

COUNCIL BRIEFING & ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-297 – DA21/0949.01
PROPOSAL	Section 4.55(2) modification to Seniors Housing development for demolition of existing dwelling and construction of 95 residential units, a swimming pool, signage, lot consolidation and tree removal.
ADDRESS	Lot 113 DP 237806; 6 Powell Street, Tweed Heads; Lot 114 DP 237806; 8 Powell Street, Tweed Heads; Lot 115 DP 237806; 10 Powell Street, Tweed Heads; Lot 116 DP 237806; 12 Powell Street, Tweed Heads; Lot 117 DP 237806; 33 Florence Street, Tweed Heads; Lot 118 DP 237806; 35 Florence Street, Tweed Heads; and Lot 119 DP 237806; 37 Florence Street, Tweed Heads
APPLICANT	Zone Planning
OWNER	Tweed Shire Council
DA LODGEMENT DATE	16 February 2024
APPLICATION TYPE	Section 4.55(2) Modification Application
REGIONALLY SIGNIFICANT CRITERIA	<p>The original application was determined pursuant to Section 2.19, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: development that has a capital investment value of more than \$30 million.</p> <p>The proposed modification comprises of a departure from the development standard pursuant to Clause 108(2) of SEPP(Housing) 2021 in relation building height. The departure has already been consented to however further adds to the departure which is greater than 10% and therefore pursuant to Clause 123BA(2) of the Environmental Planning & Assessment Regulation and subsequent Sydney District & Regional Planning Panels Operational Procedures the planning panel determine application to modify consents under Section 4.55(2) which seek to comprise of development that contravenes a development standard imposed by an EPI by more than 10% or non-numerical standards.</p>
CIV	\$53,153,800.00 (including GST)
CLAUSE 4.6 REQUESTS	Nil - consent already granted and therefore not statutorily required for Section 4.55(2) modification to the consent.

KEY SEPP/LEP	State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy (Biodiversity and Conservation) 2021; Tweed City Centre Local Environmental Plan 2012
AGENCY REFERRALS	Essential Energy Water NSW
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Notification Period 1: One (1) total unique submission and; Notification Period 2: One (1) total unique submission. Total: Two (2) unique submissions
DOCUMENTS SUBMITTED FOR CONSIDERATION	S4.55 Modification Report Amended Stage 1 Architectural Plans Amended Stage 2 Architectural Plans Further amended Plans Stage 1 Further amended Plans Stage 2 Roof Area Plan – Max – Building Heights Staging Plan Revised Waste Management Plan Stormwater Management Plan Amended Traffic Impact Assessment Report Water and Sewer Servicing Plan Landscape Plan Stage 1 Landscape Plan Stage 2
KEY ISSUES	Merit assessment of additional height variation Merit assessment of developments performance against current SEPP (Housing) 2021 standards compared to the repealed standards the originally approved development was assessed against Construction Management Plan Updated Noise Impact Assessment to deal with staging of development Dewatering Plan detail not consistent with Stage 1 plans Provision of at grade stormwater quality devices in the basement carparking area(s)
PREVIOUS BRIEFINGS	NIL

ASSESSMENT STATUS	Complete
PREPARED BY	Hannah Van de Werff

EXECUTIVE SUMMARY

The Section 4.55(2) modification seeks consent to modify the approved DA21/0949 for Seniors Housing development at 6-12 Powell Street and 33-37 Florence Street TWEED HEADS.

The approved development included demolition of existing dwellings, consolidation of seven (7) lots and staged construction of a seven (7) storey Seniors Housing development comprising of three (3) buildings (nominated A, B and C) which contains 94 independent living units and one (1) manager residence.

The approved development includes the provision of basement carparking and at grade parking with access to and from the site via a Porte cochere. The approved development has a C.I.V of \$53,153,800 (including GST) and for this reason is categorised as Regionally Significant Development as it has a C.I.V greater than \$30 Million. The original consent was granted by NRPP on 1 June 2023 by way of deferred commencement.

The deferred commencement matters were satisfied, and the consent became operational on 13 February 2024.

The proposed modification seeks several design changes which are detailed later in this report and visually depicted in **Attachment B** (Comparative analysis of approved development vs proposed modifications). Most notably however, the proposed modifications seek the following key changes that require planning meritorious assessment and consideration by Essential Energy:

- Modification to the pad mounted transmission (PMT) station which was approved at the eastern interface of the site and now is being relocated to the western interface
- Increase in the overall height of proposed Building B for its lift overrun and;
- Changes to the staging of the development per the following:
 - Stage 1: Demolition of existing dwelling houses (7) on 6-12 Powell Street, Tweed Heads and 33-37 Florence Street, Tweed Heads and Construction of Building A and B (including basement parking) involving a total of 48 independent living units, swimming pool and access from Powell Street.
 - Stage 2: Construction of Building C (including basement parking) involving 47 Independent living units and access from Florence and Powell Streets.

The proposed increase in height is 1.2m beyond that approved and occurs to 15sqm of the roof form in Building B. The total approved overall height of this building is 22.6m and the proposed overall height of the building is 23.8m, which is 8.18% greater than the maximum height permitted under Tweed City Centre (TCC) LEP 2012. In addition, given the development comprises of Seniors Housing, it is affected by SEPP (Housing) 2021 and Clause 108(2) states as follows:

The following are non-discretionary development standards in relation to development for the purposes of independent living units—

- (a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,*
- (b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—*
 - (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
 - (ii) is limited to an area of no more than 20% of the surface area of the roof, and*
 - (iii) does not result in the building having a height of more than 11.5m,*

The proposed height represents a 107% variation beyond that permitted under Clause 108(2) of SEPP (Housing) 2021. For this reason, pursuant to the Section 3 (Functions of Panel) of Sydney District & Regional Planning Panels Operational Procedures, which states that Section 4.55(2) applications for regionally significant development that comprise of a contravention to a development standard imposed by an EPI by more than 10% are to be determined by the Panel, the assessment is referred to NRPP for determination.

Notably, part of the original consent, a Clause 4.6 variation request was considered to vary both Clause 108(2) of the SEPP and Clause 4.3 (Height of Building) pursuant to TCCLEP2012. As such, the variation to a height has already been consented to and a Clause 4.6 is not statutorily required for the proposed additional variation to the building height. Notwithstanding, merit consideration has been given the proposed additional height, leaning on the principles of Clause 4.6 to consider whether compliance with the statutory requirement is unreasonable or unnecessary in this case.

In relation to the variation to the location of the PMT, this was referred to Essential Energy for consideration and comment in relation to safety concerns. None were raised and the initial comments by Essential Energy remain relevant for the proposal. These are included in the existing consent (see Condition 20 of **Attachment E**).

The provision of changes to staging will result in the staged construction of a basement carpark and interim traffic control measures (onsite) are proposed to alleviate any impacts associated with the staging of basement construction. The detail of this is contained later in this report however it has been concluded that onsite traffic management can be accommodated to ensure no safety concerns and conditions of consent are recommended to secure these outcomes.

Construction Management and Noise Impact assessment has also been reviewed to ensure that the revisions to the staging will not result in adverse impact on residents in the existing Building A and B when Building C is being constructed. Council officers have reviewed an extensive set of reports and are satisfied that the impacts can be managed and are acceptable.

Finally, the provision of two separate basement constructions has resulted in an update to the Dewatering Management Plan. Council officers noted a discrepancy in the excavation depths nominated in the plan as compared to the submitted updated architectural plans. Council officers have recommended a condition of consent to resolve this issue. It is noted that Water NSW have also considered the proposed modification and raised no objection subject to the retention of existing Water NSW GTA's. It is noted these GTA's did not have regard to specific detail in the dewatering management and therefore the provision of GTA's per the original consent would not conflict with any other matter for consideration as a result of this modification.

The subject modification application was notified and separately advertised (further discussion of this is contained later in the report). During the notification period and advertising period, a total of

two (2) submissions were received. Detail of the issues raised and Council officers assessment of these issues is contained later in this report.

It is noted that during the assessment of this application there was a “handover” between Council officers (due to staff movements) and therefore it was resolved by Council officers that rather than extending the assessment timeframes with a briefing meeting once the current assessing officer had carriage of the application, that the assessment would progress and an RFI issued to expedite the assessment and “make up” for lost time. The proponent has responded to the RFI promptly and all issues raised by Council officers are generally considered to be resolved. As such, the subject modification application has not been briefed to the panel and it is proposed that the modification be briefed and determined in a consolidated format at the October NRPP meeting.

Following consideration of the matters for consideration under Section 4.55(2) and where relevant, Section 4.15(1) of the EP&A Act, the proposed modifications are considered to be worthy of support and the application is recommended for approval subject to amendments to conditions and the insertion of new conditions as detailed in **Attachment A**.

1.0 THE SITE AND LOCALITY

1.1 The Site

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

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

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

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

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

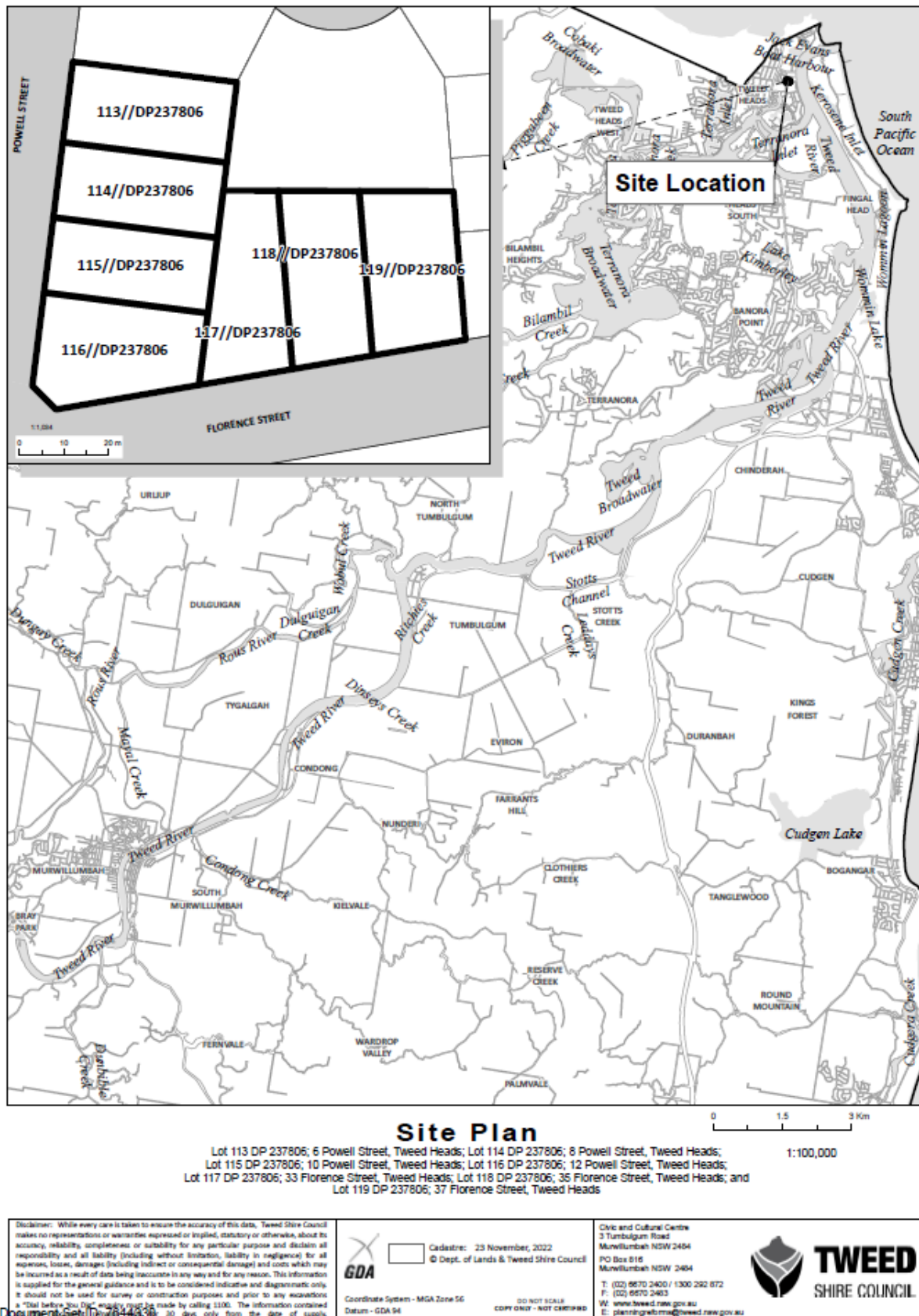


Figure 1: Site location map

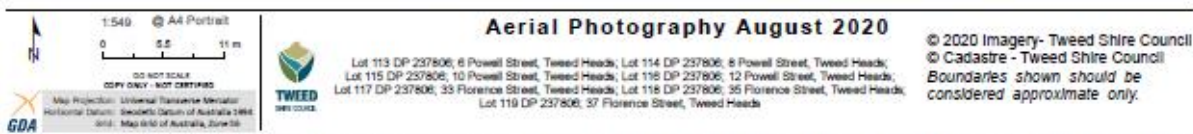


Figure 2: Aerial imagery of the subject site



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



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



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



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

1.2 The Locality

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

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

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

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

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

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

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposed Section 4.55(2) modification seeks to amend DA21/0949. In particular it seeks to alter the staging of the Seniors Housing development over two (2) stages in accordance with the following:

Stage 1: Demolition of existing dwelling houses (7) on 6-12 Powell Street, Tweed Heads and 33-37 Florence Street, Tweed Heads and Construction of Building A and B (including basement parking) involving a total of 48 independent living units, swimming pool and access from Powell Street.

Stage 2: Construction of Building C (including basement parking) involving 47 Independent living units and access from Florence and Powell Streets.

The proposed modification also seeks the following design element modifications:

- Alterations to the approved height of the building for an additional 1.2m beyond that already approved for the purpose of a lift motor room overrun. The proposed height increase is from RL 24.7m AHD to RL 25.9m AHD, for a total of 15m² in area (Item 33 in Plans);
- Relocation of the pad mount transformer station from the east to the west of the site fronting Florence Street (Item 1 in Plans);
- Escape stairs position for Exit 1 and 2 (Item 2 and 3 in Plans);
- Minor reconfiguration of car parking bays at Ground Level and driveway configuration (Item 4 in Plans);
- Basement exit ramp - minor change to alignment (Item 6 in Plans);
- Parking bays revised reducing one space at Ground Level (Item 7 in Plans);
- Waste room and chute position revised as indicated on Plans (Item 9 in Plans);
- Exit ramp connection to road cross over located further to the east (Item 11 in Plans);
- New staircase provided (Stage1) to enable access to vacant land in Stage 2 (Item 12 in Plans);
- Emergency exit - revised stairs now running east west (Item 13 in Plans);
- Revised exit path along Florence Street with wider double stairs now proposed (Item 14 in Plans);
- Entry stairs off Florence Street revised with wider double set of stairs now proposed (Item 15 in Plans);
- Electrical switch room now added to the south removing the kitchen, storage etc room (Item 16 in Plans);

- Relocated ground floor toilets (Item 17 in Plans);
- Temporary bin storage repositioned further to the South however remaining at rear of site (Item 18 in Plans);
- Minor increase in landscaping/ deep soil zones adjacent to residents' courtyard (Item 19 in Plans);
- Fire pump access stairs added to the north of the site at Ground Level (Item 20 in Plans);
- Ground Floor Level planters layout revised as indicated on the Plans (Item 21 in Plans);
- Entry ramp to basement extended to achieve required gradients (Item 22 in Plans);
- Staircase and waste chute amended and repositioned (Item 23 in Plans);
- Scissor stairs replaced by standard staircase (Item 24 in the Plans);
- Level convention amended (Item 25 in Plans);
- A/C plant revised in location for Stage 1 (Items 26 and 27 in Plans);
- Feature window removed (Item 28 in Plans);
- Pool area layout revised with roof terrace to the west repositioned to the south. Pool access also revised (Item 29 - 31 in Plans);
- Roof outline amended with previous roof outline shown in blue dash outline in Page 14 of Stage 1 Plans (Item 32 in Plans);
- Water storage tank added on Level 2 of the Plans (Item 34 in Plans);
- Unit naming revised and number of levels revised, noting the number of units and levels remains the same quantity (Item 35 and 36 in Plans);
- Internal unit layout revised, noting no changes are to occur that are visible from the exterior of the units (Item 37 in Plans);
- Minor changes to the setback along Powell Street, minor increase and decrease. On balance retaining the setbacks as previously approved in DA21/0949 (Item 38 in Plans);
- Final gross floor areas revised, now proposed as 11,447.2m² compared to the previously approved 11,491.6m²; a reduction of 44.4m² (Item 39 in Plans);
- Unit numbers revised (Item 40 in Plans);
- Vehicle stop bay / controlled entrance / exit ramp added (Item 42 in Plans);
- Roof terrace on Level 6 revised however retaining north, east and west aspect (Item 43 in Plans); and
- Water meter repositioned (Item 44 in Plans).

Refer to **Appendix B** for comprehensive comparative study of the approved development and the proposed changes sought under this modification application.

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

Table 1: Key development data

Control	Proposal	Previously Approved	Variation	Complies
No. of Units	95 Units (187 beds) (including 1 Managers Residence) Stage 1: 48 Stage 2: 48	95 (including 1 Managers Residence)	NIL	-
Composition of Units	16 x 1 bed = 16 66 x 2 bed = 132 13 x 3 bed = 39 Total Bed = 187	17 x 1 Bed = 17 66 x 2 Bed = 132 12 x 3 bed = 36 Total Bed = 185	+ 2 beds	Yes *See parking calc. based on Clause

					108(2)(k) non discretionary development standards - SEPP Housing 2021
Residential GFA	11,447.2sqm		11491.6sqm	< 44.4sqm	-
	Stage 1: 6329sqm	Stage 2: 5118.1sqm			
Total FSR max. permitted 0.5:1 (SEPP Housing) + 15% bonus pursuant to Cl. 87(2)(b)(i) 1.8:1(TCCLEP2012) +15% bonus per above = 2.07:1	2.3:1		2.3:1	NIL	No however already approved. Proposal results in minor reduction of GFA compared to that approved.
	Stage 1: 1.3:1	Stage 2: 2.3:1 (including Stage 1)			
Site coverage	59.5% (2,918sqm)		59%	<1%	Yes
	Stage 1: 1778sqm (36%)	Stage 2: 2918sqm (60%)			
Maximum building height 9.5m (excl. service areas) and 11.5m including service areas) (SEPP Housing) 22m (TCCLEP2012)	RL 25.9m AHD or 23.8m HOB (observed at Eastern elevation of Building B)		RL24.7m AHD or 22.6m HOB (observed at Eastern elevation of Building B)	>1.2m	No max. permitted under SEPP - 11.5m 22m TCCLEP2012
	Stage 1: RL 25.9m AHD	Stage 2: RL 21.2m AHD			
Deep Soil Zone (DSZ) (15%) (Cl. 108(2)(f) SEPP (Housing))	735sqm (15%)		771sqm	<36sqm	Yes
	Stage 1: 2043sqm (42%)	Stage 2: 735sqm (15%) (includes Stage 1)			
Landscaping (30%) (Cl. 108(2)(d)(ii) SEPP Housing) 2021	1627sqm (33%)		1637sqm (33.5%)	<10sqm	Yes
	Stage 1: 2801sqm (54%)	Stage 2: 1627sqm (33%)			
*Carparking (93.5 rqd based on 0.5/bed) (Cl. 108(2)(k) SEPP (Housing) 2021	96 spaces		98 spaces	<2 spaces	Yes
	Stage 1: 92 beds therefore 47 spaces rqd	Stage 2: 187 beds therefore 93.5 spaces rqd			

	54 provided	96 provided (includes Stage 1)		
Solar access 70% receive 2hr 9am -3pm during winter solstice in living rooms and POS (Pursuant to Cl 108(2)(g) SEPP Housing 2021)	71% (reliant on skylights to achieve this outcome)	70% (reliant on skylights to achieve this outcome)	-	Yes
Private Open Space (POS) Ground floor dwelling – 2m balcony 1 bed 6sqm or 2+ 10sqm and continuous accessible path. First floor + dwellings – 2m balcony and 1 bed 6sqm or 2+ 10sqm	Min. provided for all units pursuant to Clause 108(2)(h) of SEPP housing.	15sqm conditioned as deferred commencement for U107 (GF) and min. provided per Clause 108(2)(h) of SEPP Housing.	-	Yes
Clause 4.6 Requests	Not required	Yes	-	Yes

*See Table 5 later in this report for more detailed assessment against SEPP (Housing) 2021 and Section A2 TDCP discussion for further explanation of parking requirements

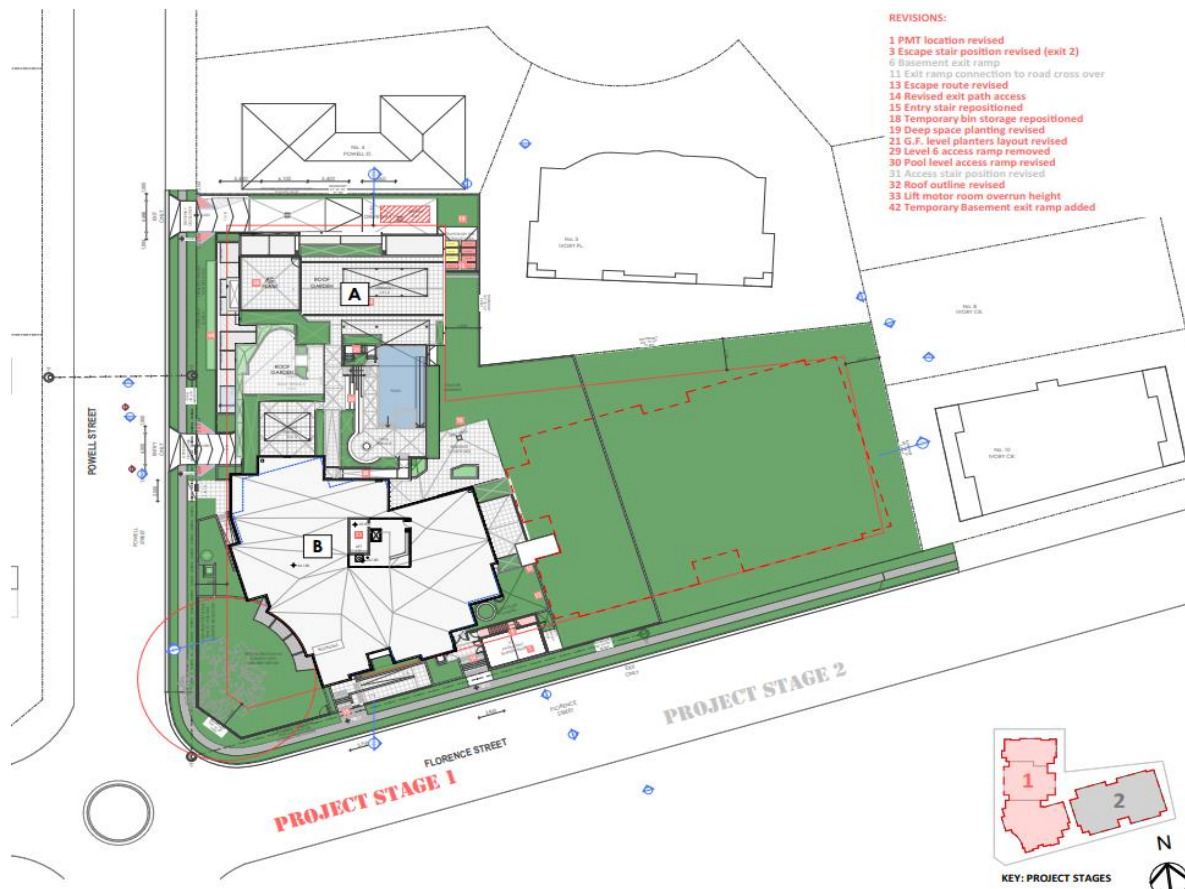


Figure 7A: Proposed amended site plan (with staging detail – Stage 1)

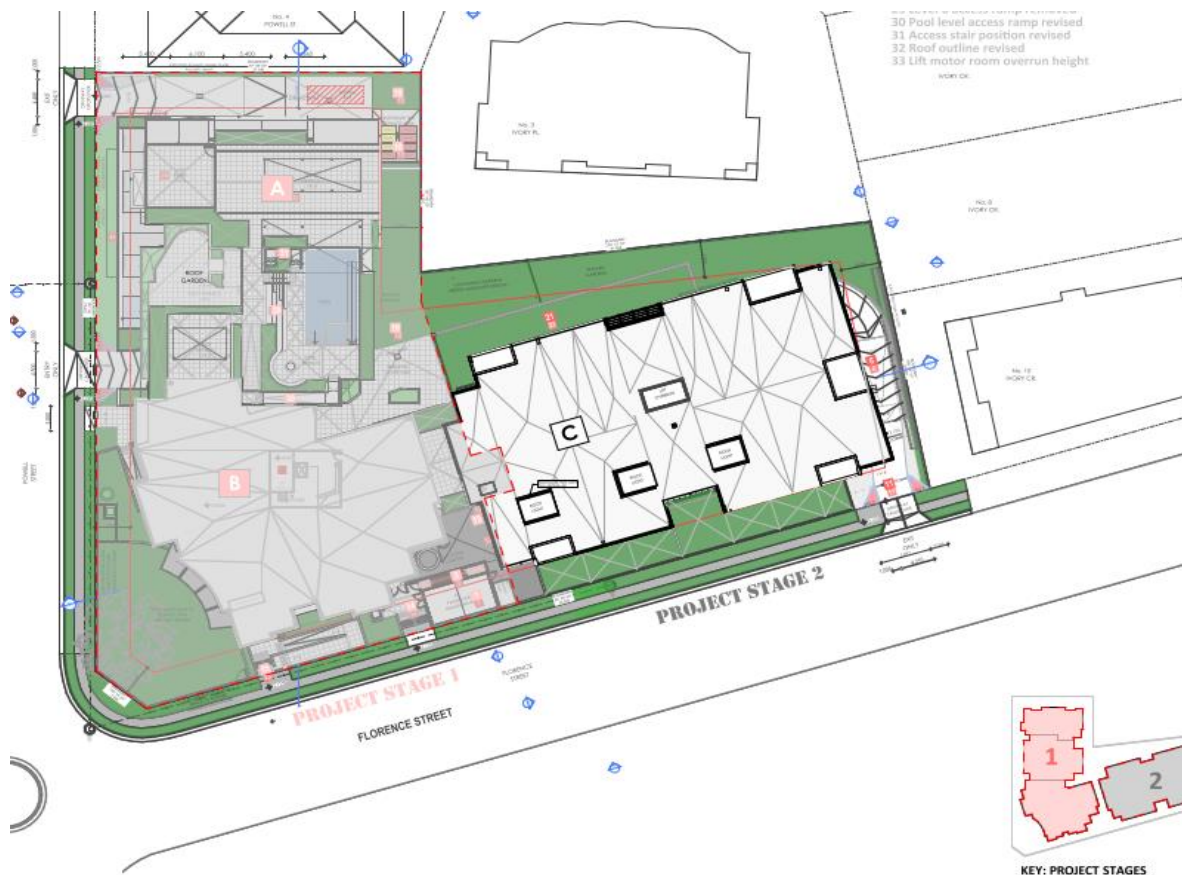


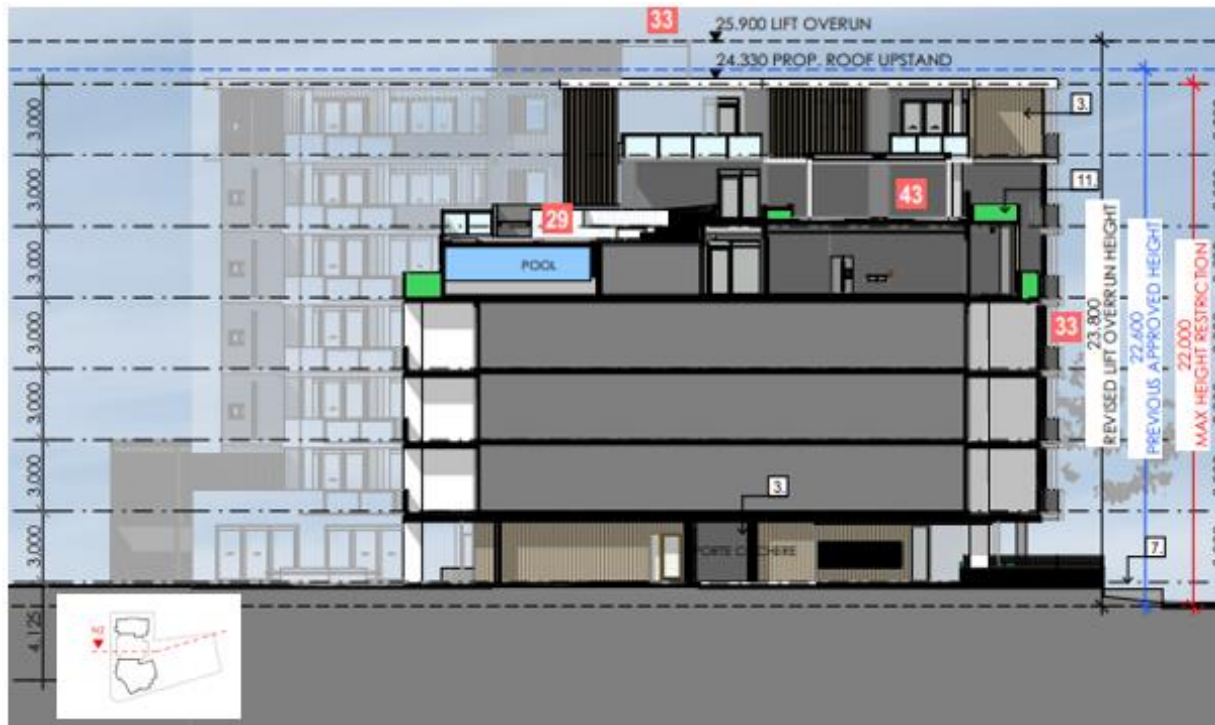
Figure 7B: Proposed amended site plan (with staging detail – Stages 1 and 2)



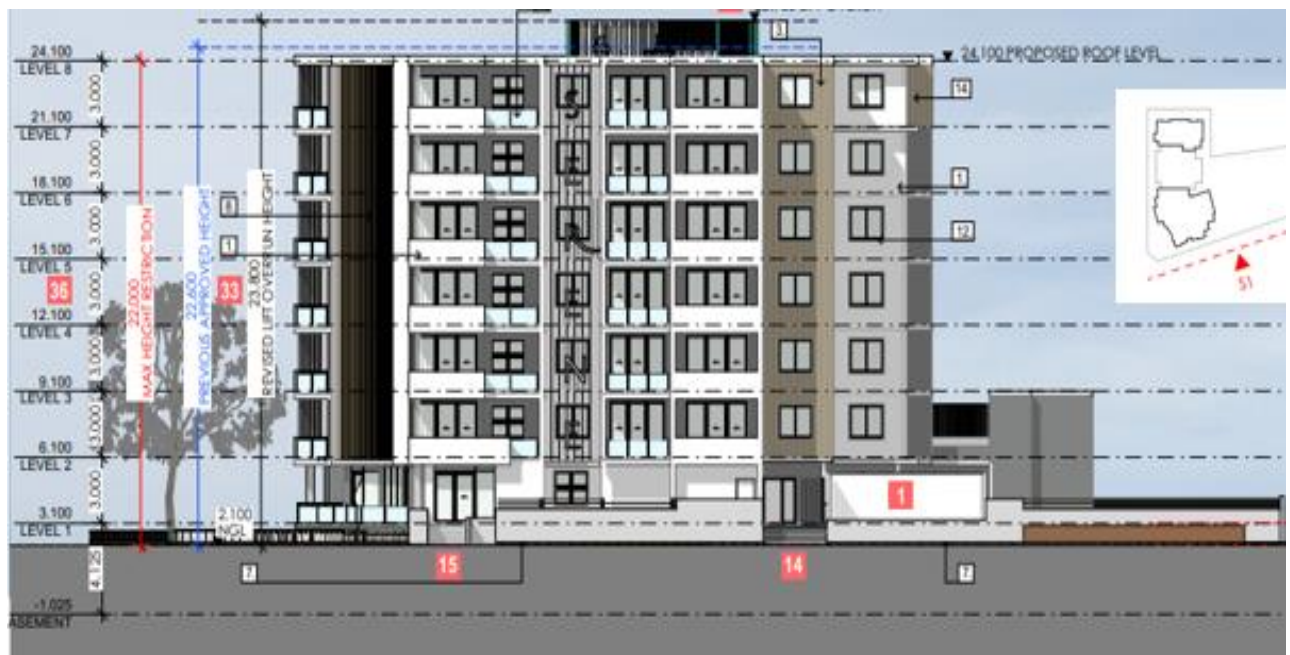
Figure 8: DA21/0979 approved site plan

The series of images below provide a comparative study of the proposed elevations for Building B (proposed to be constructed in Stage 1), which contains exceedance for lift overrun vs approved elevation of Building B (noting that the maximum exceedance is observed at the Eastern elevation).

North Elevation



South Elevation



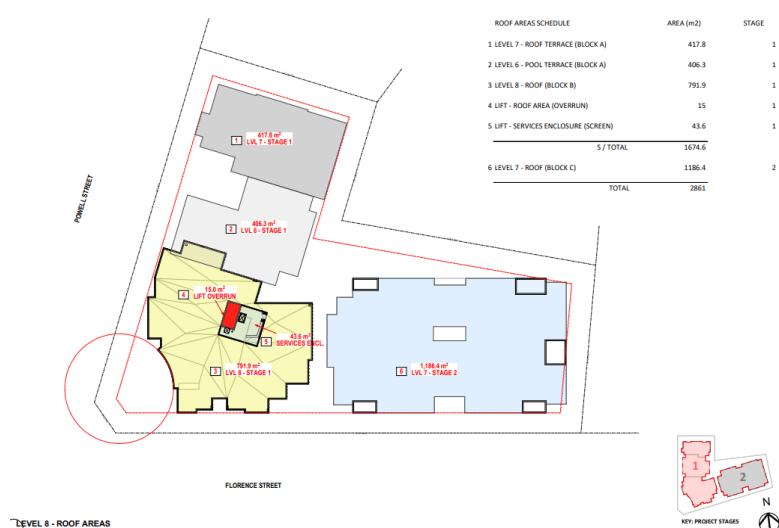
West Elevation



East Elevation



Proposed roof plan:



2.2 Background

DA21/0949 for Seniors Housing comprising of 110 independent living units including 1 manager's residence, swimming pool, tree removal and lot consolidation was received by Council on 2 December 2021.

On 22 August 2022, the DA was amended in response to Council's RFI. The amendments were:

- reduced building height from 8 storeys to 6;
- reduced number of units from 110 to 95 (including manager's residence);
- reduction in FSR from 2.9:1 to 2.3:1 (although Council calculates the amended FSR to be 2.36:1);
- increased landscaping from 26.7% to 34.8%;
- increased deep soil zones from 14.8% to 15.2%;
- increase in car parking spaces from 94 to 97;
- change to unit mix in response to reduced height and;
- retention of the Lemon Scented Gum tree in the southwestern corner of the site, dated 17 August 2022 accepted by Council under Section 38 of the Environmental Planning and Assessment Regulation 2021 ('EP&A Regulation') on 22 August 2022.

On 15 February 2023 a Clause 4.6 variation was received by Council. The submitted Clause 4.6 sought to vary the development standards for prescribed maximum building height and maximum permitted FSR pursuant to TCCLEP2012.

Council officers' assessment of the DA was submitted to the Panel for the NRPP panel meeting on 19 April 2023. In response to the submitted report, the Panel requested clarification in relation to the submitted Clause 4.6 request to vary development standards and the lack of justification to contravene non-discretionary development standards under the Housing SEPP. In particular, whilst the Clause 4.6 request to vary development standards under TCCLEP2012 in relation to the 22m building height, it was highlighted that Section 108(2)(a) [of the SEPP] denotes a maximum permissible building height of 9.5m, excluding servicing equipment on the roof of a building, and 108(2)(c) denotes the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. The original proposal sought a building height of 22.6m and a FSR of 2.3:1, neither of which comply with the development standard. Whilst the NRPP assessment report acknowledged the contravention, the report stated:

"In accordance with s4.15(3) of the EP&A Act, maximum building height and maximum FSR prescribed under the TCCLEP 2012 are applied where the proposal does not meet the nondiscretionary development standard. As such, s108(2)(a) and (c) does not apply."

The Panel advised that they are of the opinion that the discretion of the consent authority is not limited where the SEPP's non-discretionary development standards are exceeded, the Act s.4.15(3)(b) in fact requires the cl.4.6 variation mechanism in the TCCLEP2012 to be used in relation to the non-compliance with the SEPP's non-discretionary development standards.

Subsequent to this request, it was confirmed by Council and its legal representatives that caselaw in respect of SEPP non-discretionary development standards has established that Clause 4.6 request is required if the application does not comply with the standard and that it is not the case that the TCCLEP2012 comes to life and apply instead of the SEPP provisions.

Based on this advice, the proponent was advised consent could not be granted for the proposed contravention of height (pursuant to Clause 108(2) of the Housing SEPP) without a written request to vary the standard pursuant to Clause 4.6 of TCCLEP2012.

A supplementary request to vary the standard was submitted to Council on 19 April 2023, in advance of the meeting on 19 April 2023.

On 20 April 2023, a supplementary assessment report was prepared to specifically outline Councils assessment of the submitted Clause 4.6 request to vary Clause 108(2) (see extract below in relation to the extent of variation to development standards under this Clause).

Development Control	Non Discretionary Development Standard	Proposed Development/ Comment	Council officer note
Clause 108(2)(a)	No building has a height of more than 9.5m, excluding servicing equipment on the roof of a building	22.6m above existing	This represents a variation of 13.1m , being 137.9% .
Clause 108(2)(b)	Servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m— (iii) does not result in the building having a height of more than 11.5m,	Servicing equipment extends past 11.5m above existing ground and to 22.6m	The SEPP does not explicitly define servicing equipment. Other than the lift overrun, no other servicing equipment has been identified on the plans. The clause 4.6 variation submitted by the applicant includes the lift overrun as part of the building height (22.6m) and as such this development standard would be irrelevant. Nevertheless, the applicant has submitted a request to variation the 11.5m height standard by 11.1m , or 96.5%.
Clause 108(2)(c)	The density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less	11,498.8m ² of gross floor area at 2.3:1 FSR	This represents a variation of 1.8:1 , being 360% .
Clause 108(2)(g)*	At least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces	The Council indicates that 65 of the 95 units proposed satisfy the provision, or 68.4% of units.	The applicant's submission on compliance is noted. Should roof lights not be determined to satisfy requirement for solar access, this represents a shortfall of 1.6% - 68.4% of units compliant where SEPP requires 70% compliance.
* The Applicant strongly asserts that the development is compliant with respect to this provision. Conclusions drawn by reference to guidance provided by the Apartment Design Guidelines, is with respect, not valid or relevant to the provisions of the Housing SEPP, the purpose of which is, among other things, to provide specific standards and guidance for Housing for Seniors and People with a Disability, a form of development that is distinguished from the planning regime applicable to residential apartment development as defined under SEPP 65 - Design Quality of Residential Apartment Development.			

Council, in its supplementary NRPP assessment report, concludes that the proponent's Clause 4.6 request is considered to be acceptable, and it is agreed that compliance with the building height and FSR development standards (which are significantly lower than the development standards in the TCCLEP) would be unreasonable. On these grounds, the proponent's Clause 4.6 request is considered to be acceptable to meet the minimum requirements set out in parts (3) and (4).

On 4 May 2023, the panel issued an approval determination and statement of reasons. It is noted that the recommended conditions for the consent included deferred commencement matters for the following:

- a. Amended plans are to be provided to Council and approved by Council's General Manager or delegate, showing compliance with section 8(b)(i) and (ii), Part 1, Schedule 4 of SEPP(Housing) 2021 for unit types K-1, K-3, K-4 and K-5.
- b. Amended plans are to be provided to Council and approved by Council's General Manager or delegate, showing compliance with section 19(c), Part 2, Schedule 4 of SEPP(Housing) 2021 for unit types C-1 and C-2.
- c. Amended plans are to be provided to Council and approved by Council's General Manager or delegate, showing compliance with section 108(2)(h)(i), Division 7 of SEPP(Housing) 2021 for Unit 107 on the ground floor of the development.
- d. Amended plans are to be provided to Council and approved by Council's General Manager or delegate, showing widened rooflights over Units 606, 607 and 608 of Building C, as well as a building section showing direct solar access to the living room and private open space of Units 606, 607 and 608 in accordance with section 108(2)(g), Division 7 of SEPP(Housing) 2021.

On 13 February 2024, upon receipt of updated plans on 23 January 2024, Council issued advice that the deferred matters had been satisfied and that the consent operates from 13 February 2024.

On 16 February 2024, the subject Section 4.55(2) application was received. The application was lodged under the assumption that it could be determined by Council. However, having regard to Section 3 (Functions of Panel) of Sydney District & Regional Planning Panels Operational Procedures, which states that Section 4.55(2) applications for regionally significant development that comprise of a contravention to a development standard imposed by an EPI by more than 10% are to be determined by the Panel.

In this regard, the proposed modification seeks to further alter the height, which, pursuant to Clause 108(2)(a) of the Housing SEPP, is limited to 9.5m. Given the contravention is greater than 10% of this standard, albeit a contravention already approved, the proposed modification seeks to further increase the variation and is to be determined by the planning panel.

The original notification letter and exhibition of the DA failed to reference the consent authority as being NRPP (given the manner in which the application was made) and therefore the modification application was re-exhibited for 28 days from 8 May 2024 – 5 June 2024.

During the time of the original notification period and the renotification (extension) to address the correct consent authority for this modification application, two (2) submissions were received.

On 8 July 2024, a preliminary assessment of the subject modification application was undertaken and a formal request for information ("RFI") was issued on 10 July 2024. On 12 August an RFI

NRPP Briefing/Determination Report: DA21/0949.01 – Section 4.55(2) modification to Seniors Living for demolition of existing dwellings and construction of 95 units, swimming pool, signage, lot consolidation and tree removal at 6-12 Powell Street and 33-37 Florence Street, TWEED HEADS [8 October 2024]

response was received which sought to further amend the Section 4.55(2) application in an effort to respond to the RFI matters. A suite of additional information was also received at the same time. A summary of the RFI matters, the proponent's response and updated assessment comments are provided in **Table 2** below:

Table 2: RFI issues

Issue	Proponent's response	Assessment Comments
The submitted modification report states that a revised certificate is not necessitated due to the thermal comfort remaining unchanged as originally approved. Whilst this may be the case, the revised unit numbering may fail to correlate with the existing BASIX Certificate and the scheduling of units in that Certificate. On these grounds, an updated BASIX Certificate may be required.	Unit numbers may have changed but this does not necessitate a new BASIX under any Environmental Planning Instrument/s. The modification is considered BASIX affected development but as the thermal comfort remains the same, an update BASIX is not considered necessary. For convenience, a sheet with the revised units number to those originally approved in DA21/0949 has been provided.	It is accepted that the modifications can be dealt with under the existing BASIX Certificate however the revised unit numbers to those originally approved has been included in the stamped approved plans to provide coherency between the original BASIX Certificate and the revised scheduling of units under the modification application.
The revised unit number schedule submitted with the DA includes proposed Unit No 417 twice against Unit 402 and Unit 404. Please update the unit schedule	Amended Plans have been received to address other items raised in Councils RFI. As part of the amendments, Sheet 20528 Stage 1 and Stage 2 plans have been amended to reflect the correct Unit number schedule.	NFAR
Having regard to the scope of changes to the building, please update the submitted site plan to provide an overlay of existing approved siting of the building as compared to that proposed. It is expected it will better articulate the approved setbacks compared to the proposed setbacks.	The previous approved building envelope has been included on the Site Plan in the amended plan package as requested.	The siting and location of the building is considered to be generally consistent with the approved building footprint. Where encroachments to the building setbacks have been approved, the provision of acoustic and visual privacy has been protected by way of privacy screens, consistent with the original approved plans (see assessment comments pursuant to Design Principles in Housing SEPP later in this report).
An updated Construction Noise Management Plan prepared by a suitably qualified acoustic consultant. The consultant shall consider Construction Noise Management Plan (CRG Acoustics dated 25 July 2022, crgref: 21106 Construction Noise Plan rev .1) and relevant NSW EPA guidelines, and address the staging and modifications proposed and the impacts of the Stage 2 works on the future occupants of Stage 1 and the impact of Stage 1 development on the existing dwelling at No 37 Florence Street, seeking to be	The amended modification application clarifies that the proposed Stage 1 works will result in demolition of existing dwellings on the subject site and therefore does not pose the extent of impact that give rise to the RFI for updated Construction Noise Management Plan (CNMP). Notwithstanding, A revised CMP has been prepared appreciating the change in staging and minor design change.	This document was referred to Councils Environmental Health officer whom advised that The CNMP refers to methods to reduce noise conflict (see extract from Section 6.2 of the CNMP below). These include the option of temporary acoustic barriers. It is important to note that such barriers have recently been used at the Gemlife Tweed Waters site in Tweed Heads South, and no manufactured home construction noise complaints have been made to Council. Some noise from construction sites is inevitable. It is

<p>retained for Stage 1 and demolished as part of Stage 2.</p> <p>Further, and in addition the Construction Noise Management Plan, a Construction Management plan is to be prepared to detail the proposed staging with particular reference to the staging of the basement construction noting that a recent meeting with the proponent confirmed that part of the basement (such as piling) would occur in Stage 1 for the entire basement, and the excavation of the basement below Building C would occur in Stage 2. However, the application presents no part of the basement is to be constructed for Building C in Stage 1. This aspect of the proposal is to be clarified.</p>	<p>The updated CNMP states that at the time of the production of this management plan there is a draft Construction Noise Guideline which is yet to be finalised; therefore, the existing interim guideline has been applied. Further, the construction contract is yet to be awarded, therefore, we have applied an assumed method of works, equipment types and equipment locations. Therefore, <u>this document should be reviewed prior to construction works being undertaken.</u></p> <p>With respect to a Construction Management Plan, this was not required nor provided as part of the original application. Further a relevant condition (condition 22) in DA21/0949 has specifically requested a Construction Environmental Management Plan (CEMP) to be submitted and approved by the Certifier (Council or Private Certifier). The CEMP is to be prepared to include relevant matters are noted in the condition and comply with Guideline for the Preparation of Environmental Management Plans (DIRNR, 2004). It is noted this condition will be complied with prior to the issue of the Construction Certificate providing sufficient assurance that this report will be provided prior to works occurring.</p>	<p>considered that the CNMP refers to feasible and reasonable work practices to minimise construction noise impacts.</p> <p>No objections to the CNMP however given the notations underlined in the adjacent column, as it relates to the CNMP needing to be reviewed prior to works being undertaken, it is considered that existing Condition 22 be retained to adequately address the CNMP recommendation for the CNMP to be reviewed prior to construction works being undertaken. It is recommended that Condition 98 be amended to reflect the updated plan. Condition 62 on the consent has been reviewed to ensure it is consistent with the hours of work nominated in the updated CNMP, which it is and therefore no changes to this Condition is required.</p>
<p>An updated Noise Impact Assessment Report prepared by a suitably qualified acoustic consultant. The consultant shall consider Noise Impact Assessment Report (CRG Acoustics dated 26 July 2022, cgrref: 21106 report rev. 1) and relevant NSW EPA guidelines and address the staging and modifications proposed including final mechanical plant selection and plant locations.</p>	<p>An updated Noise Impact Assessment report has been prepared by CRG Acoustics to consider the revised changes and the change in staging.</p> <p>In this regard, the outcome of the noise remains the same so does the extent of impact exposed to surrounding noise receivers, nevertheless the report has been revised as requested.</p> <p>Further with respect to the need to consider the impact of final mechanical plant and locations, it is noted that this exercise</p>	<p>This document was referred to Councils Environmental Health officer whom advised that no objections are raised subject to amendment to conditions – see further discussion under “likely impacts”.</p>

	requires detailed design and can only be done at Construction Certificate (CC) stage. This level of detail wasn't required in the original DA and furthermore condition 37 was included to address this information prior to the issue of the CC. Finally, correspondence with Tweed Shire Council was undertaken on 31 July 2024 whereby Council confirmed in this instance together with the presence of Condition 37, no mechanical plant assessment is required.	
The Stormwater Management Report is to be updated to address water quality requirements for the basement car parking area. Development Design Specification D7 provides the following requirements for pollutants generated from basement areas.	A revised Stormwater Management Plan has been prepared and submitted with the RFI response. It addresses water quality requirements via the provision of ground inlet pits on site fitted with 'stormsacks' for removal of large pollutants and Atlan Vault 6sqm to treat the road/driveway and podium level ground areas. Notations were provided on the plan advising that SWQ quality devices would be provided for the basement carpark via combined sediment and oil storage tanks in accordance with TSC D7 specifications.	This document was referred to Councils Stormwater and Flooding Engineer whom advised that whilst the requested detail has not been provided, conditions of consent are recommended to require the detail as part of a Section 68 application to Council. In order to ensure that the imposition of updated conditions to reflect this arrangement will not impact dewatering management via the deeper excavation, Councils Stormwater Engineer has advised that the tank will be above ground and therefore will not impact dewatering – see "key issues" for further discussion regarding the assessment outcomes for the SWQ devices.
An updated Dewatering Management Plan prepared by a suitably qualified environmental consultant. The consultant shall consider the Dewatering Management Plan (HMC dated September 2021, Report: HMC2021.179.02), staging of the development, Council's Dewatering in the Tweed Guideline, and the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZG 2018).	An updated Dewatering Management Plan has been prepared by HMC Environmental. The revised Dewatering Management Plan appreciates the changes to the stages and the minor alterations to the design sought. The total extent of excavation remains generally as originally approved so will the total extent of dewatering and associated impacts. Rather the timing of the dewatering and the resulting impacts is expected to change as the staging is sought to be amended. The revised staging proposes separate basement for Stage 1 and 2 and so the impact is distributed over the stages and to service each building.	This document was reviewed by Council Environmental Health officers whom raised no objection subject to conditions requiring an updated plan to reflect the levels on the amended elevation plan - see "likely impacts" for further discussion on this issue. The document was also referred to Water NSW and advise was returned on 1 October 2024 stating that no objections are raised subject to retention of existing GTA's on the consent.

<p>The submitted Waste Management Plan fails to calculate the quantity of operational waste based on the waste bin sizes provided by Council.</p> <p>The plan is to be updated to reflect provision for kerbside waste collection. That being a nominated space for bins to be presented at kerbside. Service vehicles would need to be able to service the bins safely.</p>	<p>A revised Waste Management Plan has been prepared to individually address these items. The amended architectural plans also include the changes in the revised Waste Management Plan.</p>	<p>The revised Waste Management Plan has been assessed by Councils Resource Recovery Co-ordinator whom advised appropriate provisions have been made to provide operational waste collection from the kerb, which is consistent with the original approval. The location and storage of bins is adequately provided for in the basement via a chute to be provided on each level, also consistent with original approval. The amended Waste Management Plan is adequate for both construction and operational waste management.</p>
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As detailed in the background section of this report, the Section 4.55(2) modification application development application was lodged on **16 February 2024**.

A chronology of the modification application since lodgement is outlined in Table 3 below:

Table 3: Chronology of the modification application

Date	Event
22 April 2024	Modification application referred to external agencies
8 May 2024	Exhibition of the application
03 July 2024	All external and internal referral comments received
05 July 2024	Site Inspection
8 July 2024	Request for information issued
20 August 2024	Response received from proponent
25 September 2024	Final outstanding internal referral comments on amended application received
8 October 2024	Draft conditions provided to the proponent
8 October 2024	Draft report and conditions provided to NRPP
23 October 2024	Matter reported to NRPP for briefing and determination

2.3 Site History

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

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

3. STATUTORY CONSIDERATIONS

When determining a modification development application, the consent authority must take into consideration the matters outlined in Section 4.55 and Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

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

These matters are further considered below.

It is noted that the proposal is not considered to be:

- Designated Development (s4.10) and;
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided.

The proposal is however:

- Integrated development pursuant to Water Management Act 2000

Integrated Development

The original application was nominated as Integrated Development in relation to the Water Management Act 2000. The matter was referred to NSW Water seeking their respective General Terms of Approval (GTAs).

The subject modification application was subsequently referred to Water NSW and advice was provided on two occasions (15 May 2024 and iterated again on 1 October 2024, based on amended plans) advising that General Terms of Approval (IDAS1143480) issued on 6 October 2022 are still current given that there are no changes to the water supply work to take groundwater other than the proponent requiring two separate approvals to reflect the two separate basement constructions in each stage. On these grounds, no objection was raised to the proposed modification.

External Referral Agency

Essential Energy

The proposed amendment includes the relocation of pad mounted substation from east to west of the site. The amended proposal was referred to Essential Energy pursuant to Clause 2.48 of SEPP (Transport and Infrastructure) 2021. Comments were received on 22 May 2024 with no particular comments provided. General conditions recommended however those which were recommended were not specific to the nature of the proposal. For absolute clarity, this issue was queried with Essential Energy and it was confirmed that all relevant conditions (including those that relate to the specifics of the proposal) should be included in the consent. Based on this clarification, the existing conditions which deal with lot consolidation etc have been retained on the consent (see Condition 20).

Water NSW

The proposed amendments include an updated dewatering management plan to reflect the revised staging. Whilst the proponent has advised that there is essentially no change to the plan, except wording to reflect the revised staging. Comments in the RFI response package indicate otherwise. Namely, the revised staging arrangements will result in separate basement for Stage 1 and 2 and so the impact is distributed over the stages and to service each building.

Water NSW provided their comments on the original amended application with no changes to the GTA's required.

On 19 August 2024 the amended Section 4.55(2) application was re-referral to Water NSW and on 1 October 2024, Water NSW advised that no objections are raised to the amended Section 4.55(2) application. It was requested that the existing General Terms of Approval on the consent remain unchanged.

Internal Referral departments

Officer	Comments	Resolved
Flooding and Stormwater	The approved level 4 PMF refuge has been relocated to Level 5 and slightly increased and reconfigured. A bathroom is provided	Yes

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	in the roof terrace area and is accessible. The reconfigured PMF refuge area is acceptable. SWQ devices detailed for ground level, driveway and podium and notations made for each basement carpark (via at grade tank). SWM & SWQ is satisfactory subject to recommended update to conditions.	
Sustainability and Environment Unit	No objection having regard to existing conditions which will remain unchanged.	Yes
Traffic Unit	Access from Powell St through Porte cochere to basement via traffic signal system. Egress from northern driveway. Stage 2 traffic signals removed and access ramp will operate one way with egress from basement to Florence St. Waste collection and loading to occur on Powell Street. The proposed design in this application has been prepared to comply with the previous version of Housing SEPP 2021 and it now well exceeds the requirements of the revised Housing SEPP 2021, given the proposed design achieves 91 spaces that comply with AS2890.6 or SEPP (3.8m wide) out of a total of 96 spaces. No objection subject to recommended conditions regarding parking arrangements (no more than 2 space are to be reserved for staff).	Yes
Environmental Health Unit	No objection to amendments subject to amendments to existing conditions (regarding CNMP and NIA) and new conditions of consent to require updated dewatering management plan to address the excavation levels provided on the architectural plans.	Yes
Development Engineering Unit	No objection providing Councils Traffic Engineer is satisfied with revised access/parking arrangements as a result of proposed staging	Yes
Water and Wastewater Unit	No objection to proposed modification subject to amended conditions of consent to reflect the new staging	Yes
Building Unit	No objection subject to existing conditions	Yes
Waste Unit	Amended Waste Management Plan assessed, and no objections raised	Yes

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

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

(a) Section 4.55(2) Modifications of consent - generally

Section 4.55(2) of the Act provides:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

(b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

(c) *it has notified the application in accordance with:*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

(d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1) and (1A) do not apply to such a modification.*

Pursuant to Section 4.55(2)(a) the consent authority must be satisfied that the development proposed in the modification application is essentially or materially the same as the currently approved development. It is important to note that to satisfy Section 4.55(2)(a), it is a question of fact and not a merit based assessment. The merits based assessment is undertaken under Section 4.15 of the Act and is addressed later in this report.

Having regard to 'substantially the same' test, some caselaw is relied upon to determine the nature in which a modification application is to be considered. Firstly, in establishing the function and nature of modification applications generally, *North Sydney Council v Michael Standley & Associates Pty Limited [1998]* is drawn upon to establish that a modification provision as "beneficial and facultative". It is designed to assist the modification process rather than to act as an impediment to it; *"It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision"*. Therefore, Councils need to exercise caution in demanding that a full DA be lodged – the modification power is there for a reason – namely, to avoid the full DA process that is always otherwise available.

A proposal can only be regarded a modification if it involves "alteration without radical transformation" (*Sydney City Council v Ilenace Pty Ltd [1984]*) and therefore if the proposed changes result in a "radical transformation", they will need to be dealt with as a new development application, rather than a modification application.

If the proposed modification is doing more than simply correcting minor errors (which is the case for this application), the consent authority must also be "satisfied" that the modified development will be "substantially the same development" as authorised by the original development consent. This means that, among other things, a comparative study of the proposed modified development against the development as it was originally approved is to be undertaken.

In a 1999 case, *Moto Projects (No 2) Pty Ltd v North Sydney Council*, the Land and Environment Court gave some additional guidance that any comparison involves consideration of quantitative and qualitative elements of the development. In practical terms then, these principles mean that you should:

- Consider the numerical differences in all key aspects of the development;
- Consider non-numerical factors (e.g. in visual impact, traffic impacts or changed land uses);
- Consider any changes relating to a material and essential feature of the approved development. These decisions may not be black-and-white and will often involve some degree of subjectivity. Furthermore, while there are a wealth of cases applying the "substantially the same" test each case is only useful for illustrating how these rules have

been applied. As each case turns on its own facts, consent authorities and courts are not necessarily obliged to take the same approach even when confronted with apparently similar factual situations.

In accordance with the *Moto Projects (No 2) Pty Ltd v North Sydney Council* caselaw, a comparative study is contained in Appendix A, which delineates the proposed individual modification and the change as compared to that already approved.

Overall, in order to consider the qualitative and quantitative elements of the development in the context of the original development, the following is surmised:

The original development incorporates demolition of six (6) dwellings, construction of 3 Residential Flat Buildings across the site for use as Seniors Housing with the provision of 94 independent living units, 1 managers unit, staff office, 3 residents lounge, 1 recreational room, an inground swimming pool, signage, lot consolidation and tree removal. The development was approved to be constructed in three (3) stages. The approved development included a maximum building height of 22.6m and FSR of 2.3:1, both these numerical aspects of the approved development contravened development standards in relation to maximum permitted height and FSR.

The proposed modified development incorporates the same land use (Seniors Housing), number of residential flat buildings and number of storeys. The number of units being delivered also remains the same. The ancillary development remains the same and lot consolidation is also sought. The location, bulk and scale of each building remains unchanged except for an additional variation to the building height for Building B. The variation comprises of 1.2m for 15sqm in the central portion of the building, associated with the lift overrun.

The proposed modification seeks to alter the staging of the development to enable Building A and B to be constructed at Stage 1 and Building C to be constructed at Stage 2. The demolition plan makes provision for all existing dwellings to be demolished as part of Stage 1 works. Whilst not explicitly outlined in the DA, the lot consolidation would likely be reflective of the amended staging. The number of parking space, the FSR, deep soil zones and landscape areas remain largely unchanged as a result of the proposed modification.

The proposed modification will seek an alteration to access for the site given that Stage 2 egress to Florence Street is not available during Stage 1 of the development. As such, in/out access is proposed via Powell Street via two separate single crossovers. The singular vehicular ingress to the development will be provided via a one lane, one way driveway crossover from Powell Street from the northwestern boundary of the development site which will provide access to the ground level parking and the basement. Egress will be provided via the northwestern driveway/crossover to Powell Street, per **Figure 9** below:



Figure 9: Proposed Stage 1 and Stage 2 vehicular movement

The proponent provided the following comments in support of the modified development being substantially the same development as that originally consented to:

- *The land uses and number of units approved under Development Consent 21/0949 remain unaltered by the modification design;*
- *The revised development retains the bulk and scale of the development including the visual appearance of the external facades viewed from the public domain.*
- *The additional building height is centrally located and relevant to the lift overrun only. The additional building height does not change the architectural merit and appearance of the building, in fact it is not visible from ground level of either Powell or Florence Streets;*
- *No additional non-compliances arise with the relevant planning benchmarks. The modification does not introduce any additional variations to relevant development controls;*
- *When considered at a general level, there is no radical transformation of the proposal; and*
- *The proposed amended design maintains the character as approved originally through consistent setbacks, landscaping/ deep soil zones, massing and use of materials.*

Council officers concur that the proposed modification is 'substantially the same', as it is quantitatively and qualitatively the same development by virtue of the modified development fundamentally retaining the same characteristics and outcomes.

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Resilience & Hazards) 2022*
- *State Environmental Planning Policy (Sustainability Buildings) 2022 and;*
- *Tweed City Centre Local Environmental Plan 2012*

A summary of the key matters for consideration arising from the abovementioned State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of applicable Environmental Planning Instruments

EPI	Matters originally	Original DA Comply (Y/N)	Modified proposal Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas Chapter 4: Koala Habitat Protection The proposed modification does not include any additional tree removal.	Y Y	Y Y
State Environmental Planning Policy (Sustainability Buildings) 2022	Chapter 2: Standards for residential development – BASIX The existing BASIX certification remains relevant to the proposal and therefore has been included in the revised set of proposed approved plans. For absolute clarify, a schedule of units approved vs proposed has been provided by the proponent to assist with the translation of existing BASIX commitments in the revised Unit scheduling. Existing conditions of consent are included to address BASIX requirements and will remain unchanged as a result of the proposal.	Y	Y
State Environmental Planning Policy (Housing) 2021	Chapter 3: Diverse Housing Housing for Seniors and People with Disability <ul style="list-style-type: none"> • Clause 84 Development standards – general • Clause 85 Development standards for hostels and independent living units • Clause 87 Additional floor space ratios • Clause 93 Location and access to facilities and services – independent living units • Clause 95 Water and sewer • Clause 97 Design of in-fill self-care housing • Clause 98 Design of seniors housing • Clause 108 Non-discretionary development standards for independent living units – the Act, s4.15 Modified proposed adequately performs against all relevant Clauses and poses no additional variations to development standards beyond that already approved (including FSR) <u>except for the provision of additional height</u> pursuant to Clause 84(2)(c)(ii) – see further discussion later in this report.	N N Y Y Y Y Y	N N Y Y Y Y Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declared the development as regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises a capital investment value of more than \$30 million. This aspect of the proposal remains unchanged as a result of the modification.	Y	Y

SEPP (Resilience & Hazards)	Chapter 2: Coastal Management		
	<ul style="list-style-type: none"> Section 2.10 (1) & (2) - Development on land within the coastal environment area. 	Y	Y
	<ul style="list-style-type: none"> Section 2.11(1) - Development on land within the coastal use area. 	Y	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 4: Remediation of Land		
	<ul style="list-style-type: none"> Section 4.6 - Contamination and remediation have been addressed in the original DA. No changes to the site as a result of the proposed modification. 	Y	Y
	Chapter 2: Infrastructure		
	<ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposed amendment includes the relocation of pad mounted substation from east to west of the site. The amended proposal was referred to Essential Energy and comments received on 22 May 2024. No concerns raised and general conditions recommended (the recommended general conditions already exist on the consent and therefore no further action required in this regard). 	Y	Y
	<ul style="list-style-type: none"> Section 2.121(4) – No change to number of units and reduced GFA therefore referral to Transport NSW not warranted. 	N/A	N/A
Tweed City Centre Local Environmental Plan 2012	<ul style="list-style-type: none"> Clause 1.2 – Aims of the Plan 	Y	Y
	<ul style="list-style-type: none"> Clause 2.3 – Zone objectives and Land Use Table 	Y	Y
	<ul style="list-style-type: none"> Clause 4.3 – Height of buildings 	N	N
	<ul style="list-style-type: none"> Clause 4.4- Floor Space Ratio 	N	N
	<ul style="list-style-type: none"> Clause 4.6 – Exceptions to development standards 	Y	N/A*
	<ul style="list-style-type: none"> Clause 5.21 – Flood Planning 	Y	Y
	<ul style="list-style-type: none"> Clause 6.1- Acid Sulfate Soils 	Y	Y
	<ul style="list-style-type: none"> Clause 6.3 – Floodplain risk management 	Y	Y
	<ul style="list-style-type: none"> Clause 6.6- Min. building street frontage 	Y	Y
	<ul style="list-style-type: none"> Clause 6.9 – Airspace Operations 	Y	Y
	<ul style="list-style-type: none"> Clause 6.10 – Design excellence 	Y	Y
Tweed Development Control Plan 2008	<ul style="list-style-type: none"> Section B2 -Tweed City Centre 	Y	Y
	<ul style="list-style-type: none"> Section A1 – Residential flat buildings & shop top housing 	N	N**
	<ul style="list-style-type: none"> Section A2 – Site Access and Parking Code 	Y	Y
	<ul style="list-style-type: none"> Section A3 – Development of Flood Liable Land 	Y	Y
	<ul style="list-style-type: none"> Section A15 – Waste Minimisation and Management 	Y	Y
	<ul style="list-style-type: none"> Section A16 – Preservation of Trees or Vegetation 	Y	Y

*Consent pursuant to Clause 4.6 of TCCLEP2012 has been granted under the original DA and therefore further assessment under this Clause is not warranted under a modification application. Rather an assessment against Section 4.55(2) of the Act (substantially the same development test)

**Review of the DCP indicates that whilst the proposal continues to contravene development controls under Section A1, such contraventions have been justified and approved as part of the original assessment and no new contraventions are noted. Further discussion of this is contained later in this report.

Consideration of the relevant SEPPs is outlined below

Chapter 2: State and Regional Development

The original proposal was deemed *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Section 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development for Council related development over \$30 million. Accordingly, the Northern Regional Planning Panel (NRPP) was the consent authority for the application.

The original proposal included a Clause 4.6 variation request. This variation was submitted as part of the original application (on two occasions). The first version of the request was received upon lodgement of the DA and subsequently amended to include a variation request to not only TCCLEP2012 but also aspects of Clause 108(2) of SEPP Housing 2021. In particular the variation request sought to vary Clause 4.3 and Clause 4.4 TCCLEP2012 in relation to the maximum prescribed height and FSR as well as the maximum permitted height, density and scale permitted under Clause 108(2)(a) and 108(2)(c) of SEPP Housing 2021.

The proposed modification to the development includes the provision of a further increase to the overall height of building to be a total RL of 25.9m AHD (24.1m) at the location of the lift overrun. The overall additional height sought under the modification application is a further 1.5m beyond that already approved (approved RL 24.m AHD which equates to 22.6m). As previously mentioned, consent has already been granted to the development which sought variation to the maximum prescribed height, bulk and scale pursuant to SEPP Housing 2021 and TCCLEP2012 and an assessment of the proposed modification has demonstrated that it suitably satisfies the “substantially the same development” test. Given that consent was initially granted with a variation to building height (sought pursuant to Clause 4.6 of TCCLEP2012 and Clause 108(2)(a) and 108(2)(c) of SEPP Housing 2021) and the development satisfies Clause 4.55(2) of the Act (as far as substantially the same development is concerned), a further Clause 4.6 variation request is not statutorily required for the subject modification application.

Given the proposal forms regionally significant development and was originally consented to pursuant to Clause 123BA of the EP&A Regulation 2000, the “*Instruction on functions exercisable by Council on behalf of Sydney District or Regional Planning Panels – applications to modify development consents*” sets out the following in terms of Instructions when a Council is not to determine an application under Section 4.55(2) of the Act:

- *proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or*
- *proposes amendments to a condition of development consent that was not included in the council assessment report, but which was added by the panel, or*
- *meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.*

Pursuant to Item 3 of Schedule 1, development that contravenes a development standard imposed by an EPI by more than 10% or non-numerical development standards, cannot be determined by Council.

The proposed modification seeks to further increase the overall height of a building within the development project. The overall height will result in a greater than 10% contravention to Clause 108(2)(b) of Housing SEPP and therefore the proposed modification is to be determined by NRPP. Further detail of the contravention to this Clause is discussed elsewhere in this report.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

Clause 4.6(1) of Chapter 4 (Remediation of Land) outlines that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation), for the purpose for which development is proposed to be carried out. It further states that if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

Whilst this matter was considered and addressed in the original application in order for the consent to be granted, it is noted that the application was accompanied by a Remedial Action Plan (RAP), prepared by HMC Environmental Consulting Pty Ltd. The RAP was necessitated by the identification of potential soil contamination associated with the former use of termite chemicals in the under slab area of the existing structures on each allotment of land. Conditions of consent were recommended to require remediation and validation works to be undertaken prior to the commencement of construction works/issue of Occupation Certificate (see Condition 13). The submitted application fails to address this issue however Councils' assessment has determined that it is appropriate that Condition 13 be updated to reflect the staging of the development and such remediation works being undertaken as part of Stage 1 of the development given that the demolition of all structures is proposed as part of Stage 1. It is noted, to this effect, that a review of the RAP has been undertaken to ensure that extensive remediation works below existing surface levels are not required to ensure that all remediation works can be achieved as part of Stage 1 works without triggering any overlap into the Stage 2 works.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

2.48 - Development likely to affect an electricity transmission or distribution network (referral to Essential Energy)

The proposed modification includes the relocation of the approved Pad Mounted Transformer (PMT) from the east to the west of the site (See Item 1 in Stage 1 Plans). The need for this relocation was due to a requirement from Essential Energy (the previous location was within a clearance zone for the adjoining property fire booster cabinet).

The modification application was referred to Essential Energy for consideration and comment and their return advice was received on 22 May 2024. No safety concerns were raised, and General Terms of Approval were provided. A review of those GTA's indicate they are the same as that which already exists on the consent and therefore no further action is required.

The consent authority can therefore be satisfied that the obligations pursuant to Clause 2.48 of the SEPP have been satisfied as part of the subject modification application.

State Environmental Planning Policy (Sustainability Buildings) 2022

The aims of this Policy are as follows—

- (a) to encourage the design and delivery of sustainable buildings,
- (b) to ensure consistent assessment of the sustainability of buildings,

- (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,
- (d) to monitor the embodied emissions of materials used in construction of buildings,
- (e) to minimise the consumption of energy,
- (f) to reduce greenhouse gas emissions,
- (g) to minimise the consumption of mains-supplied potable water,
- (h) to ensure good thermal performance of buildings.

The original determination included a BASIX Certificate in the stamped approved plan. The certificate demonstrates that the BASIX building is capable of performing against the standards in Schedule 1 of this policy.

As part of the assessment of the proposed modification, it was identified that whilst the thermal performance of the building remains unchanged, the specific performance requirements in each unit are difficult to correlate due to the change in Unit numbers as a result of the modification.

As such, for this reason, the proponent was requested to provide clarification on this matter. In response a schedule of existing approved Unit No and proposed Unit No was provided to articulate the relationship between the existing BASIX Certificate commitments and the proposed unit scheduling. This document has formed part of the recommended approved plans in Condition 1A of the consent as it is considered to assist with post construction certificate by the certifier in accordance with the original BASIX Certificate.

Subject to compliance with recommended conditions of consent, the proposed modification will continue to perform against the aims of this policy despite the modifications.

State Environmental Planning Policy (Housing) 2021

Chapter 3 – Diverse Housing, Part 5 Housing for Seniors and People with a disability

The original application was made on 2 December 2021 and determined 1 June 2023. Since this time, the development standards in Chapter 3 have been amended on several occasions. The standard approach to the assessment of modifications to development, is that the modification would need to comply with the standards that apply at the time the modification application is made unless the relevant policy or plan is subject to savings and transitional provisions.

SEPP (Housing) 2021 contains Schedule 4A for savings and transitional provisions, which commenced on 26 November 2021. Pursuant to Clause 2 of this Schedule, the only provisions that could apply to save modification applications are those outlined in Clause (2)(1)(da) which states that the current policy does not apply to *an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date.*

Given that the original development application was made on 2 December 2021 and determined on 1 June 2023, which is after the commencement date in this Schedule, the proposed modification is not saved, and the current development standards apply.

An assessment of the proposed modifications having regard to the currently policy provisions under Part 5 (Housing for seniors and people with a disability) of SEPP (Housing) 2021 is contained herein:

Division 3 Development Standards

General requirements

Clause 84(2) states development consent must not be granted for development that involves the erection of a building for Seniors Housing unless it satisfies the minimum site area (1,000sqm), the minimum frontage of the development (20m) and, pursuant to Clause 84(2)(c), for development on land in a residential zone where residential flat buildings are not permitted—

- (i) *The development will not result in a building with a height of more than 9.5m, excluding service equipment on the roof the building, and*
- (ii) *if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and*
- (iii) *if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.*

The subject site satisfies the minimum site area and lot frontage, and the site is located on residential zoned land (R3 – Medium Density) that permits Residential Flat buildings, therefore Clause 84(2)(c) has no more work to do in the circumstance of the subject site and the proposal Seniors living development. Notwithstanding this, as discussed later in this report, there are non-discretionary development standards that apply to the development in relation to height.

Clause 85(1) states:

Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4

Refer to **Table 5** below for Council officers assessment of the proposed modification having regard to the provisions of this Clause.

Table 5: Schedule 4 - Part 1 Standards that apply to hostels and independent living units

Standard	Requirement	Complies
(2) Siting Standards	<p>(1) Wheelchair access If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road.</p> <p>(3) Common areas Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.</p>	Yes - The subject site has a gradient of less than 1:10 and as a result, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road. The proposed development complies with this control by the use of lifts through the development and continuous accessible path of travel to adjoining public roads. In respect to common areas, access in accordance with AS1428.1 is provided for persons using a wheelchair to common areas and common facilities associated with the development.
(3) Letterboxes	(a) must be located on a hard standing area, and	Yes - the development provides letter boxes for the use of all units adjacent to

	<p>(b) must have wheelchair access by a continuous accessible path of travel from the letterbox to the relevant dwelling, and</p> <p>(c) must be lockable by a lock that faces a wheelchair accessible path.</p> <p>(2) If a structure contains multiple letterboxes, the structure must be in a prominent location.</p> <p>(3) At least 20% of the letterboxes on the site must be more than 600mm and less than 1,200mm above ground level (finished).</p>	Powell Street entry in one central location.
(4) Carparking	<p>If parking spaces attached to or integrated with a class 1 building under the <i>Building Code of Australia</i> are provided for use by occupants who are seniors or people with a disability, at least 1 parking space must—</p> <p>(a) be at least 3.2m wide, and</p> <p>(b) be at least 2.5m high, and</p> <p>(c) have a level surface with a maximum gradient of 1:40 in any direction, and</p> <p>(d) be capable of being widened to 3.8m without requiring structural modifications to a building.</p> <p>(2) If parking spaces associated with a class 1, 2 or 3 building under the <i>Building Code of Australia</i> are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—</p> <p>(a) for a parking space not in a group—the parking space must comply with AS/NZS 2890.6,</p> <p>(b) for a group of 2–7 parking spaces—</p> <p>(i) at least 1 of the parking spaces must comply with AS/NZS 2890.6, and</p> <p>(ii) 50% of the parking spaces must—</p> <p>(A) comply with AS/NZS 2890.6, or</p> <p>(B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction,</p> <p>(c) for a group of 8 or more parking spaces—</p> <p>(i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and</p> <p>(ii) at least 50% of the parking spaces must—</p> <p>(A) comply with AS/NZS 2890.6, or</p> <p>(B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.</p> <p>(3) To avoid doubt, a parking space that complies with AS/NZS 2890.6 is only counted toward 1 of the requirements in subsection (2)(b)(i) or (ii) or (c)(i) or (ii).</p> <p>(4) At least 5% of any visitor parking spaces must comply with AS/NZS 2890.6.</p> <p>(5) A parking space required by this section to comply with AS/NZS 2890.6, other than a visitor parking space, is not required to include the international symbol of access.</p>	<p>N/A</p> <p>Applies</p> <p>N/A –parking provided in a group of 8 or more parking spaces on ground floor and basement – see below.</p> <p>Stage 1 provides: 60% compliant with AS2890.6 or 3.2m width (28 spaces) and;</p> <p>Stage 2 provides: >50% compliant with AS2890.6 (82 spaces) and 10% w/ 3.8m width (9 spaces) (total 91 spaces or 94.8%)</p> <p>The proposed parking complies with the provisions of this Clause. Refer to Section A2 assessment for further discussion in relation to the provision of parking for users of the facility and the residue parking available for staff/visitors.</p>

(5) Accessible entry	<p>The main entrance to a dwelling must have—</p> <p>(a) a clear opening that complies with AS 1428.1, and</p> <p>(b) a circulation space in front of the door and behind the door that complies with AS 1428.1.</p> <p>(2) This section does not apply to an entry for employees.</p>	Yes – floor plans provided demonstrate each entry to the dwelling has a circulation area compliant with AS1428.1.
(6) Interiors	<p>(1) An internal doorway must have an unobstructed opening that complies with AS 1428.1.</p> <p>(2) An internal corridor must have an unobstructed width of at least 1,000mm.</p> <p>(3) The circulation spaces in front of and behind an internal doorway in the following areas must comply with AS 1428.1—</p> <p>(a) a kitchen,</p> <p>(b) a laundry,</p> <p>(c) a bathroom,</p> <p>(d) a toilet,</p> <p>(e) a bedroom,</p> <p>(f) a living area,</p> <p>(g) the main area of private open space.</p> <p>(4) To avoid doubt, subsection (3)(b) does not apply to laundry facilities in a cupboard.</p>	Yes – interior including doorways, corridors and circulation spaces demonstrate compliance with AS1428.1 on plans
(7) Bedrooms	<p>At least one bedroom in a dwelling must have the following—</p> <p>(a) a clear area, not including a circulation space, sufficient to accommodate—</p> <p>(i) for an independent living unit—a wardrobe and a queen-size bed,</p> <p>(b) a clear area around the area for the bed of at least—</p> <p>(i) 1,200mm at the foot of the bed, and</p> <p>(ii) 1,000mm on each side of the bed,</p> <p>(c) at least 2 double general power outlets on the wall where the head of the bed is likely to be,</p> <p>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be.</p>	Yes (demonstrated on plans)
(8) Bathroom	<p>(1) At least one bathroom in a dwelling must be located on—</p> <p>(a) the same floor as the entry to the dwelling, or</p> <p>(b) a floor serviced by a private passenger lift accessible only from inside the dwelling.</p> <p>(2) The bathroom must have the following—</p> <p>(a) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013,</p> <p>(b) a washbasin with tap ware capable of complying with AS 1428.1, including by future adaptation if the washbasin and tap ware continue to use existing hydraulic lines,</p> <p>(c) a shower that—</p> <p>(i) is accessible without a shower-hob or step, and</p> <p>(ii) complies with the requirements of AS 1428.1 for the entry, circulation space, floor gradient to the wastewater outlet and location of the mixer tap, and</p> <p>(iii) is in the corner of a room, and</p> <p>(iv) has a wall capable of accommodating the installation of a grab rail, portable shower head with</p>	Yes – each bathroom in a dwelling is located on the same floor as the entry to the dwelling. Showers appropriately located in corner of room to accommodate grab rail on walls.

	<p>supporting grab rail and shower seat, in accordance with AS 1428.1,</p> <p>(d) a wall cabinet with shelving illuminated by an illumination level of at least 300 lux,</p> <p>(e) a double general power outlet in an accessible location, in accordance with AS 1428.1.</p> <p>(3) Subsection (2)(c) does not prevent the installation of a shower screen that can easily be removed to enable compliance with that paragraph.</p>	
(9) Toilet	<p>(1) At least one toilet in a dwelling must be located on—</p> <p>(a) the same floor as the entry to the dwelling, or</p> <p>(b) a floor serviced by a private passenger lift accessible only from inside the dwelling.</p> <p>(2) The toilet must have the following—</p> <p>(a) a water closet pan—</p> <p>(i) in the corner of the room, and</p> <p>(ii) with a centreline set-out in accordance with AS 1428.1,</p> <p>(b) a circulation space in front of the water closet pan that is—</p> <p>(i) at least 1,200mm long and at least 900mm wide, and</p> <p>(ii) clear of door swings and fixtures, other than a toilet paper dispenser or grab rails,</p> <p>(c) a circulation space around the water closet pan that complies with AS 1428.1,</p> <p>(d) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013,</p> <p>(e) a wall capable of accommodating the installation of a back rest and grab rail that will comply with AS 1428.1.</p> <p>(3) A removable shower screen may be located in the circulation space specified in subsection (2)(c).</p>	Yes - each dwelling contains its own toilet on the same floor as the entry to the dwelling and compliant measurements and circulation areas are provided on plans.
(10) Surface of balconies and external paved areas	<p>Balconies and external paved areas must have surfaces that are slip resistant and comply with—</p> <p>(a) the <i>Building Code of Australia</i>, or</p> <p>(b) the Standards Australia Handbook SA HB 198:2014, <i>Guide to the specification and testing of slip resistance of pedestrian surfaces</i>, published on 16 June 2014.</p>	Yes – capable of compliance and existing conditions for BCA compliance secure this outcome.
(11) Door hardware	<p>(1) Door handles and hardware for all doors, including entry doors and external doors, must comply with AS 1428.1.</p> <p>(2) To avoid doubt, subsection (1) does not apply to cabinetry.</p>	Yes
(12) Switches and power points	<p>(1) Switches and power points must—</p> <p>(a) comply with AS 1428.1, or</p> <p>(b) be capable of complying with AS 1428.1 through future adaptation.</p> <p>(2) Subsection (1) does not apply to—</p> <p>(a) remote controls, or</p> <p>(b) power points likely to serve appliances that are not regularly moved or turned off.</p>	Yes – capable of compliance switch details not provided on plans.
(5) Private passenger lifts	<p>(1) This section applies to a private passenger lift that is required by this schedule to be accessible only from inside a particular dwelling.</p> <p>(2) The private passenger lift must—</p> <p>(a) be at least 1,100mm wide and at least 1,400mm long, measured from the lift car floor, and</p>	N/A – no private passenger lift provided.

	<p>(b) have a clear indoor landing on all floors serviced by the lift, other than the floor on which the main area of private open space is located, at least 1,540mm long and at least 2,070mm wide, and</p> <p>(c) have controls that comply with—</p> <p>(i) AS 1735.12:2020, <i>Lifts, escalators and moving walks, Part 12: Facilities for persons with disabilities</i>, published on 26 June 2020, or</p> <p>(ii) AS 1735.15:2021, <i>Lifts, escalators and moving walks, Part 15: Safety rules for the construction and installation of lifts — Special lifts for the transport of persons and goods — Vertical lifting platforms intended for use by persons with impaired mobility</i>, published on 23 July 2021.</p> <p>(3) The width of the door opening of the private passenger lift must be at least 900mm.</p> <p>(4) The private passenger lift must not be a stairway platform lift.</p>	
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Table 6: Part 2 Additional standards for independent living units

Standard	Requirement	Complies
(14) Application of standards in this Part	The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of independent living units.	Pursuant to this Clause the following standards apply.
(15) Bedroom	At least one bedroom in an independent living unit that complies with this schedule, section 7 must be located on— (a) the same floor as the entry to the unit, or (b) a floor serviced by a private passenger lift accessible only from inside the unit.	Yes – all living bedrooms provided on the same floor as the entry to the unit.
(16) Living room	(1) A living room in an independent living unit must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling. (2) The living room must have— (a) a circulation space that— (i) is clear of all fixtures, and (ii) has a diameter of at least 2,250mm, and (b) a telecommunications or data outlet adjacent to a general power outlet.	Yes - all living rooms provided on the same floor as the entry to the unit and contains compliant circulation spaces per this requirement.
(17) Main area of private open space	The main area of private open space for an independent living unit must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.	Yes – main area of private open space is located on the same floor as the entry to the dwelling.
(18) kitchen	(1) A kitchen in an independent living unit must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling. (2) The kitchen must have a circulation space with a diameter of at least 1,200mm between each bench top, cupboard or large appliance and each other bench top, cupboard or large appliance.	Yes- In terms of adaptability to comply with current standards, the following is noted: kitchen same floor as entry to dwelling 1550mm diameter circulation space provided in each kitchen (demonstrated on plans) except 3 bed units which

	<p>(3) Each circulation space specified in subsection (2) must be capable of being increased to a diameter of 1,550mm without—</p> <ul style="list-style-type: none"> (a) relocating the sink, or (b) moving a load-bearing wall, or (c) breaching another circulation requirement. <p>(4) The kitchen must have the following fittings—</p> <ul style="list-style-type: none"> (a) a bench that includes at least one work surface that is— <ul style="list-style-type: none"> (i) at least 800mm long, and (ii) clear of obstructions, and (iii) not in the corner of the room, (b) a lever tap set with the lever and water source that is within 300mm of the front of the bench, (c) a cooktop next to the work surface, (d) an isolating switch for the cooktop, (e) an oven that— <ul style="list-style-type: none"> (i) has operative elements between 450mm and 1,250mm above the finished floor level, and (ii) is next to the work surface, (f) at least one double general power outlet located within 300mm of the front of a work surface. <p>(5) The cupboards must—</p> <ul style="list-style-type: none"> (a) not be entirely located in the corner of the bench or the corner of the room, and (b) face where the user of the fixture is likely to be. <p>(6) An overhead cupboard in the kitchen must be capable of being fitted with “D” pull cupboard handles towards the bottom of the cupboard.</p> <p>(7) A below-bench cupboard in the kitchen must be capable of being fitted with “D” pull cupboard handles towards the top of the cupboard.</p> <p>(8) The lever tap set, cooktop, isolating switch, oven and double general power outlet must—</p> <ul style="list-style-type: none"> (a) not be in the corner of the bench or the corner of the room, and (b) face where the user of the fixture is likely to be. <p>(9) Cabinetry below a work surface must be able to be easily removed to allow wheelchair access to the work surface.</p>	<p>comprises 1530mm-1540mm however can be adapted with removal of bench (compliant with Clause 18(2) under SEPP Housing as it currently applies).</p>
(19) laundry	<p>(1) A laundry in an independent living unit must be located on—</p> <ul style="list-style-type: none"> (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling. <p>(2) The laundry must have the following—</p> <ul style="list-style-type: none"> (a) a circulation space that complies with AS 1428.1 at the approach to any external doors, (b) an appropriate space for an automatic washing machine and a clothes dryer, (c) a clear space in front of each appliance of at least 1,550mm, (d) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013, (e) a continuous accessible path of travel to the main area of private open space or any clothes line provided for the dwelling. 	<p>Yes - laundry provided on same floor as entry to each dwelling, provides appropriate space for washing machine and clothes dryer and comprises of at least 1550mm</p>

	<p>(3) The space specified in subsection (2)(c) may overlap with a door swing or the circulation space for a door.</p> <p>(4) For laundry facilities in a cupboard, the cupboard must be capable of being fitted with "D" pull cupboard handles in the following locations—</p> <p>(a) for below-bench cupboards—towards the top,</p> <p>(b) for overhead cupboards—towards the bottom,</p> <p>(c) for floor-to-ceiling doors—between 900mm and 1,100mm above the finished floor level.</p> <p>(5) In this section— laundry includes laundry facilities in a cupboard.</p>	
(20) linen storage	An independent living unit must have a floor-to-ceiling linen storage cupboard that—	Yes – provision for linen storage at least 600mm provided in each unit
	<p>(a) is at least 600mm wide, and</p> <p>(b) has adjustable shelving.</p>	
(21) Lift access in multi storey buildings	An independent living unit on a storey above the ground storey must be accessible by a lift that complies with the <i>Building Code of Australia</i> , Volume 1, Part E3.	Yes - communal lift core provided to each storey containing dwellings. Compliance with BCA conditioned on consent.
(21) garbage and recycling	A garbage storage area and a recycling storage area provided for an independent living unit must be accessible by a continuous accessible path of travel from the dwelling entrance.	Yes – garbage store provided in basement and accessible by a chute on each floor adjacent to lift in accessible path of travel.

Additional Floor Space Ratio

Clause 87 enables additional floor space ratios for certain Seniors Housing development. The original consent enabled a variation to the maximum permitted floor space ratio for the development (beyond the incentive under this Clause, which was 15%).

The amended proposal does not seek to significantly alter the overall GFA for the site and therefore the proposal poses no change to the developments performance against this Clause as compared to the original approval.

Restrictions on occupation of Seniors housing

Existing conditions of consent limit the use of the development pursuant to Clause 88 of the SEPP.

Division 4 Site related requirements

Access to Services and Facilities

Clause 93 outlines the minimum access to facilities and services for independent living units. The proposal seeks to retain the approved use of the site (independent living units) and therefore the proposal continues to comply with the requirements of this Clause in terms of distance to facilities and services to support the seniors housing development.

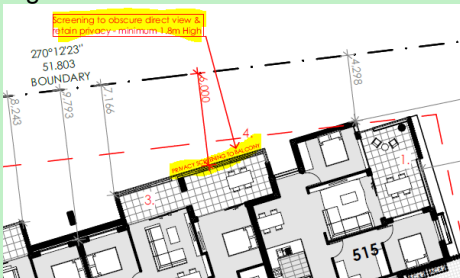
Water and Sewer

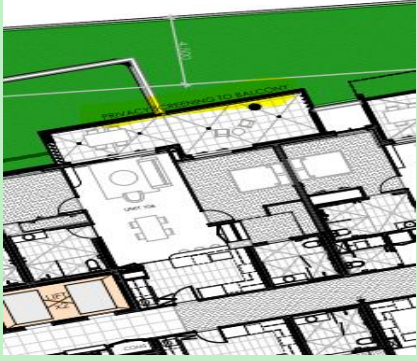
The proposed modification poses no impact to the developments performance against Clause 95 of the SEPP in relation to water and sewer services.

Division 5 Design Requirements

Clause 97 notes development consent must not be issued for developments for the purposes of Seniors Housing unless they have demonstrated adequate consideration of the design principles provided under Division 6 of the SEPP. The subject application seeks to modify the existing consent that has already been granted pursuant to this Clause. Notwithstanding, **Table 7** below addresses the proposed modifications' performance against relevant design principles prescribed under this Clause.

Table 7: Design Principles performance table

Design Principle	Original Assessment Comments	Proposed modification	Comply
Neighbourhood amenity and streetscape	The subject site is located within Tweed City Centre which is currently undergoing a transition from lower density residential dwellings with lower building heights to an area of medium density built forms including 5 storey residential flat buildings achieving the maximum building heights permitted. Whilst the proposed development seeks to exceed the maximum building height permitted for the site, it is considered the proposed development, as amended, is suitable for the emerging character of the locality. Retention of key elements such as the Lemon-scented Gum tree in the south-western corner and compliance with front setbacks ensures the development is sympathetic to the existing character and built form of the area.	Whilst the proposal seeks to further alter the height, all other considerations under the original DA as it relates to this design principle, largely remain unchanged. The development continues to retain the lemon scented gum tree and complies with the setback requirements.	Yes
Visual and Acoustic privacy	<p>Whilst the north-eastern corner of the proposed development does not meet the minimum setback required of 8m, visual and acoustic privacy to the adjoining development to the north, being No. 3 Ivory Place is retained due to the inclusion of a privacy screen to the balcony of north-facing units – see Figure below.</p>  <p>Privacy screen provided to unit 514 (Level 4) and to the same unit on all other levels.</p>	The proposed modification features the same siting and location as the approved footprint and therefore the original assessment of visual and acoustic privacy remains unchanged. It is noted that the proposed plans provide for privacy screens to POS for units positioned toward the north-eastern corner of the proposed development site, the same as that originally approved.	Yes

	<p>Furthermore, through site planning, the non-compliant component of the building is located beyond the easternmost extent No. 3 Ivory Crescent, further reducing privacy impacts to that development.</p> <p>In respect of the location of proposed new independent living units, it is considered appropriate distances from parking areas, driveways and paths have been achieved, providing the new dwellings with appropriate acoustic and visual privacy.</p>		
Solar access and design for climate	<p>Once the seven (7) lots that comprise the subject site are amalgamated, the proposed seniors housing, as amended, will be sited on a corner block. Whilst shadows cast by the amended proposal will reach the Tweed Hospital site to the south and the Anglican Church to the south-west, the majority of shadows cast by the amended proposal will fall onto Florence Street to the south and Powell Street to the west. Furthermore, the shadows cast onto the Tweed Hospital site will largely fall across on-site parking and landscaped areas, and not on hospital rooms. Solar access to neighbouring residential dwellings is largely retained and will not be adversely impacted by the proposal.</p> <p>Site planning, building design including the provision of indoor and outdoor communal open spaces at ground floor level, level 4 and level 5, dwelling design and landscaping generally responds to the climate by allowing for prevailing breezes to reach the development thereby reducing the need for energy use.</p>	<p>The proposed variation to overall height is located within the central part of Building B. This building is located with a generous setback at the apex of the Florence St/Powell St intersection and the longest shadow resulting from the varied height of Building C will continue to cast to the south, over Florence Street.</p> <p>The provision of site planning and building design themes remain unchanged in terms of indoor and outdoor communal open space and landscaping. As such, the proposed modification provides marginal difference in terms of the developments performance against this design principle.</p>	Yes
Stormwater	<p>The proposal, as amended, incorporates the use of on-site detention system to help manage the effects of stormwater.</p> <p>The proposal, as amended, was referred to Council's Roads and Stormwater Unit who raised no concerns with the amended proposal, subject to recommended conditions of consent.</p>	<p>The proposal, as amended, incorporates the use of on-site detention system at ground level to accommodate the 2 stages of the building construction. Water quality treatment has been addressed for all hard stand areas, although has not addressed water quality treatment for the basement car parking area. A notation was provided on the plan outlining that such provision will be provided via a tank to store oil and sediment, which is consistent with TSC Design Specification D7. Councils</p>	Yes

		<p>Stormwater and Flooding Unit has reviewed the original and amended SMP and SQT devices and whilst no objections are raised, amended conditions of consent are recommended to secure adequate stormwater management and stormwater quality treatment for the site.</p> <p>To this end, it is noted that Council in its RFI requested that detail of the SWQ treatment devices be provided to determine that they could be suitably provided within the development without impact circulation areas and parking. However, the proponent failed to provide this detail and therefore it has been conditioned. Should the tanks impact the number of parking spaces of vehicle manoeuvrability, a modification application would likely be required to assess the parking/vehicle manoeuvrability impacts.</p>	
Crime Prevention	<p>The proposal, as amended, achieves the environmental design principles relating to crime prevention and provides the development with appropriate security measures including entrance into the basement as well as the development itself. Pedestrian access to the site is via a check-in lobby located off the Powell Street site entrance. Entrance to each unit within the development is via this lobby, either at ground floor level or via lift cores to upper levels.</p> <p>A condition of consent has been recommended to incorporate 'peep holes' into each dwelling's front door to allow residents to see people approaching their dwelling.</p>	The design themes considered against this principle remain unchanged as a result of the proposed modification. As such the development continues to performance adequately against this design principle.	Yes
Accessibility	<p>The proposed development, as amended, provides adequate accessibility to and from the site. Stairs and a ramp are provided from Powell Street to the check-in lobby, with a ramp providing internal access to Florence Street adjacent to the sculpture garden. Access within the development is achieved by providing level hallways/walkways/paths that are wide</p>	<p>The design themes considered against this principle remain unchanged as a result of the proposed modification.</p> <p>As such the development continues to performance adequately against this design principle.</p>	Yes

	enough to allow wheelchairs and the like to utilise the accessways. Parking is via a basement level with additional parking provided at the northern end of the ground floor. Lift cores extend from the basement up to ensure access to and from the basement is achievable for all.		
Waste Management	Three (3) waste rooms are provided in the basement and house receptacles for general waste and recycling. A condition of consent is recommended to ensure appropriate waste facilities are provided within each dwelling, including separate areas for general waste and recycling.	Chute provided on each level with waste rooms at basement. Existing conditions re sorting of waste per the original assessment remain on the consent. As such, the development continues to adequately performance against this design principle.	Yes

Division 7 non-discretionary development standards

Clause 108 applies to the proposal given the development comprises of independent living units. The object of this Clause is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

A summary of the developments performance against non – discretionary development standard for independent living units (pursuant to Clause 108) is contained herein:

Table 8: Clause 108 Non-discretionary development standards performance table

Development Standard	Requirements	Approved	Proposed modification	Comply
(2)(a)(b) Height	9.5m excluding servicing equipment on the roof and <u>11.5m including servicing equipment.</u>	22.6m (96.5% variation)	23.8m (additional 1.2m) (107% variation)	No – see discussion below
(2)(c) Floor Space Ratio	0.5:1 or less	2.3:1 (360% variation)	2.3:1 (<u>no change</u>)	No however already approved – see below
(2)(d)(e) Landscape Area	35sqm per dwelling or; 30% of the site area	30%	33%	Yes
(2)(f) Deep Soil Zone	15%	15%	15%	Yes
(2)(g) Solar Access	70% of dwellings receive 2 hours	70% (reliant on skylights to achieve this outcome)	71% (reliant on skylights to achieve this outcome)	Yes
2(h)(i) Open space area	15sqm for ground floor and POS with min. dimensions of 3m accessible from living area or; 6sqm for 1 bed or 10sqm for 2+ bed and 2m min.	15sqm conditioned as deferred commencement for U107 (GF) and min. provided per Clause 2(h).	Min provided for all units pursuant to Clause 2(h)	Yes

	dimension accessible from a living area.			
2(k) minimum parking spaces	at least 0.5 parking spaces for each bedroom.	98 spaces	187 bed @ 0.5/bed = 93.5 spaces reqd. 96 spaces	Yes

Height and Floor Space Ratio

Clause 108(2)(a) denotes a maximum permissible building height of 9.5m, excluding servicing equipment on the roof of a building, and Clause 108(2)(c) denotes the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. The approved development sought a building height of 22.6m and a FSR of 2.3:1, neither of which complied with the development standard(s) under this Clause. Notwithstanding, a variation to these clauses was accepted pursuant to Clause 4.6 of TCCLEP2012 and the above height and FSR was approved.

A review of the original assessment of the variation indicates the following merit considerations to support a variation to Clause 108(2) in terms of height and FSR:

It was highlighted, in the original assessment report, that Clause 108 fails to include a qualitative performance objective for the numerical standard under this Clause. Rather, the objective of this part of this Section of the policy is simply to set out minimum requirements, if met, cannot be superseded by a consent authority to seek more onerous standards. In light of this, it was noted that Council's *Regional City Action Plan 2036* for Tweed also highlights the needs for higher residential densities in the city centre to provide a critical mass for the city centre businesses and public benefit opportunities. The SEPP's non-discretionary building height and FSR standards are not considered to enable the aims and objectives of the Regional City Action Plan to be achieved.

Having regard to the zoning, R3 Medium Density, the original assessment accepted that a development which complied with a maximum building height of 9.5m and a FSR of 0.5:1 would be an underdevelopment of the site, and would be at odds with the objectives of the 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.*

The proposed modification features a further variation to the overall height of the development and (as detailed later in this report), it applies to the lift overrun associated with Building B in Stage 1 of the development. The lift overrun was approved to have a total height of 22.6m for 7m of the overall development. It comprises of 15sqm in floor area. The proposed modification does not seek to alter the overall floor area of this aspect of the proposal, and it also comprises of the same horizontal distance (7m) however it poses to be an additional 1.2m in height and therefore the revised overall height of the proposal at this location is 23.8m which comprises of a significant variation to Clause 108(2)(a). Whilst indeed, the variation is significant, notations in this Clause outline the following:

- *See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.*

Section 4.15(3) of the Act states:

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

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

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

Whilst the above is stipulated, if a local plan outlines a more generous development standard than that prescribed under a SEPP, the local plan cannot be relied upon without proper consideration of the SEPP. This was dealt with under the original application by way of granting development consent noting that the proponent, in their original application, sought to vary the requirements of this Clause via a Clause 4.6 variation request (pursuant to TCCLEP2012) and consent to the variation(s) were granted (based on merit considerations further discussed later in this report).

As detailed elsewhere in this report, the proposal additional height is considered to be generally consistent with the objectives under Clause 4.3 of TCCLEP2012 which relates to the maximum prescribed height (22m) despite comprising of a 107% variation to the maximum height under Clause 108(2)(a) of the Housing SEPP.

Notwithstanding this, administratively, given the proposal further adds to the overall measured height of the building and comprises of a breach greater than 10% of the development standard under Clause 108(2)(a) (9.5m excluding service equipment and 11.5m including servicing equipment), this Section 4.55(2) modification application is to being referred to NRPP for determination in accordance with the *Sydney District and Regional Planning Panels Operational procedure (November 2022)*.

The following are key comments raised by the proponent in relation to their justification to further vary the height:

- *The additional building height will not create any further overshadowing primarily due to its location being well setback from the frontage façade in the center of the building envelope;*
- *The additional height is due to the lift manufacturers specifications which have been realized as part of the detailed construction design and tendering process;*
- *The modified design provides compliant landscape areas (33% total) and deep soil zones (15% total);*
- *No variations are sought to FSR beyond that already approved;*
- *The revised design comprises of 71% of dwellings achieving 2 hours of direct solar access between 9am-3pm at mid winter in living rooms and private open space*

Based on the above, the proposed modification adequately performs against other non-discretionary development standards in this Clause. Merit considerations in relation to the proposed variation are iterated under Clause 4.3 of TCCLEP2012 (below) and based on those merit considerations, the proposed modification which seeks to further increase the overall height to the lift overrun, is considered to be worthy of support.

Tweed City Centre Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Tweed City Centre Local*

NRPP Briefing/Determination Report: DA21/0949.01 – Section 4.55(2) modification to Seniors Living for demolition of existing dwellings and construction of 95 units, swimming pool, signage, lot consolidation and tree removal at 6-12 Powell Street and 33-37 Florence Street, TWEED HEADS [8 October 2024]

Environmental Plan 2012 ('the LEP'). The aims of the LEP include:

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

The proposed modification remains consistent with the aims of the plan as it continues to provide a vertical village for the purpose of Seniors Housing on the subject site which is consistent with the strategic direction for the locality. The proposal will continue to result in increased residential opportunities for a dominant demographic of people who reside in the Tweed.

Zoning and Permissibility (Part 2)

The site is located within the R3 – Medium Density Residential Zone pursuant to Section 2.2. of the LEP.

The proposed modification does not affect the approved land use of the site as Seniors Housing which is permissible within the R3 zone and is consistent with the objectives of the zone.

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 9** below.

The proposal does not comply with the development standard in Part 4 of the LEP. In particular, those that relate to the maximum permitted building height. However, given the proposal comprises of a Section 4.55(2) modification, a Clause 4.6 variation to vary the development standard (as it relates to height) is not warranted given consent has already been granted and a variation to height formed part of the original approval.

As such, the assessment criteria pursuant to Section 4.55(2) of the Act (as far as "substantially the same development" is concerned) is the prevalent consideration of the consent authority based on statutory obligations to enable a further variation to the approved height as part of the proposed modification.

Aside from the additional variation to the building height and already approved variation to FSR (which the amended proposal seeks to vary to reduce the maximum GFA), the proposed modification is considered to be generally consistent with the LEP.

Table 9: Considerations of LEP controls

Control	Requirement	Original approval	Proposed modification	Comply
Height of buildings (CI 4.3(2))	22 metres	22.6m (2.7% variation)	23.8m (8.1% variation)	No however 600mm variation already consented to pursuant to Clause 4.6 -see further discussion below
FSR (CI 4.4(2))	1.8:1 (18752.1sqm) 207:1/10,064.9sqm Including 15% / 0.27:1 bonus under SEPP(Housing) 2021	2.3:1 (11,498.8sqm)	2.3:1 (11,491.6sqm)	No but variation approved and no change under this mod.
Variation Request (CI 4.6)	Seek variation to Clause 4.3 and Clause 4.4	Written Clause 4.6 request (as amended) provided	N/A consent granted.	Yes
Flood Planning (CI 5.21)	Complies with CI 5.21(2)and Clause 5.21(3)	PMF Refuge provided	No change - PMF Refuge provided	Yes
Acid sulphate soils (ASS) (CI 6.1)	Class 2: Works below the natural ground surface. Works by which the water table is likely to be lowered.	Excavation to facilitate construction of basement proposed. Dewatering Management Plan submitted. GTA's by Water NSW provided.	No change, excavation works staged. Updated Dewatering management plan to reflect revised staging submitted. Water NSW GTA's provided.	Yes
Min. building street frontage (CI 6.6)	20m	Approx. 79.71m (Powell St) and 98.91m (Florence St)	No change	Yes
Airspace operations (CI 6.9)	RL49.5m AHD limitation surface features of the surrounding land.	Max building height = lift overrun Building B RL24.7m AHD	Max building height = lift overrun Building B RL 25.9m AHD	Yes
Design Excellence (CI 6.10)	Compliance with CI 6.10(3)	The proponent has provided a response to the Design Excellence criteria under section 6.1.10 of the amended Statement of	The proposed modification does not significantly alter the finishes, colours, bulk, scale, siting or form of the development as approved. The	Yes

		Environmental Effects.	overall change to a small portion of the building height for Building B lift overrun is negligible in terms of the development's performance against this Clause.	
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The proposed modification remains generally consistent with the LEP except for a minor increase in overall height. Refer to discussion below for merit consideration of this aspect of the proposal having regard to the provisions of Clause 4.3 of TCCLEP2012.

Clause 4.3(2) - Height of buildings

The proposed development seeks a minor increase in building height of 1.2m over that originally approved and 1.8m beyond the maximum permitted building height. This represents a 5.45% increase from the original approved consent or 8.18% variation to the maximum permitted building height of 22m.

In either case, under this modification the additional height of 1.2m beyond that already approved and 1.8m beyond the maximum permitted building height is assessed to be below the 10% numerical standard. The additional height sought under this modification remains for the lift overrun only and for a total of 7m in length and providing an area of 15m².

Whilst a Clause 4.6 variation was not submitted (and is not statutorily required for a Section 4.55 modification), justification to demonstrate the impact of a further variation to the maximum permitted height has been submitted as part of the application.

The proponent claims that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case for the reasons listed below:

- *The central location of the height exceedance, 15m+ setback from the front building facades ensure the additional building height will not be observable from the ground level of Powell St and Florence St. Further the location of the extra height ensures no additional adverse impact will result with respect to overshadowing and privacy to adjacent properties;*
- *The modified design maintains the scale and massing of the development by separating the buildings into three (3) distinct but related buildings. This enables visual relief along the front facades most notable on Powell Street and provides for an appropriate massing and scale presentation front the street to justify additional building height not visible from the street.*
- *The objectives of the development standards (Clause 4.3: Height of Buildings) is achieved despite extra height. In this regard, the development maintains an appropriate urban character and level of amenity and enables the ability for taller development to be located in urbanised areas supported by urban facilities and transport.*
- *The development, despite the variation sought, provides for an appropriate level of internal and external amenity to all residents. This is achieved through compliance with key development provisions within applicable EPI's such as ADG including provision of sufficient deep soil zones (greater than 7% achieved), generous communal open space*

(greater than 25% of the site), solar access to living areas and adequate natural ventilation to each of the dwellings consistent with Apartment Design Guidelines (ADG). Non-discretionary development standards pursuant to the Housing SEPP for Seniors Housing are also achieved demonstrating a suitable design for the site with level of amenity internally and externally.

- Given the sites locality within walking distance to surrounding facilities, services and recreation areas (notably Tweed Shopping Centre, Tweed Heads Bowls Club, Tweed Heads Hospital, public park along Tweed River etc) and acknowledging the site is close to transport facilities bus stops and pedestrian footpaths, the development affords ability to provide for greater population densities together with building heights. This is consistent with the objectives of Clause 4.3 Height of Buildings pursuant to TCCLEP 2012.

Figure 10 below is replicated from the modification report as it aims to illustrate the additional variation to overall building height within Building B which forms part of Stage 1 of the development:

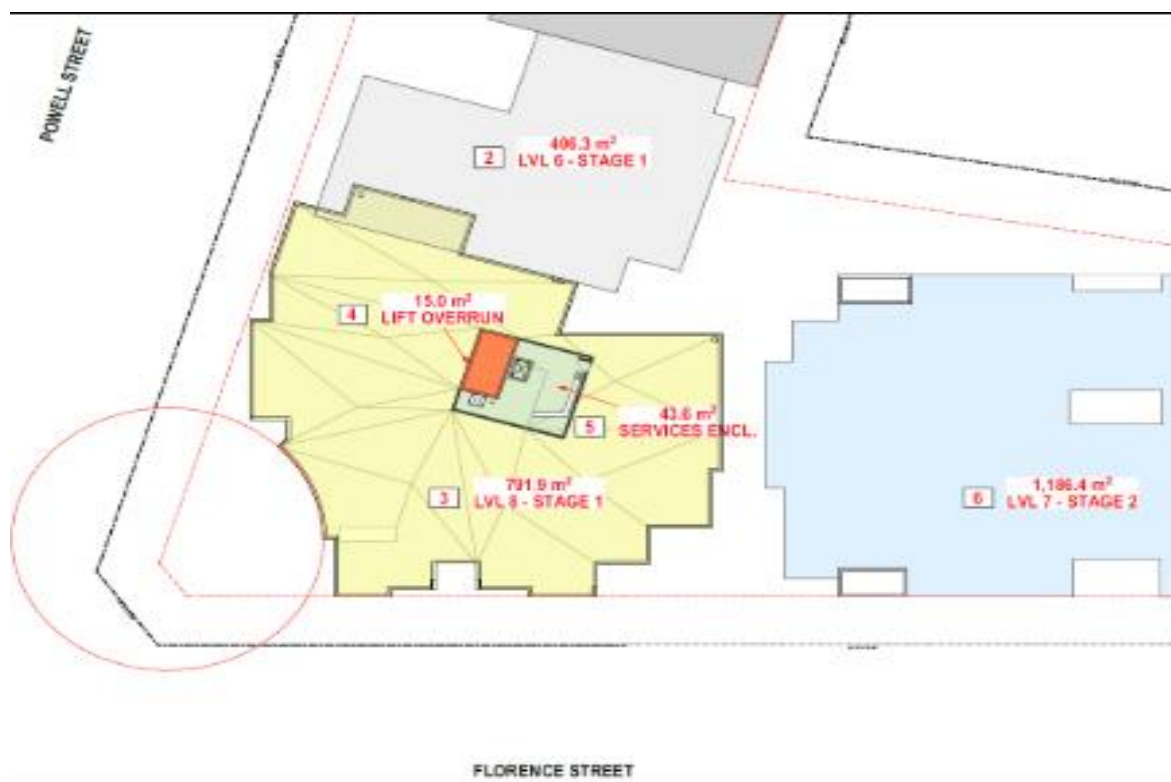


Figure 10: Diagram submitted by the proponent to demonstrate the additional variation to overall building height within Building B

Whilst the lift overrun may be marginally visible from the street, the location of this aspect of the building is such that it is centralised in the buildings floorplate and the massing is setback from the street. Therefore, having regard to the overall maximum height of buildings permitted in this location, the provision of 1.8m excess in height for such a marginal horizontal plane of built form is likely to be inconceivable at the human scale and therefore would not have streetscape impacts.

An extract of the elevation plans for the subject building which comprises of the lift overrun height variation at the Powell and Florence St interface is provided in **Figure 11** and **Figure 12** below:



Figure 11: Proposed south elevation (Florence St) - depicting extent of variation of building height





Figure 12: Proposed West Elevation (Powell St) – depicting extent of variation to building height

In order to determine the appropriateness of the height exceedance, a streetscape analysis has been undertaken to determine the progression of development in this transitional area and to what extent the existing development heights have been approved. See **Figure 13** and **14** below.



Figure 13: Map with key for height analysis assessment table

Key	Address	Land Use	Approved height	Visual capture of height at human scale
1.	31 Florence St. (DA08/0138 and DA16/0766)	Seniors Housing	RL25.7m AHD to pergola and RL 25.395 to lift overrun	 


2.	3-5 Powell St. & 7-9 Florence St. (DA06/1262)	Seniors Housing	RL19.8m AHD to roof & RL23.925m AHD to lift overrun and roof mounted services	
3.	10 Ivory Pl. (DA17/0799)	Residential Accommodation	RL23.8m AHD to roof and RL ceiling and RL 24.6m AHD to lift overrun	
4.	1-3 Ivory Pl. (0935/2001DA)	Residential Accommodation	RL20.745 AHD to roof + 2.5m for lift overrun	

Figure 14: Height analysis for surrounding built form

Based on the merit considerations above (including height analysis for the surrounding area) and majority of the overall height plane for the buildings being compliant with the maximum permitted height under Clause 4.3 of TCCLEP2012, it is considered reasonable that the consent authority support the proponent's justification that the proposed additional height for the lift overrun as it has been demonstrated that strict compliance with the development standard under Clause 4.3 is

unreasonable and unnecessary in the circumstance of this case, particularly given that the variation has already been consented to by NRPP under the original modification and there is examples of similar development with a height exceedance for the lift over run in the area (noting that the height exceedance is inconceivable at the human scale at the streetscape). The proposed additional height for the lift overrun comprises of a marginal increase to the overall approved building height for the development (0.8m). Historically, the preceding LEP height restriction measures height in storeys and the provision of lift overruns and services on the roof where excluded from the definition of a storey (hence there are several examples of this form of development in the vicinity of the site).

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

There are no draft SEPP's or LEP's that apply to the proposal.

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

Tweed Shire Development Control Plan 2008 ('the DCP') applies to the site.

The proponent, in the submitted "modification report" has made the following blanket statement in relation to the relevant chapters of the DCP that apply to the proposal:

The amended proposal remains compliant with the relevant Sections contained within the TDCP 2008. Importantly, the modified design remains compliant with Section B2 – Tweed City Centre by retaining the building envelope, general setbacks and appearance viewed from Powell and Florence Streets. Architecturally, the development achieves the character statement by providing high quality detailed and interesting facades, maximises view sharing by the use of modulation and provides for greater than required balcony areas for each dwelling complimented with embellished landscaping.

Council officers have provided a more comprehensive assessment of the modification against relevant chapters of the DCP based on the elements of variation to the overall design and the relevant development controls that apply.

Further discussion of such is provided herein:

Section B2 – Tweed City Centre

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

The subject site is located within the Tweed River precinct in the northern character area pursuant to Section B2 (see **Figure 15** below).

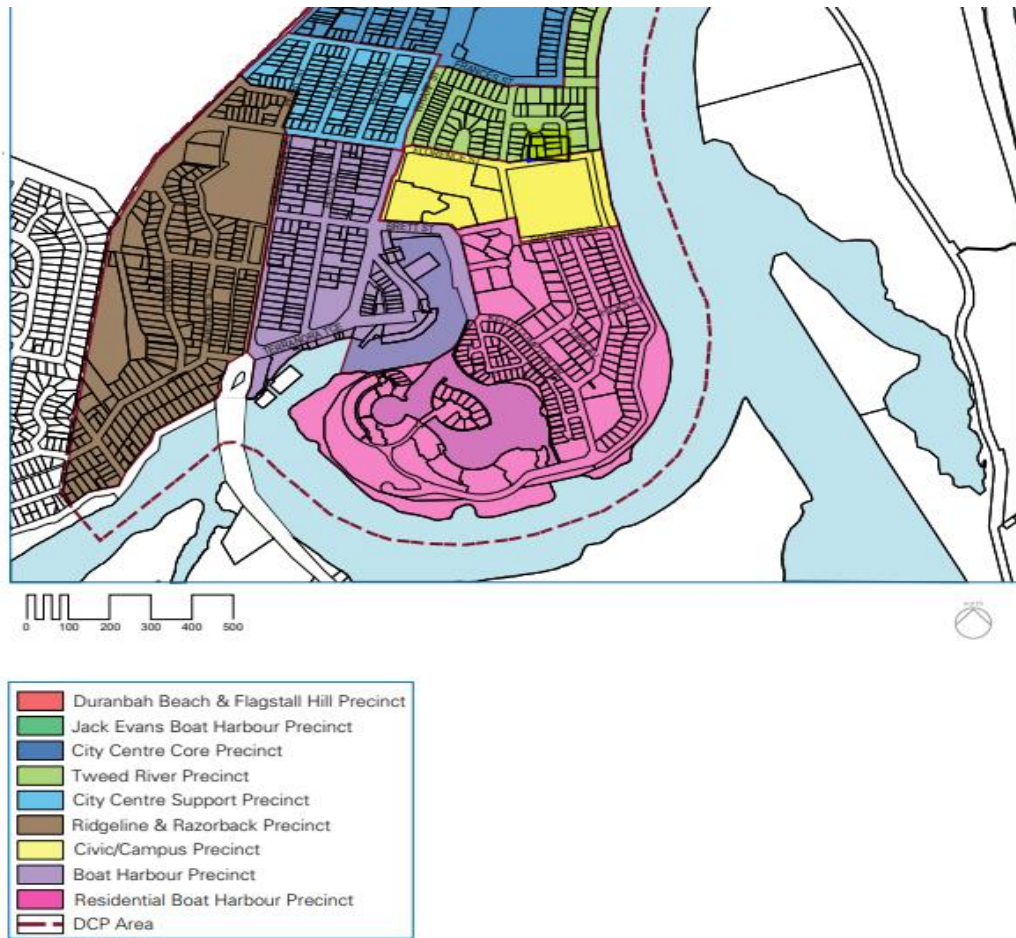


Figure 15: Extract from Section B2 of TDCP2008 - identification of subject site in Tweed River Precinct in northern character area

The character statement for this precinct is provided below:

The Tweed River Precinct adjoins the western bank of the Tweed River, extending from the Jack Evans Boat Harbour Precinct, to the Civic/ Campus Precinct and to Powell Street in the west. The area is predominantly on reclaimed land from the former Greenbank Island and Back Channel. The future character of the precinct will be of a high quality residential area with a small component of mixed business uses along the riverfront park. The future development will respond to the environmental and recreational qualities of the Tweed River and will reinforce the nexus between the City Centre Core and the Civic/Campus Precinct. The built form in the precinct will maximise the view sharing with higher buildings away from the riverfront and lower along the river. The residential buildings will have generous balconies and roof terraces and will be surrounded by landscape.

The proposed modifications comprise of a building footprint that is generally within the approved setbacks to each boundary, this is depicted in the below plan which denotes the existing approval line and proposed building footprint (see **Figure 16** below).



Figure 16: submitted site plan denoting approved setback and building footprint compared to proposed

A review of the proposed modification performance against relevant development controls in the site specific DCP indicates that there are no additional variations to the development controls and the proposal continues to perform against the overarching objectives of the relevant controls as well as the character statement for the Tweed River precinct.

Section A1 – Part C Residential Flat Building and Shop Top Housing

Block Edge Residential Flat Building

A review of the principal controls in Section A1 of the DCP, as they relate to Block Edge Residential Flat Buildings indicates the proposed modification adequately performs against the relevant controls as compared to the existing approval. The following provides a breakdown of the principle development controls relevant to the siting and location of such development.

Design Control 1: Public domain amenity

Control (a) – Maximum building and elevation length along the street is 35m

The approved building elevation length is as follows:

Florence St
19m Building B
42m Building C

Powell St
62m Building A and B

The above building lengths result in a 7m variation in respect of Building C and 27m variation to Powell St.

A review of the proposed building footprint as compared to the approved footprint does not give rise to any additional variations to building length as compared to that already approved.

Site configuration – Impermeable site area

Control (g) - the maximum areas for impervious surfaces is 60% of the allotment (on lot sizes greater than 750m²)

The approved design sought a total impervious surface area of 3,464.1m² or 71.2% of the total site area. This results in a variation of approximately 546.72m² or 18.7%.

The proposed modification results in a maximum impermeable site area of 59.5% which complies with the requirements of this control.

Design Control 2: Site configuration

Topography, cut and fill

Control (h) – cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.

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

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

The proposed modification features the same amount of fill in the same location as that already approved and therefore this aspect of the proposal remains unchanged in terms of its performance against this control. Where cut is proposed to facilitate basement carparking, this is provided in the same location as that already approved. It is noted that the basement carparking will be provided in stages per the proposed staging plan, however appropriate meritorious consideration of the staging of such works has been undertaken and addressed elsewhere in this report. For the purpose of DCP compliance of cut amounts, no further consideration applies to the proposed modification.

Design Control 3: Setbacks

The original footprint of the basement and ground floor development compromised setback controls. In particular, the following variations were approved:

- Southern extent of basement garage/parking approved forward of the building footprint;
- Basement carparking at the eastern side boundary encroaches the 1.5m side setback control.

- Rear setbacks range from 4.17m - 4.298m which is less than the minimum rear boundary setback of 8m.
- Consent was granted for the removal of eight (8) mature trees within the 8m rear boundary setback.

The proposed modifications retain the same setbacks for the basement garage and ground floor development as that approved. There are no further variations to the minimum requirements under this section of the DCP, beyond that already consented to.

Design Control 4: Carparking and Access

The approved development included a porte cochere at the ground level of the development (at grade), with a minimum 2.5m setback from Powell Street. This is located within 12m of the primary street boundary, which is contrary to the setback requirements for on grade parking at the primary street boundary.

This aspect of the proposal remains unchanged however the development seeks to stage the basement parking provision, respective to the delivery of built form relevant to each stage. Consequently, the porte cochere will contain traffic control measures to control vehicle movement in/out of Stage 1 of the development and compensate for the termination of such movement in the basement carpark. Further discussion of this aspect of the proposal, as it relates to impact assessment, is contained elsewhere in this report. However, for the purpose of the development's performance against this section of the DCP, it remains unchanged despite the modifications.

It is further noted that the approved location of the basement (and its walls) is outside of the building footprint (as previously mentioned in the setback analysis above). This aspect of the proposal also remains unchanged as a result of the proposed modifications.

Section A2 – Site Access and Parking Code

Section A2 of the DCP applies to all land in the shire except to the extent of inconsistent with a development provision contained in the applicable LEP or locality specific development controls in Section B of the DCP.

To this extent it is noted that the requirement for parking is governed by Clause 108(k) of SEPP (housing) 2021, which prevails this Section of the DCP as far as parking for users is concerned, this is acknowledged in the assessment tables for Seniors Housing in the DCP.

Notwithstanding the above, vehicular access is addressed having regard to the controls and objectives in the DCP (see further detail below) noting that the proposed modification seeks to alter the proposed vehicular access arrangements in accordance with the revised staging.

Parking

The proposed development will provide a total of 96 car parking spaces. The ground level and basement car parks will provide 12 and 84 parking spaces; respectively.

82 of the total 96 car parking spaces will provide shared spaces and therefore comply with AS2890.6 (85.4% of total carparking).

An additional nine (9) parking spaces will be 3.8m in width to satisfy the Clause 4 in Schedule 4 Part 1 of Housing SEPP 2021. It is noted that the remaining five (5) car parking spaces will comply with AS2890.1.

Given the proposed design achieves 91 spaces that comply with AS2890.6 or SEPP (3.8m wide) out of a total of 96 spaces (94.8%), the development exceeds the current requirements under SEPP as far as % ratio of compliant parking is concerned. Notwithstanding this, there is a reduction in overall parking and there are only two (2) surplus parking spaces beyond that required under the SEPP. It is reasonable to require that these two (2) additional parking spaces are the dedicated employee parking spaces, and Condition 21 is recommended to be updated to reflect such arrangements. All other parking is to be used for residents of the building, in accordance with the SEPP requirements.

Access

The approved development incorporates new and separate vehicular ingress and egress crossovers at Florence and Powell Street and demolition of the existing driveway crossovers and the kerb to be reinstated.

The approved arrangement includes single vehicular ingress with a one lane, one way driveway crossover from Powell St to the northwest corner of the development site and this entry provided direct access to the ground level and basement parking via a boom gate and down ramp.

A vehicle egress was provided via two routes being either an exit to Powe Street from ground level (via porte cochere) or via Florence St from the basement parking level.

The following diagrams illustrate the approved vehicular ingress and egress provisions for the development:



Figure 17: Approved vehicular movement overview and basement parking

The proposed modification seeks to divide the access arrangements based on development stages and this will result in the following:

Stage 1 vehicular access

The single vehicular access from Powell Street to the development will be provided via the south-western driveway crossover. This ingress will provide access to the ground level car park and, through the porte cochere, to the basement parking via a traffic signal system to enable the two-way use of the ramp. The available queuing distance for light vehicles waiting for the traffic signal will exceed the requirements of AS2890.1 (a minimum of two cars' length or 12m). The egress (north-western driveway crossover) will be provided from the north-western boundary of the development. In order to access the basement-level car park, residents will need to pass a set of traffic signals and take a ramp down. This system will enable two-way operation of the access ramp between the basement and ground levels. The proposed vehicular access arrangements for Stage 1 are illustrated below:

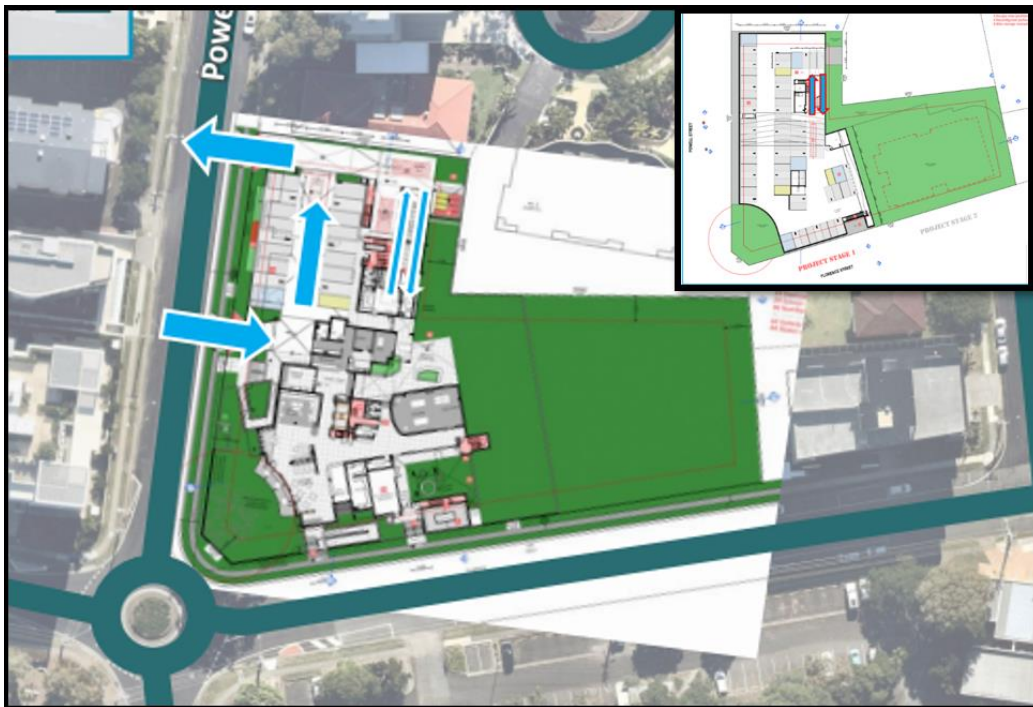


Figure 18: Proposed Stage 1 vehicular movement and basement parking arrangements

Stage 2 vehicular access

With the introduction of Stage 2, there will be no need to use the ramp in two ways and therefore the access arrangements will be different than Stage 1. The single vehicular ingress to the development will be provided from the north-western driveway crossover so that vehicles entering the basement parking will no longer need to travel through the ground level car park and porte cochere area. The egress for the ground level car park will be provided from the porte-cochere area and the egress for basement car park will be provided through the new eastern ramp to Florence Street. As part of Stage 2, the traffic signal systems will be removed, and the access ramp will operate in one way and only provide ingress to the basement from the ground level.

The proposed vehicular access arrangements for Stage 2 are illustrated in **Figure 19** below.



Figure 19: Proposed Stage 2 Vehicular access and basement carparking arrangements

Councils Traffic Engineers have reviewed the proposed staging of the development and the revised vehicular movement arrangements respective to the staging (noting that the above arrangements are supported by a traffic engineering report prepared by SLR Consulting Australia Pty Ltd) and raise no objections to the proposal.

It was noted in the assessment of the proposed modification that the provision of a one way system being controlled by internal signals for stage one does not give rise to traffic concerns given that provision for queuing is provided on the development site.

It is noted that following the receipt of Councils Traffic Engineer assessment report, further clarification was sought in relation to whether the proposed staging scenario could be accepted on a long term basis if the development in its entirety was not completed for an extended period of time and it was confirmed that the proposed signalling would be acceptable on a long term basis if this scenario was to take place providing the signal operation was appropriately maintained for the site.

Based on the additional comments from Councils Traffic Engineer, additional conditions of consent are recommended to require the maintenance and operation of signalling to prevent impact to the adjoining road network (see Recommendation 30 in **Attachment A** for new Condition 137.1)

Section A3 – Development of Flood Liable Land

The subject site is mapped as being affected by the Probable Maximum Flood (PMF) event to a height of RL5.5m AHD. As a result and combined with the surrounding roads being lower than the design flood level, a PMF Refuge is required in order to comply with A3.2.6 Emergency Response Provisions. A Flood Response Assessment Plan is also required demonstrating the adequacy of the refuge.

A Flood Response Plan was submitted with the original application and the PMF Refuge was provided on Level 4 of the development.

The proposed modification includes a PMF Refuge on Level 5 (Stage 1). The floor area of the PMF refuge has been slightly increased and reconfigured and a bathroom is provided in the roof terrace area. The proposed flood refuge construction is provided in Stage 1 of the development and would cater for the entire development site. Councils Stormwater and Flooding Engineer has reviewed the proposed PMF Refuge and advised that it is acceptable.

It is recommended that Condition 139 be updated to reflect the new location of the PMF refuge (previously approved on Level 4 however now proposed on Level 5) (see recommendation 31 in **Attachment A**).

Section A15 – Waste Minimisation and Management

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

A Waste Management Plan (WMP) prepared by HMC Environmental Consulting Pty Ltd was considered to inform the approval of the original application.

The proposed amendments are accompanied by an updated Waste Management Plan which has been considered by Councils Resource Recovery Unit who advised no objections are raised to the proposal and existing conditions in relation to waste management can remain unchanged.

Section A16 – Preservation of trees and vegetation

The approved development includes the removal of the nineteen (19) local native trees that qualify as 'prescribed vegetation', being locally indigenous species equal to, or greater than, five (5) metres in height. The original approval sought to retain the existing Lemon-scented Gum in the southwestern corner, although it is noted that this species is not native to the local area. Conditions of consent were recommended to require adequate compensatory planting for the nominated vegetation removal across the site.

The proposed modification does not seek to alter the approved tree removal, or any conditions associated with compensatory planting. Councils Sustainability and Environment Unit have reviewed the proposal and raised no objection.

Developer Contributions

Developer contributions have been calculated for the development based on the approved staging, number of units and bedroom compositions in each unit (and associated trips per dwelling).

Condition 23 on the consent outlines a schedule of payable amounts based on the deliverables for each stage.

To date, the developer contributions for the development have not been paid.

The proposed modification seeks to alter the composition of bedrooms in each unit as well as the staging as compared to what was originally approved. Therefore Condition 23 is recommended to be modified to reflect the revised staging and unit composition based on bedroom number.

NRPP Briefing/Determination Report: DA21/0949.01 – Section 4.55(2) modification to Seniors Living for demolition of existing dwellings and construction of 95 units, swimming pool, signage, lot consolidation and tree removal at 6-12 Powell Street and 33-37 Florence Street, TWEED HEADS [8 October 2024]

A breakdown of revised calculations is provided here in:

Proposed overall composition:

	Total #1 bed	Total #2 bed	Total #3 bed	Total
	17	66	12	95
ET	= 0.5417 ET/unit 0.5417 x 17 = 9.2083	= 0.7083 ET/unit 0.7083 x 66 = 46.75	= 0.8750 ET/unit 0.8750 x 12 = 10.5	66.4583 ET
Trips	2.5 trips/unit x 95			237.5 Trips

Proposed Stage 1 charges:

	Total #1 bed	Total #2 bed	Total #3 bed	-Credit	Total
	14	24	10	(7 lots)	
ET	= 0.5417 ET/unit 0.5417 x 14 = 7.583	0.7083 ET/unit 0.7083 x 24 = 17	0.8750 ET/unit 0.8750 x 10 = 8.75	- 7	26.333 ET
Trips	2.5 trips/unit x 48			- 45.5	74.5 Trips

Proposed Stage 2 charges:

	Total #1 bed	Total #2 bed	Total #3 bed	Total
	3	42	2	47 units
ET	0.5417 ET/unit 0.5417 x 3 = 1.625	0.7083 ET/unit 0.7083 x 42 = 29.75	0.8750 ET/unit 0.8750 x 2 = 1.75	33.125 ET
Trips	2.5 trips/unit x 47			117.5 Trips

Refer to **Attachment A**, recommendation 8 to delete Condition 23 and insert new condition 23A which contains developer contribution calculations which reflect the revised design and bedroom composition based on each Stage of the development.

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

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

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

The application to modify the development consent was advertised and notified in accordance with the Regulations.

The proposed amendments seek to alter the staging of the development however have no significant impact on matters prescribed by the Regulation. Where required, provision of the EP&A Regulation 2021 have been considered and addressed in the existing consent conditions.

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

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

Environmental Impacts

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

- Context and setting – The amendment to the proposal satisfies the “substantially the same development” test and for this reason is considered to adequately perform against the original matters for consideration in relation to context and settings.
- Dewatering – In response to Councils request for information and having regard to the changes to the proposed staging, the dewatering management plan (“DMP”) was updated. The detail of the updated DMP has been reviewed by all internal officers to ensure it is reflective of proposed excavation levels having regard to Acid Sulfate Soils on the site (see below) and also the requirement for Stormwater Treatment devices in the basement. It was confirmed by Councils Stormwater Engineer that the nominated devices will be “at grade” for the basement carpark and not located below the proposed basement carpark and therefore no additional excavation required.

Notwithstanding this, the DMP notes the following in terms of levels:

Excavation would be required during construction for the footings, services, stormwater drainage, pool and basement carpark. The basement carpark floor level would be RL - 0.2m AHD. The maximum ground surface elevation within the excavation zone is approximately RL 2.9 mAHD. Assuming a footing depth of approximately 0.5m, the maximum general excavation depth would be 3.6m. Areas of the site would have a general maximum excavation depth of 2.9m.

The lift well overruns would extend approximately 1.2m below the basement floor surface to RL -1.4m AHD. The excavation depth in the small, isolated areas of the liftwell overruns would range from approximately 3.69m to 4.4m.

The above statement is not considered to correspond with the amended plans for Stage 1 construction, which indicates a typical excavation depth of 4.125m for the basement carpark. Given there is a discrepancy in the dewatering provisions in the plan having regard to the revised architectural plans, it is recommended that a condition of consent be recommended to require an updated plan to reflect the depths on the plan (see further discussion in “key issues” which outline relevant conditions to be updated).

- Acid Sulfate Soils – The subject site is affected by Class 2 Acid Sulfate Soils and this was addressed as part of the original application. The proposed modifications indicate the excavation of the carpark basement will extend to 4.125m below existing natural ground level. The extent of excavation does not give rise to additional concerns in relation to Acid Sulfate Soils.
- Construction Noise Management – In response to Councils request for information and having regard to the changes to the staging, the proponent has submitted an updated

Construction Noise Management Plan (CNMP) prepared by a suitably qualified acoustic consultant. The CNMP refers to methods to reduce noise conflict in Section 6.2 of the report. These include an option of temporary acoustic barriers, which have been utilised at other similar development sites and no construction noise complaints have been made to Council. Whilst it is acknowledged that some construction noise is inevitable at the subject site (and surrounds), the report identifies appropriate measures to mitigate such impacts and secure best possible outcomes for nearby residences. As such, the CNMP is considered to be worthy of support as it provides feasible and reasonable work practices to minimise construction noise. The existing Condition No. 22 adequately addresses the CNMP (as previously submitted) and requires the report to be reviewed prior to construction works being undertaken. Retention of this condition will ensure the same is undertaken having regard to the proposed modifications. However, it is recommended that Condition 98 be updated to reflect the updated report prepared for the subject modification application.

- Operational Noise Impact Assessment – In response to Councils request for information and having regard to the changes to the staging, the proponent submitted a revised Noise Impact Assessment (“NIA”) Report. The updated NIA outlines recommended acoustic treatment measures to achieve required noise levels. The report notes limitations in relation to a lack of detail for mechanical plant noise (as this is normally a more detailed technical issue dealt with at construction phase). Given the limitations and the need for some acoustic treatments, it is recommended that the existing conditions to require additional acoustic assessment be updated to reflect the revised report and updates to staging (and other design aspects in this modification application). These recommendations are reflected in the updated wording of Condition 37 and Condition 129.
- Flood Impacts – As discussed elsewhere in this report, the subject site is affected by flooding. The proposed modification adequately caters for the land use in terms of its ability to provide appropriate flood refuge for relevant flood events. As such, the consent authority can be satisfied the proposed modification does not pose any additional risk to life of property as a result of flooding impacts.

Accordingly, subject to compliance with the recommended conditions of consent, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

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

Having regard to the merit considerations of the proposed changes and the developments demonstrated positive performance against relevant development standards, the subject site remains suitable for the development.

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


i. Community Consultation

As previously mentioned, the proposed modification was lodged a Section 4.55 (2) and the proponent was of the opinion that Council would be the consent authority for the modification. As such, the proposal was initially notified in accordance with the Tweed Shire Council’s Community Participation Plan from 6 March 2024 until 20 March 2024. However, following an assessment of the proposal (by Councils Town Planners), it was identified that the proposed increase in height and further contravention to Clause 108 of SEPP (Housing) 2021 (being greater than 10%)

required that NRPP be the consent authority. As such, the application was renotified and advertised for a period of 28 days from 8 May 2024 until 5 June 2024.

During the second advertising period, a single submission was received. However, a submission was also received in the initial notification period. For completeness the merit of all issues raised in both submissions has been included in **Table 10** below.

Table 10: Community Submissions

Issue	Council Comments
<p>Increased height</p> <p>Proposed building will be the tallest and largest residential development in the vicinity by a significant measure.</p> <p>In addition, any height increase of any kind will impact the afternoon shade and any height increase will obstruct the westerly view and outlook and we will be looking into (and residents will be looking at) each other given the extraordinary height of this apartment complex in this area</p>	<p>A building height analysis has been undertaken as part of this assessment and it has been determined that there are examples of built form with a relative bulk and scale to that proposed as it relates to height. In addition, the analysis has revealed that the provision of roof services and lift overruns protruding beyond the building height plane is prevalent in the surrounding residential flat buildings and Seniors Housing developments.</p> <p>Furthermore, the proposed variation to the height occurs at the central part of Building B and due to the bulk of this structure being within the central portion of the floorplate, there is no increase in the shadows beyond that already approved. This is demonstrated in the submitted shadow analysis (see extract below).</p> <p>The subject site is located in a transitional area in which existing dwellings are being acquired and lots consolidated for development consistent with that approved under this consent. There are no prevalent westerly views and outlooks for dwellings in the vicinity of the subject site and the provision of the proposed additional 0.8m in building height is unlikely to have any conceivable impact for adjoining dwellings (beyond that already approved).</p> <p style="text-align: center;">WINTER SHADOWS</p> <div data-bbox="560 1099 1361 1473">  </div> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Sun Reflectivity</p> <p>Reflectivity of sun in the morning bouncing off the windows facing east could affect our outlook significantly</p>	<p>The proposed modification does not seek additional windows or a scale of proposal that is different compared to that already approved and therefore this issue is not considered to relate the proposed modifications.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
<p>Setback</p>	<p>The proposed setbacks of the building are consistent with the existing approved setbacks for the building alignment. This is confirmed in a building footprint plan that has been subsequently submitted by the proponent and discussed elsewhere in this report.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>

Removal of Eucalyptus tree on the corner of Florence Street and Powell Street	<p>The proposed modification does not seek to remove any additional trees beyond that already approved. The existing Lemon-scented gum tree at the corner of Florence Street and Powell Street will be retained as part of the development.</p> <p>Outcome: This issue has been satisfactorily addressed. It is noted that Condition 18 on the consent requires the protection of Lemon-scented Gum at corner of Florence Street and Powell Street.</p>
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ii. *External referrals*

Table 11: External concurrence and referrals to external agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Water NSW	Dewatering	<p>The proposed amendments include an updated dewatering management plan to reflect the revised staging. Whilst the proponent has advised that there is essentially no change to the plan, except wording to reflect the revised staging. Comments in the RFI response package indicate otherwise. Namely, the revised staging arrangements will result in separate basement for Stage 1 and 2 and so the impact is distributed over the stages and to service each building.</p> <p>Water NSW provided their comments on the original amended application with no changes to the GTA's required.</p> <p>On 19 August 2024 the amended Section 4.55(2) application was re-referral to Water NSW and on 1 October 2024, it was advised that no objections are raised to the proposal subject to retention of existing GTA's on the consent.</p>	Y
Referral/Consultation Agencies			
Electricity supply authority (Essential Energy)	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> . Development near electrical infrastructure.	The proposed amendment includes the relocation of pad mounted substation from east to west of the site. The amended proposal was referred to Essential Energy pursuant to Clause 2.48 of SEPP (Transport and Infrastructure) 2021. Comments were received on 22 May 2024 with no particular comments provided. General conditions recommended however (already exist on the consent).	Y

iii. *Council Officer internal referrals*

Table 12: Considerations of Council Referrals

Officer	Comments	Resolved
Flooding & Stormwater	No objection subject to update of existing conditions regarding stormwater management and stormwater quality treatment devices.	Yes
Sustainability & Environment Unit	No objection having regard to existing conditions which will remain unchanged.	Yes

Traffic Unit	Access from Powell St through Porte cochere to basement via traffic signal system. Egress from northern driveway. Stage 2 traffic signals removed and access ramp will operate one way with egress from basement to Florence St. Waste collection and loading to occur on Powell Street. The proposed design in this application has been prepared to comply with the previous version of Housing SEPP 2021 and it now well exceeds the requirements of the revised Housing SEPP 2021, given the proposed design achieves 91 spaces that comply with AS2890.6 or SEPP (3.8m wide) out of a total of 96 spaces. No objection subject to recommended conditions regarding parking arrangements (no more than 2 space are to be reserved for staff).	Yes
Environmental Health Unit	Updated reports have been reviewed and no objections raised subject to recommended conditions (noting an updated dewatering plan will be required to reflect the amended Stage 1 basement excavation.	yes
Development Engineering Unit	No objection providing Councils Traffic Engineer is satisfied with revised access/parking arrangements as a result of proposed staging	Yes
Water & Wastewater Unit	No objection to proposed modification subject to amended conditions of consent to reflect the new staging.	Yes
Building Unit	No objection subject to existing conditions.	Yes
Waste Unit	Amended Waste Management Plan assessed, and no objections raised.	Yes

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

The original application was assessed to have a positive impact in terms of public interest given its contribution to housing opportunity for seniors within a medium density seniors housing development that is consistent with the future and current transition of the Tweed City Centre. The development was considered to create employment opportunities through lobby staff, cleaning and landscaping, which also adds to a positive impact on the broader public interest.

The design of the development was consistent to not have adverse impact on the safety and wellbeing of the public.

The proposed modification remains in the public interest for the reasons previously mentioned.

The proposed modification does not alter the number of units being delivered as part of the Seniors Housing development, contains a design that continues to protect the safety and wellbeing of the public and provides the same level of employment opportunities as that originally approved.

4. KEY ISSUES

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

a. Merit assessment of additional height variation

NRPP Briefing/Determination Report: DA21/0949.01 – Section 4.55(2) modification to Seniors Living for demolition of existing dwellings and construction of 95 units, swimming pool, signage, lot consolidation and tree removal at 6-12 Powell Street and 33-37 Florence Street, TWEED HEADS [8 October 2024]

The proposed modification seeks to increase the overall height of the proposal beyond that already approved (see Table 1 in this report). The increase occurs to a small area affecting the lift overrun for Building B in Stage 1 of the development. The variation comprises of 1.2m beyond that already approved (noting the approved development permitted a variation to the maximum permitted height pursuant to Clause 4.3 of TCCLEP2012 and Clause 108(k) of SEPP (Housing) 2021).

Council officers have considered the proposed additional variation having regard to the relevant matters for consideration under Clause 4.6 and also the objectives of Clause 4.3 of TCCLEP2012 (the assessment has also gone as far as undertaking an analysis of approved heights of similar developments within the locality per Figures 13 and 14 in this report), to determine that the proposed variation is worthy of support.

In terms of the height analysis is concerned, it is noted that the manner in which previous similar land uses were consented to within the locality of the subject site was at a time when limitations to height were measured in storeys and not numerical limitations (metres or top RL's). The maximum permitted height for the subject site and the surrounds at that time was 6 storeys, and this is indicative of the approved built form in the locality. The proposed development does not seek an additional storey and is indicative of a 6 storey development despite the overall height variation. Furthermore, as detailed in the streetscape height analysis, there is a strong prevalence of additional height for lift over runs, similar to that proposed.

The height is located in an area of the building that it will have no conceivable impact at the human scale (from a streetscape perspective) and does not extent shadows to the south beyond that already approved, therefore categorically has no environmental impacts in terms of overshadowing, privacy or streetscape outcomes.

Resolution: The merits of the proposal as it relates to the additional height for the proposed lift over run do not give rise to the refusal of the modification application.

- b. Merit assessment of developments performance against current SEPP (Housing) 2021 standards compared to the repealed standards the originally approved development was assessed against*

The development was consented to before the commencement of the Schedule 7A (Savings and transitional provisions) of SEPP (Housing) 2021 which would have otherwise "saved" the development from complying with the current development standards that apply to the Seniors Housing SEPP. The proponent failed to provide any assessment information in relation to the developments performance against the current policy. Notwithstanding, Council officers have undertaken an assessment of the relevant standards, the detail of which is outlined previously in this report. Based on the assessment, the consent authority can be satisfied that the proposal complies with those standards as originally approved. Where the development fails to comply with Clause 108 of the SEPP (in terms of height and floor space ratio), these variations have already been consented to. It is noted that there are additional variations to height as a result of the lift over run however the proposed floor space ratio remains unchanged as a result of the modification.

Resolution: Council officers have reviewed the proposal having regard to the current provisions and there are no additional non compliances apart from that already discussed

elsewhere in this report as it relates to the maximum permitted height of development for the purpose of independent living units pursuant to Clause 108(k) of SEPP (Housing) 2021.

Furthermore, recommendation No 7 to update Condition 21 requires parking to be provided in accordance with the current provisions of the SEPP. The current plan is capable of supporting this requirement.

c. Dewatering Plan detail not consistent with Stage 1 plans

As part of the assessment of the modification application, it was noted that a revised DMP was submitted with the DA to reflect the changes to the staging. Upon review of the plan, it was identified that the excavation depths in the plan, whilst note some depths to the extent of the Stage 1 basement carpark, mostly seeks to excavate to a maximum extent of RL2.9m AHD (based on excavation zone depths). A review of the architectural plans indicates the proposed excavation depth for the entire basement is 4.125m. It is assumed that this discrepancy may be due to the fact that the dewatering plan has not been amended in line with the revisions to the plans during the assessment of the original DA and subsequent modification application.

Water NSW GTA's do not nominate a particular excavation depth, and no issues have been raised from Water NSW in this regard. As such, Council has recommended a new condition of consent to require an updated DMP prior to the commencement of each stage of the development. The revised plan would need to reflect the approved plans as part of this modification application. Subject to compliance with the recommended conditions, Water NSW GTA's and other conditions of consent, the provision of dewatering is suitably catered for in the amended consent.

Resolution: The issue has been resolved through recommended conditions of consent (see recommendation 7 for new Condition 22.1 after Condition 22 and recommendation 25 to delete Condition 103 in **Attachment A**).

d. Construction & Operational Noise Management Plan to respond to revised staging

The original application sought to stage the development (albeit not being entirely clear in the way the conditions were composed). The subject modification (as lodged) sought to stage the development in a manner that an existing dwelling would remain on the site and not form part of the Stage 1 demolition. This gave rise to concerns in relation to Stage 1 works occurring adjacent to an existing dwelling. For this reason, Council officers raised concerns in relation to construction management and likely amenity impacts.

Upon receipt of the proponents RFI response, it was confirmed that the proposed modification will seek to demolish all existing dwellings at the subject site as part of Stage 1, ameliorating Council's concerns.

In addition, updated Construction and Operation Noise Impact reports were submitted as part of the RFI response. Each report outlines specific recommendations and attenuation measures to resolve any potential impacts. It is anticipated that the development will cater for the performance requirements to ensure internal amenity for residential dwellings can be maintained during construction and as part of the ongoing use of the site.

Resolution: The likely impacts of the development as a result of the modification to staging are considered to be acceptable. Compliance with the updated reports have been reflected

in the recommended updates to Conditions. In particular, recommendation 19 in relation to acoustic assessment based on final mechanical plant selection and location (Condition 37A), recommendation 29 regarding compliance with Environmental Noise Impact report (Condition 129A).

e. Stormwater Quality Treatment devices & parking impacts

The proposal, as amended in response to Councils RFI, incorporates the use of on-site detention system at ground level to accommodate the 2 stages of the building construction. Water quality treatment has been addressed for all hard stand areas, although it was identified that the stormwater quality treatment devices were not explicitly specified for the basement car parking area. A notation was provided on the plan outlining that such provision will be provided via a tank to store oil and sediment, which is consistent with TSC Design Specification D7. Councils Stormwater and Flooding Unit has reviewed the original and amended SMP and SQT devices and whilst no objections are raised, conditions of consent are recommended to secure adequate stormwater management and stormwater quality treatment for the site noting that the provision of at grade tanks in the basement has the potential to affect the overall layout of carparking and vehicle manoeuvrability if surplus space for tank storage is not available. To this end, it is noted that Council (in its RFI requested that detail of the SWQ treatment devices be provided to determine that they could be suitably provided within the development without impact circulation areas and parking however, the proponent failed to provide this detail). Therefore, it has been conditioned that such detail be provided as part of any Section 68 application. Having regard to other merit considerations and recommended conditions of consent for minimum parking requirements, it is noted that should the tanks impact the number of parking spaces or compliant vehicle manoeuvrability, a modification application would likely be required to assess the parking/vehicle manoeuvrability impacts noting that the proposed modification results in an overall reduction in parking. Whilst the proposal still complies with the minimum parking requirements, the residue parking of two (2) spaces for staff/visitors is at its minimum and its unlikely that a further reduction in onsite parking would be supported.

Resolution: Conditions of consent are recommended to require further detail of stormwater quality devices (see Recommendation No 14 and update to Condition 29, detail of Stormwater Quality Treatment devices, OSD and erosion and sediment control detail as part of a Section 68 application (See recommendation No. 16 and updates to Condition 30).

In addition, Conditions of consent are recommended to require compliant parking (See recommendation No 7 and update to Condition 21).

5. CONCLUSION

This modification application has been considered pursuant to Section 4.55(2) of the EP&A Act. The modification is considered to be substantially the same development as that approved and the impact of the proposal (as amended) is considered to be acceptable.

The proposal remains consistent with the zone objectives and despite comprising a further variation to the maximum permitted building height, remains consistent with the objectives of relevant clauses in both SEPP Housing 2021 and TCCLEP2012 in terms of height, bulk and scale.

The assessment of the proposed modification focused on a number of issues in relation to construction management, noise management and traffic management. These aspects of the

proposal (as modified) remain acceptable despite the changes to the staging for the development.

The modified development remains well designed and provides additional housing stock for the ageing demographic of the Shire. Further, it continues to provide both short and long term employment opportunities, thus contributing to the local economy.

The application has been assessed by various internal and external stakeholders and following the amendment to the application, stakeholders raise no objection subject to conditions.

Accordingly, it is recommended that the modified consent be granted subject to the modification of relevant conditions as detailed in **Attachment A**.

6. RECOMMENDATION

That the Section 4.55(2) modification application DA21/0949.01 for demolition of existing dwellings and construction of Seniors Living comprising 95 units, swimming pool, signage, lot consolidation and tree removal at 6-12 Powell Street and 33-37 Florence Street TWEED HEADS be APPROVED subject to the recommended modified consent conditions attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Draft recommended amendments to Conditions of consent
- Attachment B: Comparative study - approved development vs proposed changes
- Attachment C: Plans for approval
- Attachment D: Redacted Submissions
- Attachment E: Consolidated consent and stamped approved plans for DA21/0949
- Attachment F(1): Submitted Stage 1 complete set of Architectural Plans
- Attachment F(2): Submitted Stage 2 complete set of Architectural Plans