA-CST2&amp;3-02.01, there appear to be several errors as set out below:</p> <ul style="list-style-type: none"> <li>The viewpoint at the gaol is variously described as being at RL20.0 or 21.8 m RL. The base of the gaol's wall is understood to be at 20 m RL. The viewing height at the ground would therefore be at 21.8 m RL. The chosen viewpoint (which is assumed to be located on the tower above the top of the gaol's wall) would be several metres higher than this.</li> <li>It is unclear what the RL of the top of the buildings in the development will be. It is shown in the air-photo insert as "RL23.0" whereas the sketch shows it as RL24.95 (Stage 2) and RL27.7 (Stage 3).</li> </ul> <p>NPWS Recommendation</p> <p>7. Further analysis of the visual impacts of the proposed development from the vicinity of the historic gaol and Laggery Point be undertaken, with more detail (including heights and exact locations of viewpoints) provided in a revised visual analysis report.</p>		
<b>Rural Fire Service</b>		
<p>The Bush Fire Safety Authority / General Terms of Approval dated 17<sup>th</sup> April 2024 has been withdrawn. By letter of 15<sup>th</sup> August 2024, an updated RFS advice was issued.</p>	<p>Subject to compliance with conditions relating to the Maintenance of Asset Protection Zones, Landscape maintenance, Bush Fire Emergency Management, and Evacuation Planning, Property Access and Water and Utility Services, this aspect is satisfactory.</p>	<p>Yes</p>



Agency	Comments	Resolved
<b>NSW Heritage</b>	Rejected the referral request and as such no further commentary is required.	
<b>Essential Energy</b>		
Strictly based on the documents submitted, Essential Energy has no comments to make as to potential safety risks arising from the proposed development.	Noted.	
Essential Energy in principle has no objections to the proposed Development, provided our advice listed below is applied where applicable.	Noted.	
<b>Department of Planning and Environment - Water</b>		
<p>The proposal involves future construction of a basement car park with potential to interfere with groundwater. Water NSW should be consulted in regards to any proposal that involves groundwater interference and/or dewatering.</p> <p>If the proposed development is approved by Council, the department requests these GTA be included (in their entirety) in Council's development consent.</p>	<p>The proponent says that it will consult Water NSW for any future development applications which involve basement construction.</p> <p><u>Assessment consideration:</u> Concept Development Application approval is sought for a basement car park and appropriate groundwater assessment should have been submitted in support of that application.</p>	No
<b>Transport for NSW</b>		
TfNSW has reviewed the information provided and raises no objection to, or requirements for, the proposed development as it is considered there will be no significant impact on the nearby classified (State) road network.	Noted.	



## 9. COUNCIL OFFICER REFERRALS

The development application has been referred to various Council officers for technical review, as outlined **Table 7**. Bullet point style summaries of the various Council officer referrals are provided.

**Table 7: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	<ul style="list-style-type: none"> <li>Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.</li> </ul>	Yes
Traffic	<ul style="list-style-type: none"> <li>A strategic approach is warranted considering good planning for the future traffic generation on this road network over the next 10 years or so. This is particularly pertinent considering the planned road network links to Phillip Dr from the Sea Spirit development in the south.</li> <li>A cumulative effect (Stages 1,2 and 3) needs to be re assessed using the trip generation rates for Regional areas.</li> <li>The current Traffic Impact Assessment noted that "no road upgrades or intersection improvements will be required in the vicinity of the site as a consequence of the additional vph which is queried".</li> <li>Private property access on 'collector' roads can become hazardous those with reasonably high traffic volumes especially drivers waiting to turn right from the major road (eg susceptible to rear end collisions).</li> <li>The traffic generated from this total development over Stages 1,2 and 3 and the estimated future daily and peak hour volumes on the Phillip Drive indicates that traffic volumes in Phillip Drive would require to have a small channelised intersection (CHR(S) and auxiliary left (AUL(S). This issue was raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.</li> <li>Any upgrade will need to align with Council's road network planning for South West Rocks currently in progress as part of the development of the SWR Structure Plan.</li> <li>The report references Guide to Traffic Generating Developments - (The Technical Direction (TDT) 00004a:2013) which provides guidance for traffic, safety, and transport practitioners.</li> <li>The TDT Regional Average should be used.</li> <li><u>State Environmental Planning Policy (Transport and Infrastructure) 2021</u></li> </ul> <p>It is considered that the total development proposed:</p> <ul style="list-style-type: none"> <li>DA2200404(Stage 1) – 30 units approved</li> <li>Subject DA2300926 (Stages 2 and 3) for concept approval of 283 units</li> </ul> <p>should be considered as one (313 units) for traffic generation calculations.</p> <p>In this regard, the application should be referred to TfNSW for further comment with total units being above 300 (Note: this DA assessment disagrees with this referral observation).</p>	No



Officer	Comments	Resolved
Water and Sewer	<ul style="list-style-type: none"> <li>Water and Sewer strategy to be agreed on by Water and Sewer Manager.</li> </ul>	Yes
Carparking	<ul style="list-style-type: none"> <li>Carparking layout plan DA-CST 2&amp;3-5.01 Rev A for Basement shows what appears as wheel stops are marked incorrectly.</li> <li>Stage 3 basement car parking shows 'stacked parking' as part of their carpark count.</li> <li>Need to provide swept paths for B85 car design template to ensure compliance with AS2890.1 and 6.</li> <li>Show access ramps width and grades are not shown.</li> </ul> <p>These issues were raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.</p>	No
Flooding	<ul style="list-style-type: none"> <li>Council are currently undertaking a review of their flood modelling within the Lower Macleay floodplain. Upon completion, it is likely that flood levels and/or velocities for this property may change. Council encourages you to make contact and check if the new flood modelling is being used, as this may affect the assessment of flood impacts on your development.</li> <li>Provide natural surface levels (NSL) on typical cross sections (especially cut and fill).</li> <li>Provide datum on all plans are Australian Height Datum (AHD).</li> <li>It is noted that the FFL on basement carparking is FFL3.0. This needs to be confirmed as Australian Height Datum (AHD). Appropriate measures need to be in place to prevent flooding of basement carparking. Current 1%AEP level is R.L. 3.2m AHD.</li> <li>This DA increases (doubles) the number of units affected for evacuation in the event of flooding.</li> </ul>	No
Environmental Health	<ul style="list-style-type: none"> <li>Concerns regarding EPA letter stating: <ul style="list-style-type: none"> <li>PFAS is present in groundwater beneath the Site. As the site is being proposed for a sensitive development (e.g., residential), the EPA recommends the implementation of appropriate management measures during construction activities to minimise contact and exposure (for both human and environmental health), and/or to prevent mobilisation of PFAS impacted groundwater.</li> <li>Need to ensure risks from remnant PFAS contaminants and acid sulfate soils are fully mitigated. These measures need to be identified and more detailed to satisfy EPA.</li> </ul> </li> </ul>	Yes
Waste	<p>This DA is for a 'concept' only and future DA's will be required for the approval of each building. However, it would be good to clearly provide Council's requirements in terms of waste collection at the concept stage. There doesn't appear to be any provisions shown on the plans of where waste collection services will be located and how it would occur.</p> <ul style="list-style-type: none"> <li>The main consideration is whether Council would conduct a waste collection service for properties on a 'Private Road', if Council's waste collection vehicles do not enter private roads</li> </ul>	Yes



Officer	Comments	Resolved
	and that any bins need to be placed on the public road reserve. If this is the case, the proposed development/s on the Rise site could ultimately result in 300+ bins on Phillip Drive on collection days which is something that Council or the SWR residents would not like to see.	
Heritage	<ul style="list-style-type: none"> <li>Heavy reliance is placed on the prevailing tree cover and masking the form and height, particularly from Phillip Drive, in long views from Trial Bay and to some degree in southern views from Burrawong Drive, which appear to obscure any views or glimpses available of Trial Bay Gaol. Future growth of trees will impact on that view also.</li> <li>The argument that the impact will be minimised as passers-by will be travelling at some speed in vehicles, is spurious. The impacts of scale and mass are imposed on local residents who walk around and view the area daily. It impacts the setting of their environs.</li> <li>Maintaining the lightness in colour and limiting the palette of materials is to be encouraged and pursued in later Stage DA proposals.</li> </ul>	Yes

## 10. KEY ISSUES

The following key issues are relevant to the assessment of this Concept Development Application.

### 10.1. THE LACK OF CONSIDERATION OF THE VERY SENSITIVE CONTEXT OF THE DEVELOPMENT

The civil engineering documentation in support of the subject application takes a “business as usual” approach to the consideration of adjoining land. Ordinarily, this approach would be satisfactory and consistent with what is generally regarded as best practice. However, in the subject circumstances, the site has a 500+m frontage to land that is ecologically sensitive. The proposal will alter the existing hydrology and water quality discharging from the site. Also, there will potentially be a change to the water table as a consequence of the introduction of subterranean car parking. No comprehensive assessment has been carried out in relation to the impact of those changes on the adjacent coastal wetlands. Further, no robust management arrangements are proposed to prevent urban intrusion (people, pets, rubbish, exotic species and the like) into the adjoining sensitive Crown Land.

The issues concerning the absence of satisfactory documentation in relation to potential adverse impacts on environmentally sensitive areas, the ecological impact of approximately 6 hectares of altered inundation on land to the northeast, the impacts of car park dewatering and ensuring the ecological integrity i.e. buffering of the adjoining wetlands were raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

### 10.2. THE TENSION BETWEEN AN APPLICATION FOR CONCEPT DEVELOPMENT APPLICATION APPROVAL AND THE NEED TO PROVIDE AN APPROPRIATE LEVEL OF ENVIRONMENTAL IMPACT ASSESSMENT

By their very nature, applications seeking Concept Development Application approval are not accompanied by the full raft of assessment documentation, which is ordinarily the province of a formal Development Application. However, in this instance, Concept Development Application approval in the form for which consent seeks to “lock in” key development principles going forward at the subject site, including:



- groundwater changes are related to the impact of the excavation of the car park;
- additional stormwater discharge from the development site to the ecology of the adjoining land;
- changes to the flooding regime associated with filling the land; and
- a near “bufferless” edge to the sensitive Crown Land.

Further, the Concept Development Application documentation supplied concerning mosquito management does not have regard to the location and functional operation of the proposed wet stormwater basin shown on the plan DA\_CST 2&3-04.1 within the proposed mosquito buffer area.

The above aspects have not been the subject of fulsome environmental impact assessment, but the application as lodged seeks to defer careful review of the impacts until a detailed Development Application is submitted. It is considered inappropriate to defer such impact assessment to a later date.

### **10.3. NON-COMPLIANCE WITH THE STATUTORY INSTRUMENTS**

Kempsey Local Environmental Plan 2013.

The proposal does not meet the zone objectives specified at Clause 2.3 (2). The proposal is for high density residential development, whereas the zone objectives call for the provision of a medium density residential environment.

The proposal does not comply with CI 7.2(3)(g) as inadequate information has been submitted in support of the application to ensure that earthworks will not have a detrimental impact on environmental functions, processes, and neighbouring uses.

These issues were raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

The Resilience and Hazards SEPP (Resilience and Hazards 2021)

Adequate assessment has not been carried out in relation to the impacts that are required to be satisfied under Clause 2.8 (development on land in proximity to coastal wetlands), Clause 2.10 –(development on land within the coastal environment area) and Clause 2.11 (development on land within the coastal use area) of the Resilience and Hazards SEPP. That assessment cannot appropriately be deferred to a detailed Development Application.

These issues of statutory compliance were raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

### **10.4. NON-COMPLIANCE WITH KEMPSEY DEVELOPMENT CONTROL PLAN 2013**

Because of the Concept Development Application nature of the proposal, exact compliance with Council's Development Control Plan (DCP) is not pressed. However, there are a number of what are regarded as “core controls” in the DCP, where the proposal is inconsistent with the provisions of the DCP. DCP provisions that are important at the Concept Development Application level that are not adhered to include:

- Residential densities,
- Parking standards,
- Protection of the unique character of South West Rocks, and
- Street setbacks for buildings in Stage 3.

These DCP compliance issues were raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

### **10.5. HEIGHT BULK AND SCALE**

The proposed building form, being 26m in height, presents a grotesquely unsympathetic response to the low scale, low intensity character of the locality and the Phillip Drive streetscape and is of excessive bulk and scale.



The proposal does not contribute positively to the future character of the area as articulated in the Council's Strategic Planning which, inter alia, seeks a maximum building height of 8.5m in the locality.

Issues relating to bulk, scale and intensity were raised in the RFI 6<sup>th</sup> June 2024, but no response has been received.

## 11. RECOMMENDATION

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Following an assessment of the development application in relation to the development controls, taking into account the issues raised in submissions from the community, Council officers and agencies, it is recommended that DA2300926 PAN384760 be refused for the following reasons:

1. The consent authority cannot be satisfied that the provisions of Kempsey Local Environmental Plan 2013 have been complied with, as the proposal:
  - a. fails to satisfy Clause 2.3(2) of the Kempsey LEP 2013, which requires the consent authority to have regard to the objectives of the zone. The R3 objectives seek to achieve housing to meet the needs of the community "within a medium density residential environment". The height bulk and scale of the proposal are not consistent with a medium density residential environment: and
  - b. does not satisfactorily address Claus 7.2(3)(g) of Kempsey LEP 2013 as inadequate information provided to assess the ecological impact of changed inundation occurring on land to the northeast, the groundwater impacts of car park excavation and dewatering and the changed stormwater discharge.
2. Inadequate information has been lodged with the Development Application to adequately assess the environmental impacts concerning matters specified in SEPP (Resilience and Hazards) Clauses 2.8; 2.10 and 2.11.
3. The development does not comply with core provisions of Kempsey Development Control Plan 2013 that directly seek to achieve the objectives of the R3 Medium Density Residential zone, particularly:
  - a. DCP Clause C1(5)(a) concerning residential densities.
  - b. DCP Clause B2(b) concerning standards for car parking, movement aisles, and driveways.
  - c. DCP Clause C1 chapter objectives concerning the protection of the unique character of South West Rocks.
  - d. DCP Clause 5.1(DO2) requiring residential development at densities that are compatible with the desired natural character of the neighbourhood and locality, noting that the excessive bulk and scale of the development do not positively align with the adjoining sensitive Crown Land.
4. The form of the development has not had regard to the character of the immediate locality, the coastal village environment of South West Rocks and the sensitive context of the site, particularly as:
  - a. The layout of the development provides near-direct access to this ecologically sensitive Crown Land area and proposes no robust measures to ensure the long-term ecological integrity of the Crown Land.
  - b. There is a lack of robust assessment concerning the ecological impact of about 6ha of changed inundation occurring on land to the northeast, the groundwater impacts of car park construction and changed stormwater discharge.
5. The proposed architectural form with building heights in Stage 2 of 19.4m+ and Stage 3 of 26.05m+ presents a very unsympathetic response to the existing and desired future character of the locality and the Phillip Drive streetscape.
6. Insufficient environmental impact assessment documentation accompanies the application with respect to:
  - a. groundwater changes are related to the impact of the excavation of the car park;



- b. additional stormwater discharge from the development site to the ecology of the adjoining land; and
  - c. changes to the local ecology occasioned by the extended flooding regime associated with filling the land.
7. The Mosquito Impact Assessment has not demonstrated that there is an adequate buffer distance from mosquito areas to the development to prevent or minimise nuisance and health risk associated with mosquitos and minimise human contact with mosquitos.
8. The traffic generated from the total development proposed over Stages 1, 2, and 3, along with the estimated future daily and peak hour volumes on Phillip Drive, indicates the need for a small channelised intersection (CHR(S) and auxiliary left (AUL(S) intersection, but no design plans have been submitted with the Development Application.
9. The development application does not satisfactorily address issues raised by The Department of Planning and Environment – Biodiversity & Conservation.
10. The development is not in the public interest as it conflicts with the character of the immediate locality, the existing and the desired future coastal village character of South West Rocks and the community lead strategic planning for the village that seeks to protect this character.

## **12. ANNEXURES**

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The following attachments are provided:

- Attachment A: List of documents submitted with the Development Application
- Attachment B: Extracts from Architectural Plan Set
- Attachment C: Table of DCP Compliance



## **ATTACHMENT A**

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List of Planning Portal documents concerning the Development Application



## PPSNTH-268 · PHILLIP DRIVE, SOUTH WEST ROCKS

Doc No	File name	Uploaded date
PPD 1	FeeEstimate_1697868615.pdf	20/10/2023
PPD 2	App_0_Owners Consent.pdf	27/10/2023
PPD 3	App_1_Survey Plan.pdf	27/10/2023
PPD 4	App_10_Groundwaer Monitoring Report.pdf	27/10/2023
PPD 5	App_11_Detailed Site Investigation EPA.PDF	27/10/2023
PPD 6	App_12_Preliminary Site Investigation.pdf	27/10/2023
PPD 7	App_14_Traffic Impact Assessment.pdf	27/10/2023
PPD 8	App_17_Bushfire Report.pdf	27/10/2023
PPD 9	App_18_Quantity Surveyor Report.pdf	27/10/2023
PPD 10	App_2_Pre-Loegement Meeting Minutes.pdf	27/10/2023
PPD 11	App_3_Architectural Plan.pdf	27/10/2023
PPD 12	App_4_SEPP 65 Design Verification Statement.pdf	27/10/2023
PPD 13	App_6_Civil Letter.pdf	27/10/2023
PPD 14	App_7_Flood Assessment & Suppl Memo.pdf	27/10/2023
PPD 15	App_8_Geotechnical Assessment.pdf	27/10/2023
PPD 16	App_9_Acid Sulfate Soil Management Plan.pdf	27/10/2023
PPD 17	Pre-DA form_1698497408.pdf	27/10/2023
PPD 18	Statement of Environmental Effects_South West Rocks.pdf	27/10/2023
PPD 19	DA20231020004731-Original-1 Custom Letter.pdf	6/11/2023
PPD 20	App_0_Owners Consent_Update.pdf	13/11/2023
PPD 21	DA form_1700061721.pdf	14/11/2023
PPD 22	Letter to KSC REFDA231323.231114.pdf	14/11/2023
PPD 23	PaymentReceipt 1.pdf	14/11/2023
PPD 24	PaymentReceipt 2.pdf	14/11/2023
PPD 25	PaymentReceipt 3.pdf	14/11/2023
PPD 26	RPP FORM_1700554680.PDF	20/11/2023
PPD 27	CNR-62750-A-75506-PHILLIP DRIVE SOUTH WEST ROCKS 2431.pdf	11/12/2023
PPD 28	Department of Planning and Environment-Water_1702354454.pdf	11/12/2023
PPD 29	Department of Planning and Environment-Water_1702354454.pdf	11/12/2023
PPD 30	FeeEstimate_1702354454.pdf	11/12/2023



# PPSNTH-268 · PHILLIP DRIVE, SOUTH WEST ROCKS

PPD 31	PaymentReceipt_17023554454.pdf	11/12/2023
PPD 32	PaymentReceipt_17023554454.pdf	11/12/2023
PPD 33	Rural Fire Service_1702354454.pdf	11/12/2023
PPD 34	Rural Fire Service_1702354454.pdf	11/12/2023
PPD 35	NTH22_00779_03 - TfNSW Response - DA2300926.PDF	15/12/2023
PPD 36	Record of preliminary Briefing - PPSNTH-268 PUBLISHED.pdf	18/12/2023
PPD 37	BCD Response - Concept DA Phillip Drive SWR - Signed DY 202312 20.pdf	20/12/2023
PPD 38	BCD&NPWS RFI - Concept DA Phillip Drive SWR.pdf	22/12/2023
PPD 39	DA2300926 - Redacted Submissions Comined_05.pdf	22/12/2023
PPD 40	DA2300926 - Redacted Submissions Comined_1.pdf	22/12/2023
PPD 41	DA2300926 - Redacted Submissions Comined_10.pdf	22/12/2023
PPD 42	DA2300926 - Redacted Submissions Comined_11.pdf	22/12/2023
PPD 43	DA2300926 - Redacted Submissions Comined_12.pdf	22/12/2023
PPD 44	DA2300926 - Redacted Submissions Comined_13.pdf	22/12/2023
PPD 45	DA2300926 - Redacted Submissions Comined_14.pdf	22/12/2023
PPD 46	DA2300926 - Redacted Submissions Comined_15.pdf	22/12/2023
PPD 47	DA2300926 - Redacted Submissions Comined_16.pdf	22/12/2023
PPD 48	DA2300926 - Redacted Submissions Comined_17.pdf	22/12/2023
PPD 49	DA2300926 - Redacted Submissions Comined_18.pdf	22/12/2023
PPD 50	DA2300926 - Redacted Submissions Comined_19.pdf	22/12/2023
PPD 51	DA2300926 - Redacted Submissions Comined_2.pdf	22/12/2023
PPD 52	DA2300926 - Redacted Submissions Comined_20.pdf	22/12/2023
PPD 53	DA2300926 - Redacted Submissions Comined_21.pdf	22/12/2023
PPD 54	DA2300926 - Redacted Submissions Comined_22.pdf	22/12/2023
PPD 55	DA2300926 - Redacted Submissions Comined_23.pdf	22/12/2023
PPD 56	DA2300926 - Redacted Submissions Comined_24.pdf	22/12/2023
PPD 57	DA2300926 - Redacted Submissions Comined_25.pdf	22/12/2023
PPD 58	DA2300926 - Redacted Submissions Comined_26.pdf	22/12/2023
PPD 59	DA2300926 - Redacted Submissions Comined_27.pdf	22/12/2023
PPD 60	DA2300926 - Redacted Submissions Comined_28.pdf	22/12/2023
PPD 61	DA2300926 - Redacted Submissions Comined_29.pdf	22/12/2023



## PPSNTH-268 · PHILLIP DRIVE, SOUTH WEST ROCKS

PPD 62	DA2300926 - Redacted Submissions Comined_3.pdf	22/12/2023
PPD 63	DA2300926 - Redacted Submissions Comined_30.pdf	22/12/2023
PPD 64	DA2300926 - Redacted Submissions Comined_31.pdf	22/12/2023
PPD 65	DA2300926 - Redacted Submissions Comined_32.pdf	22/12/2023
PPD 66	DA2300926 - Redacted Submissions Comined_33.pdf	22/12/2023
PPD 67	DA2300926 - Redacted Submissions Comined_34.pdf	22/12/2023
PPD 68	DA2300926 - Redacted Submissions Comined_4.pdf	22/12/2023
PPD 69	DA2300926 - Redacted Submissions Comined_6.pdf	22/12/2023
PPD 70	DA2300926 - Redacted Submissions Comined_7.pdf	22/12/2023
PPD 71	DA2300926 - Redacted Submissions Comined_8.pdf	22/12/2023
PPD 72	DA2300926 - Redacted Submissions Comined_9.pdf	22/12/2023
PPD 73	Response to Council's RFI dated 22 December 2023.pdf	22/12/2023
PPD 74	RFIApplicant.pdf	22/12/2023
PPD 75	RFIApplicant_22122023.pdf	22/12/2023
PPD 76	NSW Department of Planning and Environment-Water Response_IDAS -	22/01/2024
PPD 77	RFI Item 1 2 6 - RFI Response Ref1.0 (Biodiv Aust).pdf	24/01/2024
PPD 78	Rise SW Rocks - Concept Mplan - BAR Rev2.0.pdf	24/01/2024
PPD 79	DA2300926 - BCD NWPS RFI Reply 2024 01 25.pdf	25/01/2024
PPD 80	RFI Item 3 - Assessment - Development Adjacent NPWS Lands.pdf	25/01/2024
PPD 81	RFI Item 6 - RGS Letter.pdf	25/01/2024
PPD 82	RFI Item 7 - Visual - Urbis Reply.pdf	25/01/2024
PPD 83	DA20231126005373-Original_1 Custom letter.pdf	6/02/2024
PPD 84	Appendix A Economic Impact Assessment.pdf	28/02/2024
PPD 85	Appendix B Community Consultation Report.pdf	28/02/2024
PPD 86	Appendix C Biodiversity Assessment Report.pdf	28/02/2024
PPD 87	Appendix D Mosquito Management Plan.pdf	28/02/2024
PPD 88	Appendix E Design Guidelines.pdf	28/02/2024
PPD 89	Appendix F Agency Submission.pdf	28/02/2024
PPD 90	Appendix G Public Submission Response.pdf	28/02/2024
PPD 91	Appendix H NPWS Assessment Table.pdf	28/02/2024



## PPSNTH-268 · PHILLIP DRIVE, SOUTH WEST ROCKS

PPD 92	Appendix I Groundwater Letter.pdf	28/02/2024
PPD 93	Appendix J Visual Impact Ltr.pdf	28/02/2024
PPD 94	Appendix L Character Study.pdf	28/02/2024
PPD 95	WTJ32-159 Response Report_SW Rocks.pdf	28/02/2024
PPD 96	Appendix K Bushfire Hazard Assessment.pdf	29/02/2024
PPD 97	DA2300926-NPWS closure.pdf	7/03/2024
PPD 98	RFS Request for Further Information	25/03/2024
PPD 99	Appendix K Bushfire report for applicant	28/03/2024
PPD 100	Briefing note to Panel	9/04/2024
PPD 101	RFS determination letter	17/04/2024
PPD 102	Record of Panel Briefing	22/04/2024
PPD 103	RFS determination letter	17/4/2024
PPD 104	Council Request for Further Information	6/06/2024
PPD 105	RFS previously issued Bush Fire Safety Authority / General Terms of Approval 17 April 2024 withdrawn and updated advice issued 15/8/24.	



## **ATTACHMENT B**

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Extracts from Architectural Plans



## DEVELOPMENT DATA

## STAGE 2

### **108 Residential apartments**

**STUDIO: 1**  
**1BED: 22**  
**2BED: 17**  
**3BED: 62**  
**4BED: 6**

**\*Minimum 10% of the GFA to be affordable  
(approx 23 apartments / 1,150sqm GFA)**

### STAGE 2A: Total 30 units

1BED: 9  
2BED: 5  
3BED: 14  
4BED: 2

### STAGE 2B: Total 29 units

1BED: 3  
2BED: 7  
3BED: 19  
4BED: 0

**STAGE 2C: Total 24 units**

1BED: 3  
2BED: 3  
3BED: 16  
4BED: 2

### STAGE 2D: Total 25 units

STUDIO: 1  
1BED: 7  
2BED: 2  
3BED: 13  
4BED: 2

**Parking provision:**

**Basement parking: 181 spaces**

**On-street private road parking: 24 spaces**

**Total: 205 spaces**

### STAGE 3:

**Shops/Café/Restaurant: Total 2,500sqm NLA**

**Residential:**

### 95 Residential apartments

**1BED: 5**  
**2BED: 60**  
**3BED: 30**

### **80 Residential serviced apartments**

**1BED: 14**  
**2BED: 66**

### STAGE 3A (Residential): Total 32 units

1BED: 0  
2BED: 17  
3BED: 15

**STAGE 3B (Residential): Total 34 units**

1BED: 5  
2BED: 27  
3BED: 2

**STAGE 3C (Residential serviced apartments): Total 40 units**

1BED: 14  
2BED: 26  
3BED: 0

**STAGE 3D (Residential serviced apartments): Total 40 units**

1BED: 0  
2BED: 40  
3BED: 0

**STAGE 3E (Residential): Total 29 units**

1BED: 0  
2BED: 16  
3BED: 13

**Parking provision:**

**Basement parking: 345 spaces**

**On-street private road parking: 41 spaces**

**Total: 386 spaces**

[illegible]







**PROPOSED ESTIMATED OVERALL GFA:**

RESIDENTIAL / RESIDENTIAL SERVICED APARTMENTS: 29,000-33,000sqm  
SHOPS / FOOD & BEVARAGE: 2,000-3,000sqm

**STAGE 2 (INDICATIVE)**

RESIDENTIAL: 10,000-12,000sqm

**STAGE 3 (INDICATIVE)**

RESIDENTIAL / RESIDENTIAL SERVICED APARTMENTS: 19,000-21,000sqm  
SHOPS / FOOD & BEVARAGE: 2,000-3,000sqm

**PAGE 3 (INDICATIVE)**

## STAGE 3

- 0x 6 STOREY MIXED USE BUILDINGS (RESIDENTIAL/SHOPS/FOOD&BEVERAGE/SERVICED APARTMENTS)
- BASEMENT
- PUBLIC PEDESTRIAN STREET & PLAZA
- PUBLIC WALKWAY
- LANDSCAPE WORKS INCL REVEGETATION AND KOALA FOOD TREES
- STAGE 3D  
6 STOREYS
- STAGE 3E

## STAGE 1

- DA2200404 APPROVED FOR:**
- CIVIL WORKS
  - 30 TOWNHOUSES
  - COMMERCIAL AREA
  - CAFÉ
- SHOPS

## STAGE 2

- 4x 5 STOREY RESIDENTIAL BUILDINGS (RESIDENTIAL/COMMERCIAL/SERVICED APARTMENTS)
- BASEMENT

[illegible]

4.10.23	B	FINAL FOR CONCEPT DA LODGE
8.10.23	A	DRAFT FINAL FOR COORDINATION
<b>Date</b>	<b>REV</b>	<b>Description</b>

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RAWN BY: Author | CHECKED: Checker


ADDRESS:  
**LOT 2 PHILLIP DRIVE,  
SOUTH WEST ROCKS**

VIEW:

## STAGING PLAN

OB No : <b>RP 260</b>	NORTH:
--------------------------	--------

SCALE :  
A1/1 : 700

DATE: 

W No.	REV:
-------	------

**B**









SHEET TO BE STAMPED  
IN APPROVAL

24.10.23	B	FINAL FOR CONCEPT DA LODGEMENT
18.10.23	A	DRAFT FINAL FOR COORDINATION

Date REV Description

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DRAWN BY: Author CHECKED: Checker

ADDRESS:  
**LOT 2 PHILLIP DRIVE,  
SOUTH WEST ROCKS**

VIEW:  
**BUILDING ENVELOP  
- 00 GROUND  
FLOOR**

JOB No : <b>RP 260</b>	NORTH:
SCALE : A1/1 : 700	
DATE: 24.10.23	
DW No.	REV: <b>B</b>





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ADDRESS:

LOT 2 PHILLIP DRIVE,  
SOUTH WEST ROCKS

VIEW:

**BUILDING ENVELOP  
- 01 FIRST FLOOR**

JOB No: **RP 260**

SCALE: A1/1 : 700

DATE: 24.10.23

DW No.

REV: **B**

53

DA-CST2&3-05.03





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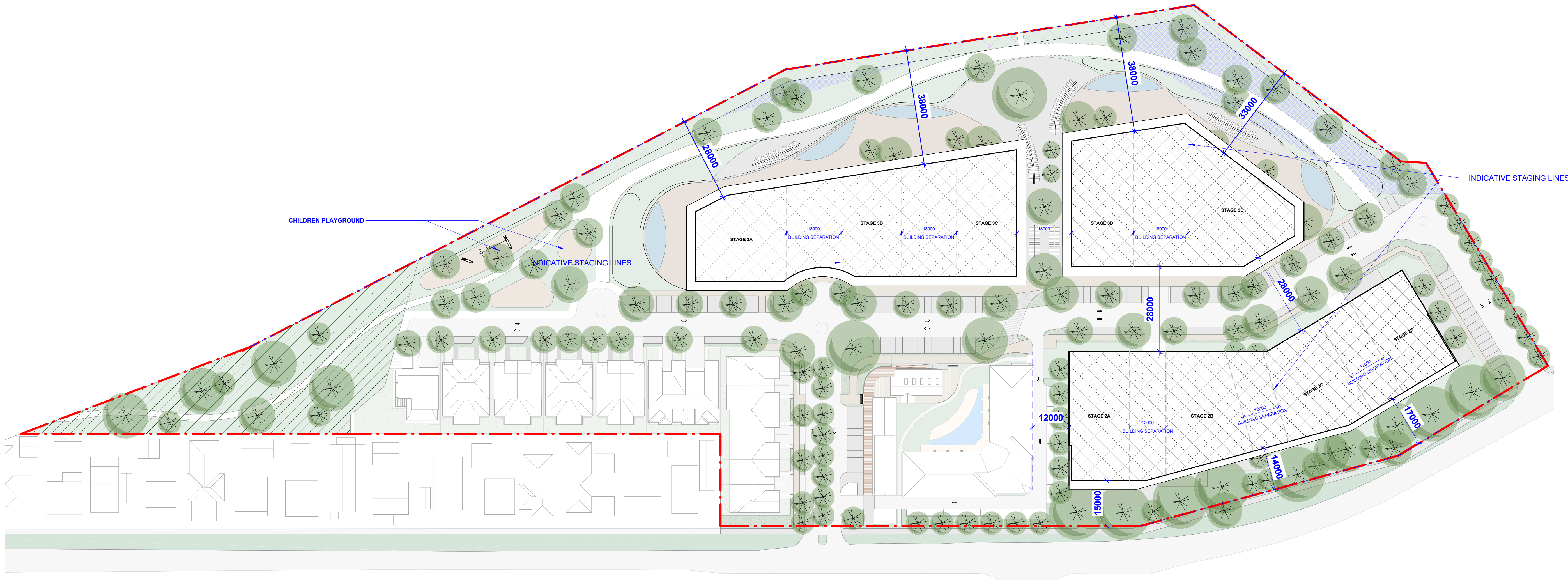
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VIEW:  
**BUILDING ENVELOP  
- 02 SECOND  
FLOOR**

JOB No : <b>RP 260</b>	NORTH:
SCALE : A1/1 : 700	
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VIEW:  
**BUILDING ENVELOP  
- 03 THIRD FLOOR**

JOB No :	RP 260	NORTH:	
SCALE :	A1/1 : 700		
DATE:	24.10.23		
DW No.		REV:	

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SOUTH WEST ROCKS

VIEW:

BUILDING ENVELOP  
- 04 FOURTH FLOOR

JOB No: RP 260 NORTH:

SCALE: A1/1 : 700

DATE: 24.10.23

DW No. REV: B





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**LOT 2 PHILLIP DRIVE,  
SOUTH WEST ROCKS**

VIEW:  
**BUILDING ENVELOPE  
- 05 FIFTH FLOOR**

JOB No : <b>RP 260</b>	NORTH:
SCALE : A1/1 : 700	
DATE: 24.10.23	REV: <b>B</b>
DW No.	



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The site plan illustrates the layout for Stage 1C and Stage 2 developments. Stage 1C features a residential building with a 12000m wide staging area. Stage 2 consists of four residential buildings (ST2A, ST2B, ST2C, ST2D) with 18000m wide staging areas. The plan also shows a basement, ground floor FFL 6.4, and a proposed building envelope for approval.

The site plan illustrates the proposed building envelopes for two development stages, Stage 3 and Stage 2, relative to Phillip Drive (PHILLIP DR) on the right. A red dashed line indicates the property boundary.

**STAGE 3:** This stage includes a three-story building with the following components and dimensions:

- RESIDENTIAL SERVICED APARTMENTS:** The upper portion of the building, with a height of 3000 units. The roof level is marked as RL 27.7 and the ground floor level as RL 18.6.
- RESIDENTIAL & RETAIL:** The middle portion of the building, with a height of 25000 units. The first floor level is marked as FFL 11.3.
- BASEMENT + CAFE/BAR:** The lower portion of the building, with a height of 15000 units. The ground floor level is marked as FFL 6.4 and the basement level as FFL 3.0.

**STAGE 2:** This stage includes a larger building with the following components and dimensions:

- RESIDENTIAL:** The upper portion of the building, with a height of 17000 units. The roof level is marked as RL 24.95 and the ground floor level as FFL 6.4.
- BASEMENT:** The lower portion of the building, with a height of 12000 units. The basement level is marked as FFL 3.0.

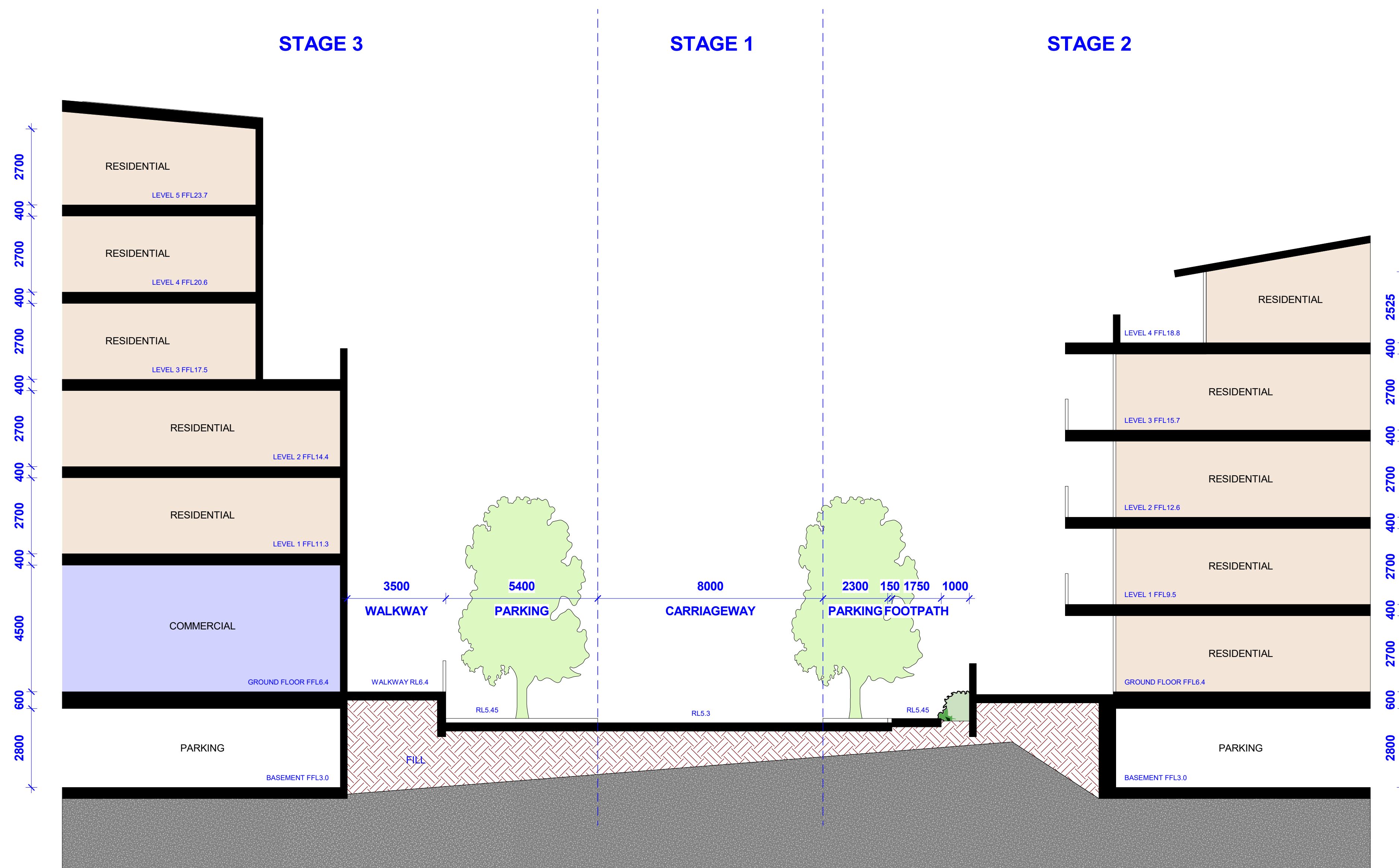
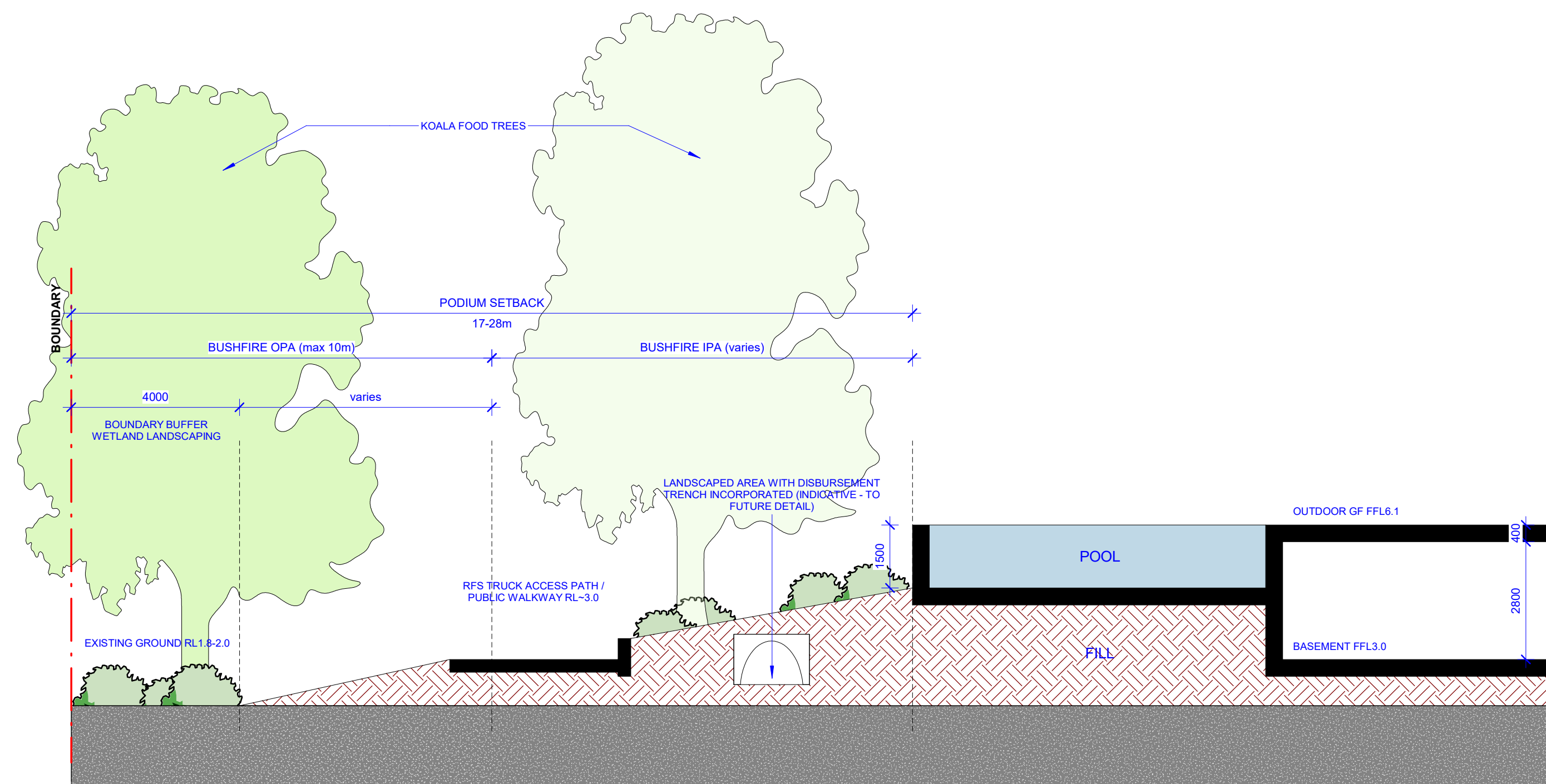
Additional dimensions and levels for Stage 2 include a height of 3000 units for the upper section, a height of 15000 units for the middle section, and a height of 12000 units for the lower section. The ground floor level is marked as FFL 6.4 and the basement level as FFL 3.0. The roof level is marked as RL 19.8 and the ground floor level as RL 16.7.

The site plan illustrates the proposed new building's footprint in red dashed lines and its connection to the existing building in blue lines. The new building is a large, irregular structure with a central courtyard. The existing building is a long, rectangular structure with a central courtyard. The connection is a narrow strip of land between the two buildings. Labels A, B, C, A', and B' mark key points on the plan: A is at the top left of the new building, B is at the bottom left of the new building, C is at the top right of the new building, A' is at the top right of the existing building, and B' is at the bottom right of the existing building.

LOP

B



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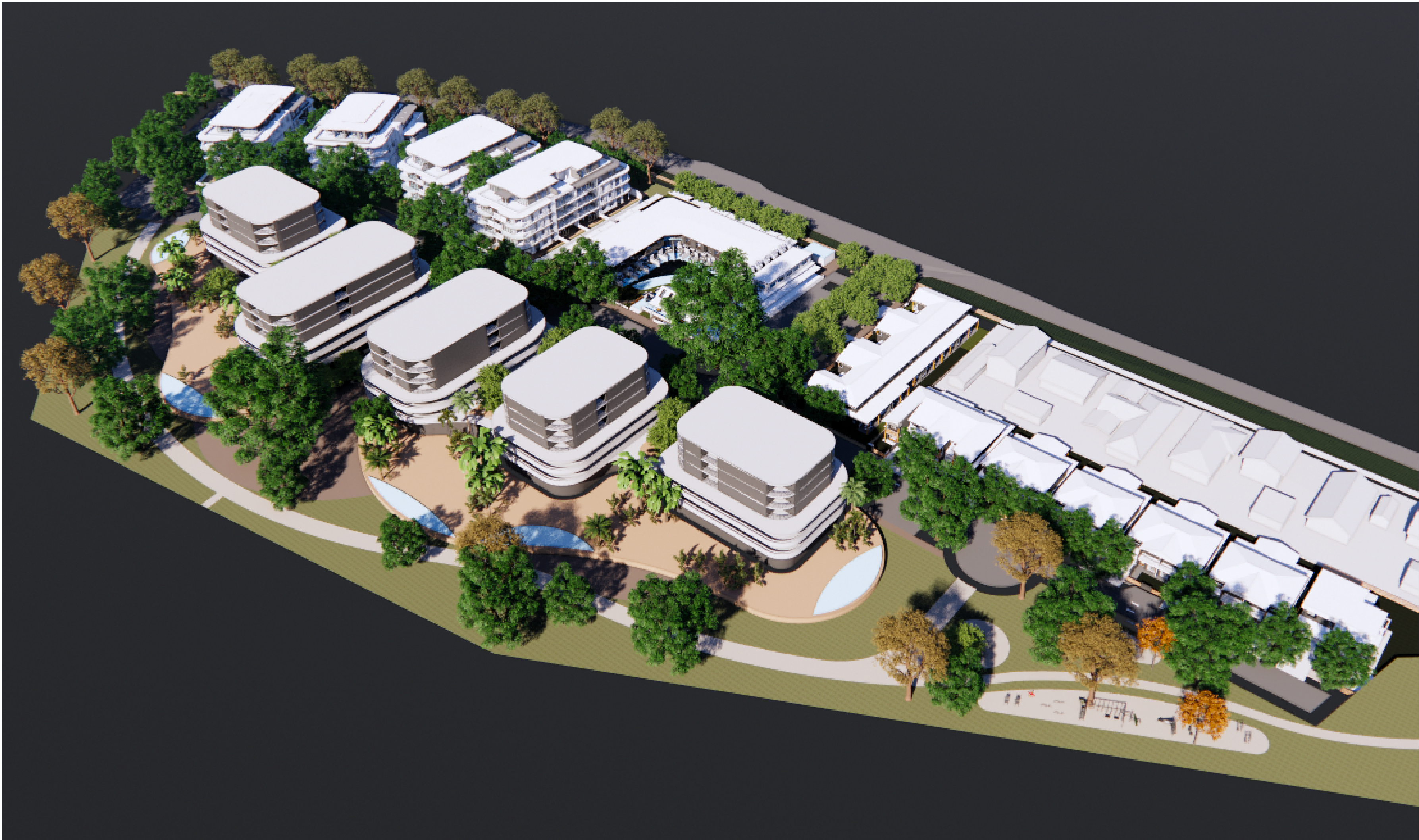
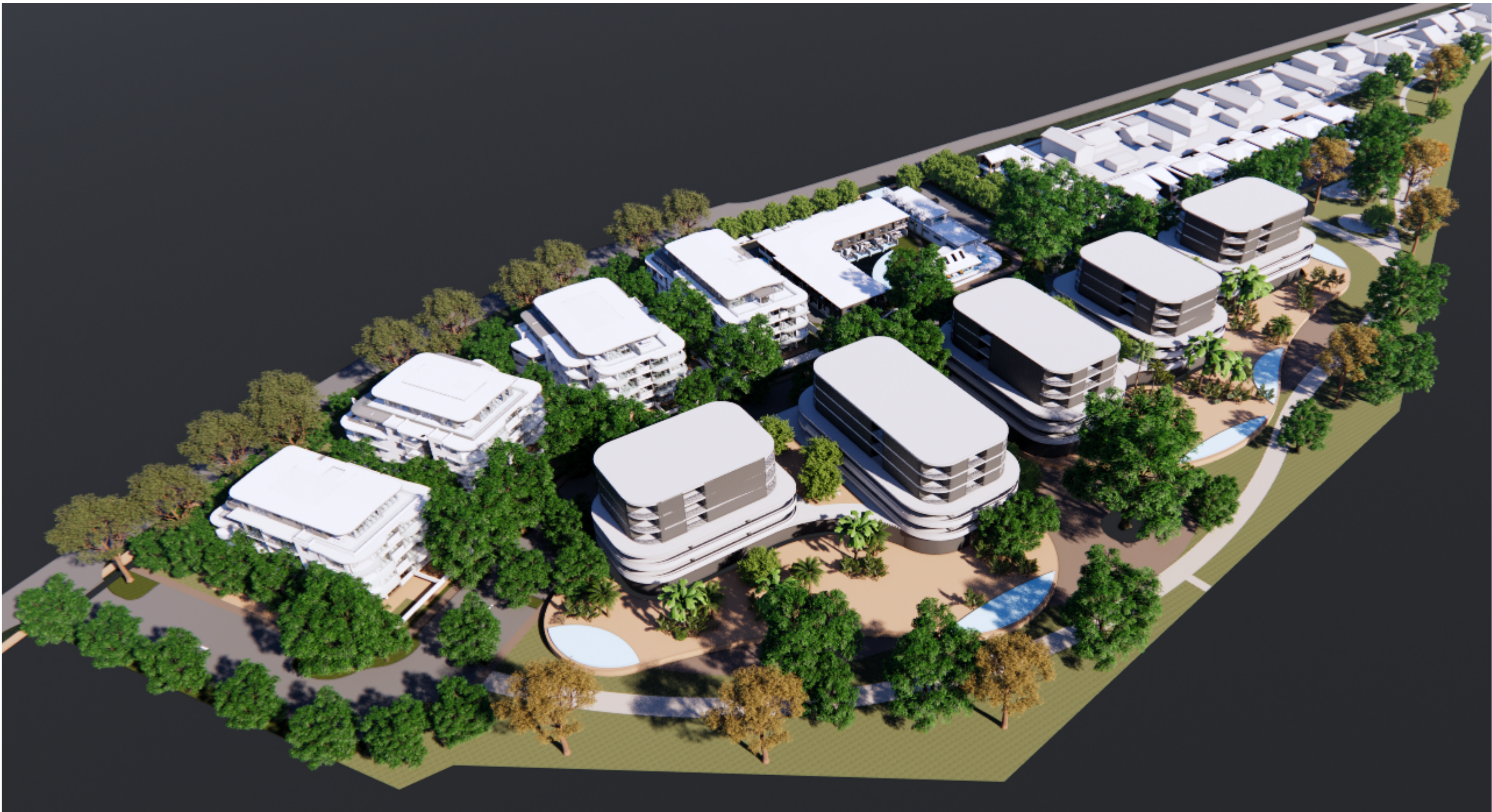
**LOT 2 PHILLIP DRIVE,  
SOUTH WEST ROCKS**

VIEW:

**TYPICAL SECTIONS**

JOB No : <b>RP 260</b>	NORTH:
SCALE : A1/ 1 : 100	
DATE: 24.10.23	
DW No.	REV:





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VIEW: <b>CONCEPT 3D VIEWS</b>			
JOB No :		NORTH:	
SCALE :		A1/	
DATE:		24.10.23	
DW No.		REV:	
DA-CST2&3-08.01		B	



AN

B



Table of DCP Compliance

Kempsey Development Control Plan 2013		
Control	Compliance	Comment
<b>PART B – GENERAL REQUIREMENTS</b>		
<p><b><u>B2 – Parking, Access and Traffic Management</u></b></p> <p>a. The concept design of the car parking area shall be submitted to Council for approval with the development application.</p> <p>b. All car parking, movement aisles and driveways shall be consistent with the relevant requirements of:</p> <p>i. The following Australian Standards:</p> <ul style="list-style-type: none"> <li>▪ AS/NSZ 2890.1-2004: Parking Facilities - Off-street Car Parking;</li> <li>▪ AS 2890.2-2002: Parking Facilities - Off-street Commercial Vehicle Facilities;</li> <li>▪ AS 2890.3-1993: Parking Facilities - Bicycle parking facilities;</li> <li>▪ AS 2890.5-1993: Parking Facilities - On-street Parking; and</li> <li>▪ AS/NZS 2890.6-2009: Parking Facilities - Off-street Parking for People with Disabilities.</li> </ul> <p>ii. the RTA Guide to Traffic Generating Developments; and</p> <p>iii. the relevant components of Council's Engineering Guidelines for Subdivision and Development.</p>	<b>NO</b>	<p>The Concept Design of the basement car parking areas have been provided with the Architectural Plans. Council officers note:</p> <ul style="list-style-type: none"> <li>• Carparking layout plan DA-CST 2&amp;3-5.01 Rev A for Basement shows what appears as wheel stops are marked incorrectly.</li> <li>• Stage 3 basement parking shows 'stacked parking' as part of the spaces count.</li> <li>• Need to provide swept paths for B85 car design template to ensure compliance with AS2890.1 and 6.</li> <li>• Need to show access ramps width and grades.</li> </ul>
<p><b><u>B9 – Landscaping</u></b></p> <p><b>4.1.1 Triggers for Submission of Type of Landscape Plan</b></p> <p>a. Landscape Concept Plans are required to accompany Development Applications (DAs) for:</p>	<b>YES</b>	<p>The Landscape Concept Plans for the proposed development have been prepared by Rise Projects and are provided within the Architectural Plans.</p> <p>The Landscape Concept Plans are indicative only and more detailed Landscape Plans would be provided for each detailed application.</p>
<p><b><u>B11 – Koala Habitat Management</u></b></p> <p>a. Development applications identify whether there is any koala habitat on site, including any koala feed trees (refer to Appendix A of this Chapter).</p>	<b>YES</b>	<p>The subject site is identified as containing Secondary (Class A) preferred Koala habitat and unknown.</p>



Kempsey Development Control Plan 2013																					
Control		Compliance	Comment																		
<p>b. Development applications address the relevant procedures and requirements of Volume 1 (Working Provisions) of the Comprehensive Koala Plan of Management for the Eastern Portion of Kempsey Shire LGA (CKPoM).</p> <p>c. Development applications address the relevant requirements of State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP44).</p>			The majority of the site has been cleared of vegetation and previous investigations across the subject site did not record any koalas or evidence of koalas.																		
PART C – USE SPECIFIC REQUIREMENTS																					
<p><b><u>C1 – Residential Development – Urban Areas</u></b></p> <p><b><u>5 – Development Outcomes</u></b></p> <p>a. The residential densities specified below will be a fundamental determinant of dwelling yield or densities on individual sites within each density area or precinct. Land contained within each density category shall, for each 1, 2, 3 or 4 bedroom dwelling proposed, have a site area of not less than that indicated in Column 1 of the following table.</p> <p>b. A common landscaped area of not less than that indicated in Column 2 of the following table is to be provided on each development site.</p> <table><tr><th>Residential Density Precinct</th><th>Dwelling Size</th><th>Column 1 Minimum Site Area (m2)</th><th>Column 2 Minimum Landscaped Area (m2)</th></tr><tr><td rowspan="4">Medium to High Density</td><td>1 bedroom</td><td>70</td><td>30</td></tr><tr><td>2 bedroom</td><td>95</td><td>40</td></tr><tr><td>3 bedroom</td><td>130</td><td>55</td></tr><tr><td>4 bedroom</td><td>165</td><td>70</td></tr></table>		Residential Density Precinct	Dwelling Size	Column 1 Minimum Site Area (m2)	Column 2 Minimum Landscaped Area (m2)	Medium to High Density	1 bedroom	70	30	2 bedroom	95	40	3 bedroom	130	55	4 bedroom	165	70	NO	<p>The DA SEE states that the proposed development meets the chapter objectives and desired outcomes, but is silent on numerical compliance.</p> <p>The required minimum site area for Stage 2 would be 10,531 m<sup>2</sup>. The net area of this stage is 10,672m<sup>2</sup>.</p> <p>Stage 3 would be 12,070 m<sup>2</sup> This site has a net area of 11,147m<sup>2</sup>.</p> <p>The minimum landscaped area seems to be compliant.</p>	
Residential Density Precinct	Dwelling Size	Column 1 Minimum Site Area (m2)	Column 2 Minimum Landscaped Area (m2)																		
Medium to High Density	1 bedroom	70	30																		
	2 bedroom	95	40																		
	3 bedroom	130	55																		
	4 bedroom	165	70																		
<b><u>Chapter Objectives</u></b>																					
<p>a) To achieve a balance between maximising lot and dwelling yields for more efficient and effective use of land, infrastructure and services, whilst making our residential areas desirable places to live.</p>		YES	The proposed development seeks to optimise use of land to ensure the efficient use of infrastructure and services.																		
<p>b) To provide a degree of certainty to developers and existing residents with regard to the density of housing development throughout Council's urban areas.</p>		YES	The proposal provides building envelopes that show the proposed future development.																		



Kempsey Development Control Plan 2013		
Control	Compliance	Comment
<i>c) To provide areas within Council's principle towns and villages for varying levels of residential density.</i>	<b>YES</b>	The proposal is zoned for medium density residential development. The proposal is not specific about a mix of building and residential typologies.
<i>d) To ensure that development densities are not beyond the capacity of the infrastructure, services and topographical constraints of each area.</i>	<b>YES</b>	Infrastructure and servicing is appropriate and can sufficiently cater for the proposed development.
<i>e) To ensure that lands identified for higher density development are not developed for low density developments.</i>	<b>NO</b>	The site is identified for medium density development. The proposal exceeds the medium density threshold and accordingly is not consistent with this requirement.
<i>f) To provide for wider housing choices in general residential zones where there are minimal development constraints.</i>	<b>YES</b>	The proposal is not specific about the widening of choice but is considered could be satisfactorily addressed at detailed DA stage.
<i>g) To encourage innovative building design and site usage.</i>	<b>YES</b>	The proposal proposes an very efficient site usage.
<i>h) To encourage a more efficient and effective use of land and minimise the cost of providing urban infrastructure and servicing.</i>	<b>YES</b>	The proposal would ensure efficient and effective use of existing appropriately zoned land.
<i>i) To encourage the design of energy efficient housing.</i>	<b>YES</b>	Future applications would need to ensure energy efficiency.
<i>j) Where relevant, to encourage development that enhances and protects the unique character of Crescent Head and South West Rocks</i>	<b>NO</b>	The proposal is not compatible with the existing established character of South West Rocks.
<b><u>5.1 Lot Size and Density</u></b>		
<p><i>DO1 - Where subdivision is proposed for residential development, lots have appropriate area and dimensions to enable the siting and construction of a dwelling or other intended forms of residential development, whilst providing for:</i></p> <ul style="list-style-type: none"> <li><i>ancillary outbuildings;</i></li> </ul>	<b>N/A</b>	No subdivision is proposed and as such this Desired outcome is not applicable.



Kempsey Development Control Plan 2013		
Control	Compliance	Comment
<ul style="list-style-type: none"> <li>• useable private outdoor space;</li> <li>• convenient vehicle access and parking;</li> <li>• adequate solar access; and</li> <li>• access to cooling breezes and other relevant siting and design considerations.</li> </ul>		
<p>DO2 – Residential development is developed at densities which:</p> <ul style="list-style-type: none"> <li>• is compatible with the desired natural character of the neighbourhood and locality;</li> <li>• meets the needs of residents for accommodation, services and open space on site; and</li> <li>• facilitates a high level of residential amenity within the development.</li> </ul>	<b>NO</b>	<p>The proposed development is not compatible with the surrounding character of both the natural environment and urban context.</p> <p>The proposed development does not result in any material amenity impacts to existing residential dwellings adjoining the site.</p>
<p><b>5.2 Building Siting and Design</b></p> <p><u>5.2.1 Street Setbacks</u></p> <p>a. A minimum setback of 5.0 metres to the primary street frontage shall be provided to the front wall of the main dwelling, except that:</p> <p>i. A minimum setback of 6.0m shall be provided to any garage.</p>	<b>NO</b>	<p>The proposal includes a 12m setback from Phillip Drive. The proposal has a setback from the internal road of 3.6m. The minimum specified by the DCP is 5m.</p>
<p><u>5.2.2 Side/rear setbacks</u></p> <p><b>Three Storey Development</b></p> <p>d. A minimum setback of 2.0 metres shall apply to the second and third storeys provided the average setback in the same horizontal plane is not less than 4.5m.</p> <p>e. In respect to buildings containing three storeys, the minimum setback requirements for Single Storey Development, Two Storey Development and Three Storey Development may be applied separately to the ground floor, second storey and third storey respectively.</p>	<b>YES</b>	<p>The concept proposal includes an initial three storey built form along Phillip Drive, with further stepped heights up to 5 storeys within Stage 2 and up to 6 storeys in Stage 3.</p>
<p><u>5.2.3 Long Walls</u></p> <p>a. Long walls to side boundaries should be avoided. The continuous length of a building wall or retaining wall greater than 1.8m in height, in any one horizontal plane, shall be not more than 20 metres.</p> <p>b. Where walls are longer than 20 metres, they must incorporate offsets throughout their length to break up the appearance of the wall.</p> <p>c. Offsets shall generally be a minimum of 1 metre and</p>	<b>YES</b>	<p>Future applications would need to include façade articulation along each frontage.</p>



Kempsey Development Control Plan 2013		
Control	Compliance	Comment
<i>for a length of not less than 1 metre.</i>		
<p><b><u>5.2.5 Solar Access and Energy Conservation Three Storey Development</u></b></p> <p><i>b. All buildings shall be designed to ensure that no part of the windows of any living areas of any adjoining residential buildings or primary ground level private open space, are shaded for more than three (3) hours between 9:00am and 3:00pm on 22 June.</i></p> <p><b>Shadow Diagrams</b></p> <p><i>c. Where there is likely to be an adverse impact as a result of overshadowing, Council may require an applicant to prepare shadow diagrams showing solar access to dwellings, private open space and solar panels on land to which the development application relates to an adjoining properties.</i></p> <p><i>d. Shadow diagrams are to be submitted to illustrate the shadows cast by the proposed building at 9:00am, 12:00 noon and 3:00pm on 22 June.</i></p> <p><i>e. Shadow diagrams will be required to be submitted with development applications for two-storey development, particularly development on streets running north south.</i></p>	YES	Adequate solar access appears to be maintained to all surrounding residential development and good solar access is considered able to be achieved for all future internal development.
<p><b><u>5.4 Private Open Space</u></b></p> <p><b><u>5.4.1 General</u></b></p> <p><i>a. Private open space areas are to be designed so as to enable an extension of the function of the dwelling for relaxation, dining, entertainment, recreation and children's play.</i></p> <p><i>b. The location and design of private open space is to take into account the outlook and natural features of the site and the features of adjoining buildings.</i></p> <p><i>c. The orientation of private open space should provide for maximum year round use by receiving a minimum of three hours of sunlight between 9am and 3pm on 22 June.</i></p> <p><i>d. Enclosing screen walls or fences shall be designed to ensure privacy, both from adjoining communal open space or accessways and from other dwellings and their courtyards.</i></p> <p><i>e. Private open space may be located within the front setback provided:</i></p> <p><i>i. adequate provision is made for additional intensive landscaping within the property; and</i></p> <p><i>ii. a decorative fence or screen is provided which is</i></p>	YES	The proposal seems to incorporate sufficient open space areas and apartments would have balconies.



Kempsey Development Control Plan 2013		
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<p><i>setback an average of not less than one (1) metre from the front boundary.</i></p> <p>f. <i>Clothes drying areas must not be visible from the street</i></p>		
<p><u>5.4.2 Ground Level</u></p> <p>a. <i>Each ground floor dwelling is to be provided with a minimum private open space area of 25m<sup>2</sup>, which shall be directly accessible from the living areas of dwellings.</i></p> <p>b. <i>Where the dwelling is at ground level, the private open space area is to contain a rectangle with minimum dimensions of 4m by 4m, which is not steeper than 1 in 8.</i></p> <p>c. <i>Any area within a side or rear setback less than 2 metres in width shall not be included when considering the area provided for private open space.</i></p>	YES	Balconies or ground floor private spaces would need to be provided to units as part of future detailed applications.
<p><u>5.4.3 Above Ground Level</u></p> <p>a. <i>Where the dwelling is located wholly above ground level, roof decks, balconies and verandahs for each dwelling can contribute to private open space requirements provided:</i></p> <p>i. <i>each roof deck or balcony is not less than 15m<sup>2</sup> in area;</i></p> <p>ii. <i>the minimum width of a roof deck or balcony is greater than 2 metres for more than 80% of its area; and</i></p> <p>iii. <i>the roof deck or balcony immediately adjoins, and is directly accessible from, the living area of the unit at the same level.</i></p>	YES	Balconies could be provided as part of a detailed Development Application.