

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-306 – PAN-438794 – DA24/0196
PROPOSAL	Construction of shop-top housing comprising three levels of basement carparking, ground floor retail premises, 72 residential units, podium level pool, signage and associated vegetation removal (NRPP)
ADDRESS	Lot 1 DP 807977; No. 3 River Terrace TWEED HEADS; Lot 2 DP 807977; No. 5 River Terrace TWEED HEADS; Lot 5 DP 9056; No. 7 River Terrace TWEED HEADS
APPLICANT	Sutherland & Associates Planning Pty Ltd
OWNER	Mr Edward G Briscoe & Mrs Skye L McMaster
DA LODGEMENT DATE	20 June 2024
APPLICATION TYPE	Integrated Development Application – Section 90(2) of the <i>Water Management Act 2000</i>
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as the development has an estimated development cost of more than \$30 million.
EDC	\$86,908,759.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 4.3 Height of Buildings of Tweed City Centre Local Environmental Plan 2012 Clause 4.4(2C) Floor Space Ratio of Tweed City Centre Local Environmental Plan 2012
KEY SEPP/LEP	State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Resources and Energy) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022

	<p>State Environmental Planning Policy (Transport and Infrastructure) 2021</p> <p>Tweed City Centre Local Environmental Plan 2012</p>
TOTAL & UNIQUE SUBMISSIONS	<p>11 unique submissions in total noting one duplicate and one addendum to a previous submission.</p> <p>An additional unique submission was also received after closure of the notification period.</p>
KEY ISSUES IN SUBMISSIONS	<p>Vehicle conflict and traffic on Monastery Lane, Wharf Street and River Terrace</p> <p>Inadequate car parking</p> <p>Inadequate hydraulic and ground testing investigations and construction impacts on structural integrity of neighbouring buildings</p> <p>Solar access to neighbouring buildings</p> <p>Stormwater and rubbish impacts on the river</p> <p>Loss of vegetation</p> <p>Non-compliance with setbacks, height standard and floor space ratio standard</p> <p>Impact on native wildlife</p> <p>No public transport impact statement</p> <p>Non-compliances with the National Construction Code</p> <p>Impacts to residents during construction</p> <p>Privacy impacts</p> <p>Impacts on lot boundaries</p> <p>Location of power poles</p> <p>Trades parking during construction stage</p> <p>Stormwater drainage</p> <p>Potential obstruction of nearby signage</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>Accessibility Review</p> <p>Acid Sulfate Soils Investigation and Acid Sulfate Soil Management Plan</p> <p>Adjacent Development Potential Study</p> <p>Amended Architectural Plan Package – Revision H</p> <p>Amended Building Services Infrastructure Report – Revision D</p> <p>Amended Civil Design Report – Issue 4</p> <p>Amended Civil Package – Issue C</p> <p>Amended Clause 4.6 Floor Space Ratio Variation Request</p> <p>Amended Development Summary</p> <p>Amended Landscape Package – Revision B</p> <p>Amended Noise Impact Assessment dated 17 February 2025</p> <p>Amended Waste Management Plan dated 13 March 2025</p>

	<p>Arborist Report</p> <p>Architect Response Letter dated 9 April 2025</p> <p>Architect's Response to Council Matters dated 21 February 2025</p> <p>Architectural Design Report with Design Verification Statement</p> <p>BASIX Certificate</p> <p>BCA Assessment Report</p> <p>Building Services Return Brief</p> <p>Clause 4.6 Height of Buildings Variation Request</p> <p>Contaminated Land Site Investigation Report</p> <p>Ecologically Sustainable Development Assessment Report</p> <p>Embodied Energy Report</p> <p>Fire Safety Strategy</p> <p>NatHERS Certificate</p> <p>Pedestrian Wind Environment Statement</p> <p>Preliminary Geotechnical Investigation</p> <p>Remediation Action Plan</p> <p>Response to Additional Information Cover Letter dated 15 April 2025</p> <p>Section J Energy Efficiency Assessment</p> <p>Statement of Environmental Effects</p> <p>Survey Plans</p> <p>Traffic Impact Assessment</p> <p>Traffic Impact Additional Information Response dated 15 April 2025</p> <p>Visual Impact Assessment</p> <p>Visual Impact Assessment Appendix 4 Photos</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not applicable.
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	16 June 2025
PLAN VERSION	2 April 2025 Version No H
PREPARED BY	Turner Architects

EXECUTIVE SUMMARY

The development application DA24/0196 seeks approval for the construction of shop-top housing comprising three levels of basement carparking, ground floor retail premises and 72 residential units, podium level pool, signage and associated vegetation removal.



Figure 1: 3D view of “the Landmark” tower building (prepared by Turner).

Associated works are also proposed including the widening of the primary access road (Monastery Lane), services works and streetscape works subject to final design agreement with Council.

Existing development on the site comprises of three (3) dwellings (one (1) on each of the subject sites). These dwellings are approved for demolition in CDC24/0070.

The application was initially lodged on 20 June 2024 and the Northern Regional Planning Panel was briefed on 11 December 2024.

Following the briefing, a request for further information was issued on 16 January 2025 and finally responded to in full by the applicant on 15 April 2025.

The application is now referred to the Northern Regional Planning Panel for determination in accordance with Section 2.19(1) and Clause 2 of Schedule 6 of the *State Environmental Planning Policy (Planning Systems) 2021* as the development has an estimated development cost of more than \$30 million.

The site benefits from water views of the terminus of the Terranora inlet of Tweed River to the east and city views to the north. Directly opposite the site on the eastern side of River Terrace is a working harbour (Tweed Marina), public car park and fish and chip shop. Within walking distance of the site is the Tweed Civic and Cultural Centre (130m), Club Tweed (Registered Club) (250m), and Tweed Mall Shopping Centre (700m).

The site is part of the Southern Boat Harbour precinct designated for redevelopment in Section B2 of the Tweed Development Control Plan (DCP) 2008. The primary aim of the redevelopment is (Section 8.1.4 of Section B2):

To create a revitalised southern gateway to Tweed City Centre. This highly attractive location has good exposure to the main street and boat harbour. There is an opportunity to rejuvenate this intimate boat harbour and tourist area into a mixed-use destination containing residential uses, tourist activities and accommodation, a function centre, and restaurants and cafés addressing the boat harbour frontage...

Accordingly, the site is located in an area identified for transition from an area of low density that is dominated by single dwellings into a vibrant mixed-use area. To encourage activation of the redevelopment, the site is afforded the highest height and floor space ratio controls the Tweed City Centre Local Environmental Plan 2012 (TCC LEP) offers.

The application required referral to Water NSW as integrated development under Section 4.46 of the *Environmental Planning & Assessment Act 1979* and Section 91 of the *Water Management Act 2000*. General Terms of Approval have been issued.

The application was also referred to Essential Energy under Section 2.48 of the *State Environmental Planning Policy (Transport & Infrastructure) 2021* and to the Gold Coast Airport under Clause 6.9 of the *Tweed City Centre Local Environmental Plan 2012*.

Essential Energy and the Gold Coast Airport have issued their final approvals subject to conditions of consent.

The site is identified as a Key Site in the TCC LEP, with Clause 6.10(4) of the TCC LEP triggering the need for a Design Competition, unless a waiver was issued under Clause 6.10(5), and the design was subject to a Design Review Panel (DRP) review.

The applicant applied for, and was issued with a Design Competition waiver. The proposed development has been subject to four (4) DRP meetings (three (3) meetings pre-lodgement and one (1) meeting post-lodgement) pursuant to Clause 6.10(5) of the TCC LEP and Section 145 of the *State Environmental Planning Policy (Housing) 2021*. The development design has evolved after each meeting and the DRP advice includes significant comments of support for the final design.

The key issues raised in the initial assessment and the briefing report related to traffic, car parking, waste collection, stormwater, dewatering, noise, vibration, contamination and electrical safety concerns.

These issues are considered to be satisfactorily resolved by way of further information and/or conditions as recommended in Attachment A.

The proposal was notified and advertised in accordance with Council's Community Engagement and Participation Plan 2019-2024 from 17 July 2024 until 14 August 2024. The notification/advertisement included the following:

- An advertisement in the local newspaper Tweed Valley Weekly;
- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (approximately 30); and
- Notification on the Council's website.

The Council received a total of 11 unique submissions, comprising 12 objections (including 1 addendum to an existing submission) to the proposal.

An additional submission was received after the closing date for the notification period.

The submissions raised concerns in relation to vehicle conflict and traffic, car parking, hydraulic and ground testing, construction impacts on neighbouring buildings, solar access, television reception, non-compliance with setbacks, height standard and floor space ratio standard, impacts on native wildlife, public transport assessment, non-compliances with the National Construction Code, construction impacts, privacy impacts, noise impacts from the loading dock, impacts on lot boundaries, location of power poles, trades parking, stormwater drainage and visibility of nearby signage. These issues are considered further in this report and are considered either addressed by the application or manageable by conditions of consent.

Following a detailed assessment of the application, pursuant to Section 4.16(1)(a) of the *Environmental Planning & Assessment Act 1979*, DA24/0196 is recommended for approval subject to the conditions of consent contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The site comprises three (3) lots known as 3, 5 and 7 River Terrace, Tweed Heads. Combined, the sites have an area of 1,847m² and have road frontages to Wharf Street (46m), River Terrace (67m) and Monastery Lane (38m) to the west, east and south respectively.

The lots are currently improved with single dwelling houses and are heavily vegetated. The dwelling houses are to be demolished pursuant to a Complying Development Certificate (CDC24/0070 approved by private certifier on 25 June 2024). The application seeks approval to clear all vegetation on the sites prior to consolidation and construction.

The sites have a cross-fall of approximately 4.25m from the southern corner on Monastery Lane to the opposite corner of Wharf Street and River Terrace and rises steeply within the front setback of existing 7 River Terrace, Tweed Heads.

The site benefits from water views of the terminus of the Terranora inlet of Tweed River to the east and city views to the north. Directly opposite the site on the eastern side of River Terrace is a working harbour (Tweed Marina), public car park and fish and chip shop. Within walking distance of the site is the Tweed Civic and Cultural Centre (130m), Club Tweed (250m), and Tweed Mall (700m).

The site is mapped as above the Design Flood Level but below the Probable Maximum Flood (PMF) level of 5.6m AHD.

River Terrace is partially mapped as below the Design Flood Level of 2.6m AHD.

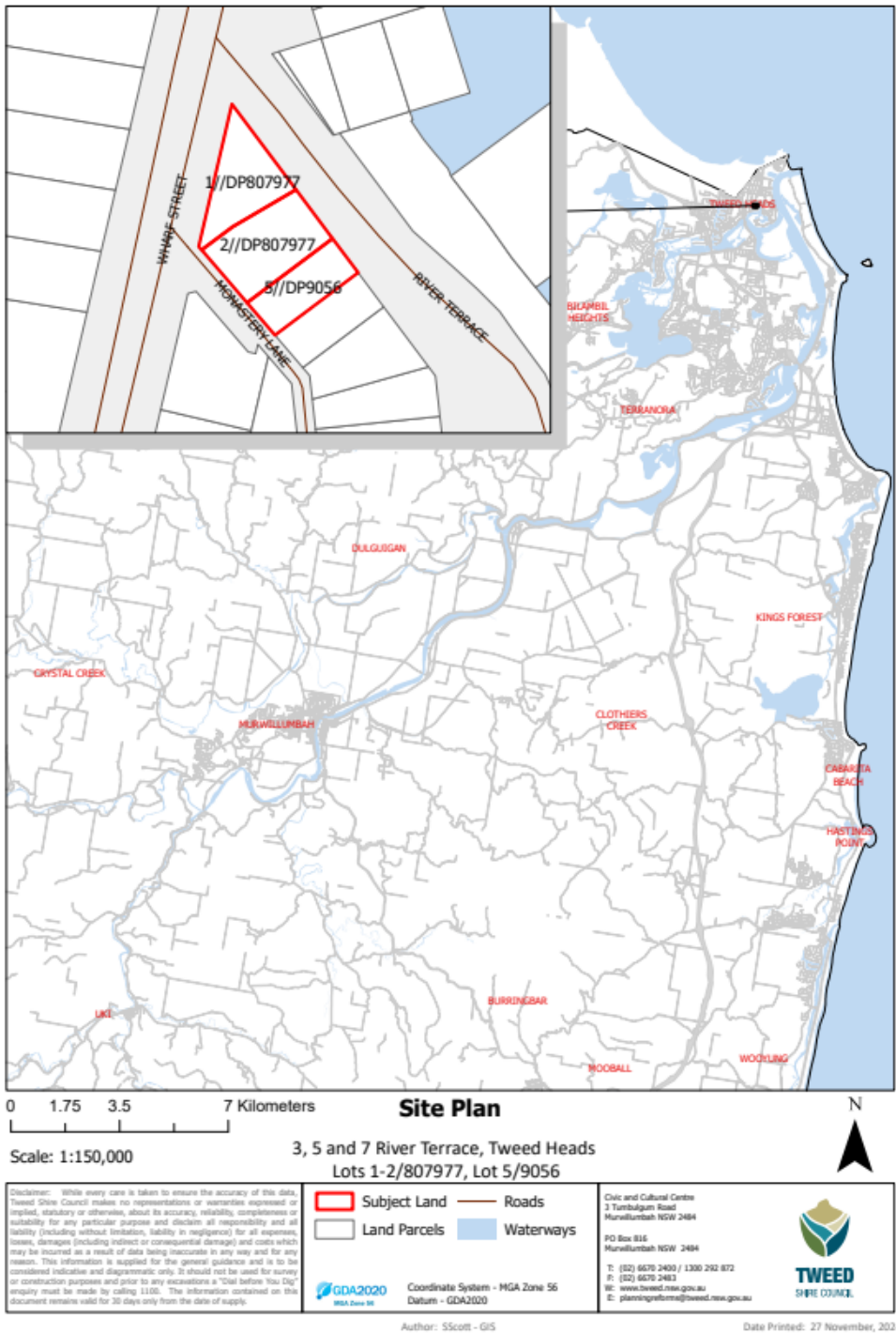


Figure 2: Site Plan from Tweed Shire Council.

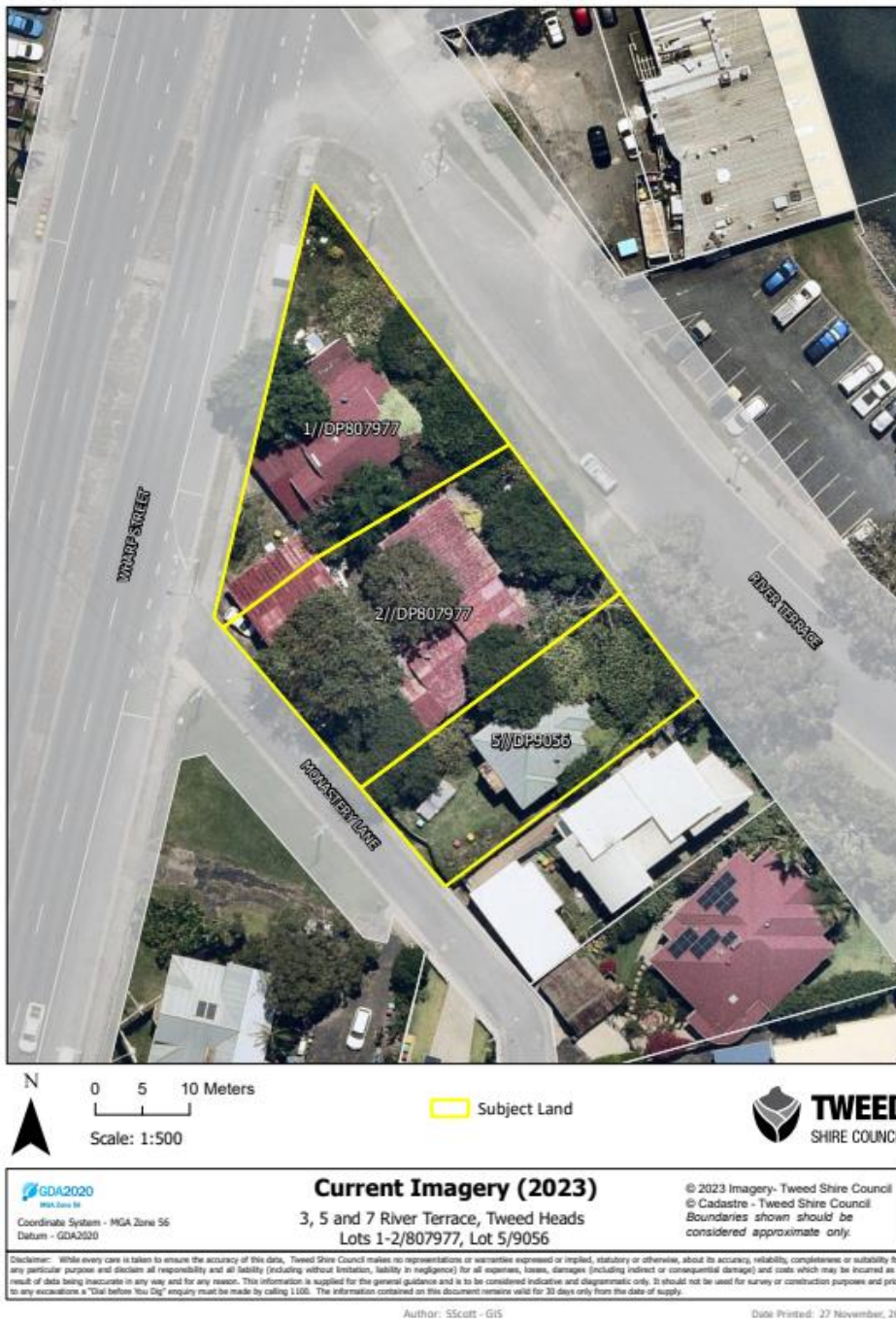


Figure 3: Aerial imagery from Tweed Shire Council.

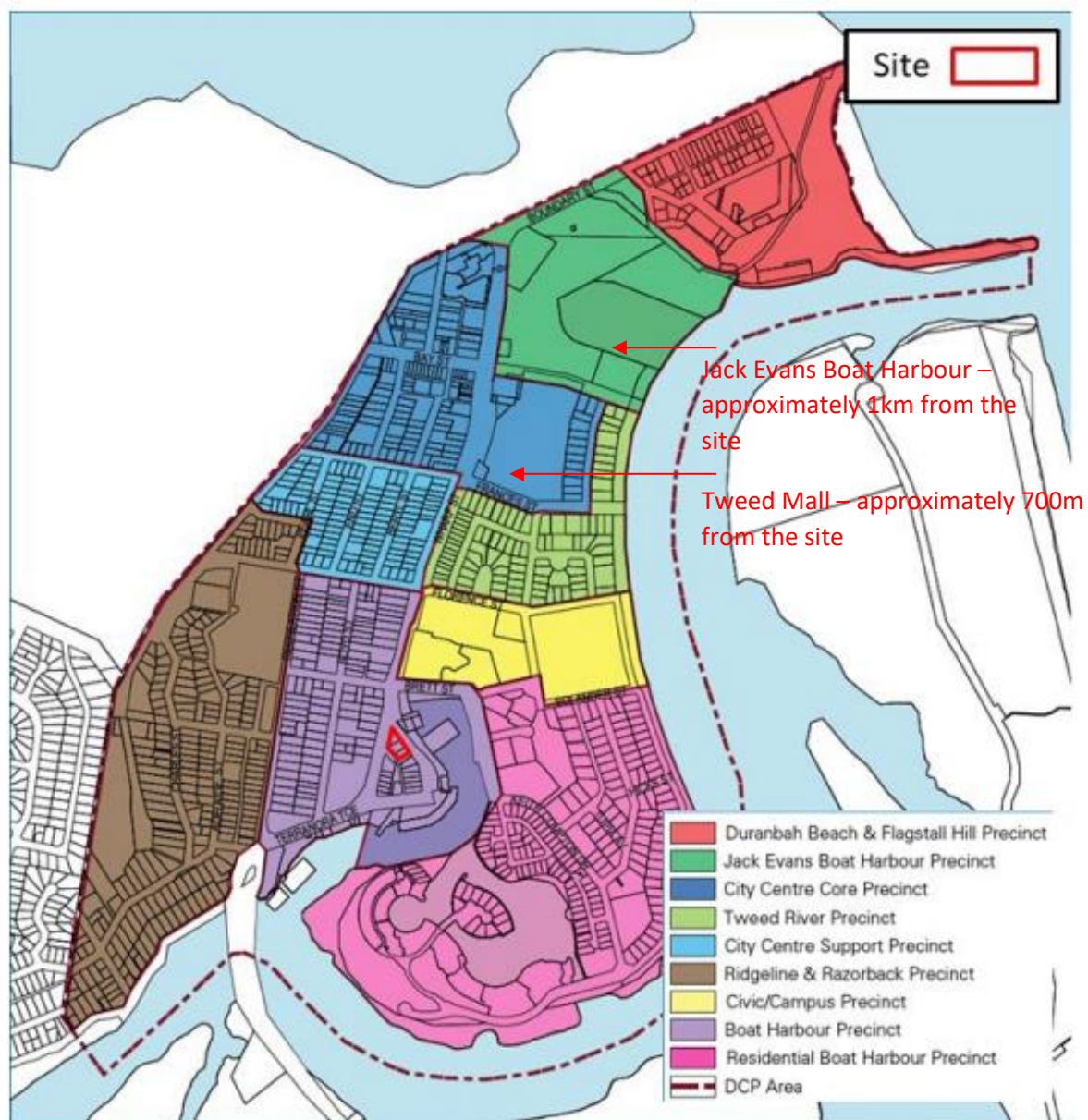


Figure 4: Extract of Tweed City Centre precinct map in Section B2 of the DCP.



Figure 5: View to the south from Wharf Street looking to the corner of Wharf Street and River Terrace.



Figure 6: View to the north from Monastery Lane looking towards Wharf Street.

1.2 The Locality

The site is located in the Tweed City Centre approximately 600-700m from the Coolangatta, QLD border. The site is located along a significant collector road (Wharf Street) which connects (from the south) the Pacific Motorway and more modest built form, green spaces and waterways of Tweed Heads and Tweed Heads South with the larger scale buildings, commercial and tourist developments and beachside of the Coolangatta/Tweed Heads border (to the north). Wharf Street accommodates car and bicycle transit as well as a bus route. A

bus stop is located on the Wharf Street frontage of the site and on the other side of Wharf Street from the development.

Immediately opposite the site is the Tweed Marina and the Terranora inlet of the Tweed River. The Tweed Marina is a working boat harbour. River Terrace follows the Terranora inlet before exiting further south along Wharf Street. Between River Terrace and Wharf Street is the traditionally named “Monastery Hill” which is dominated by single dwelling houses. Monastery Lane provides the sole access for most of the residential development on the hill and is a cul-de-sac lane that does not provide turnaround facilities at the terminus.

This area forms part of the “Boat Harbour Precinct”, being named the “Southern Boat Harbour” and has been designated for redevelopment in Section B2 of the DCP. The area benefits from mixed use zoning and generous height and floor space ratio standards that facilitate redevelopment.

The subject site and a further site on the southern tip of the Southern Boat Harbour are nominated as “key sites” in the TCC LEP and Section B2 of the DCP. “Landmark” buildings are encouraged to be developed on these sites as entry statements to the precinct and the Tweed City Centre.

The objective of the redevelopment is:

- 1) To create a revitalised southern gateway to Tweed City Centre. This highly attractive location has good exposure to the main street and boat harbour. There is an opportunity to rejuvenate this intimate boat harbour and tourist area into a mixed-use destination containing residential uses, tourist activities and accommodation, a function centre, and restaurants and cafés addressing the boat harbour frontage (as indicated in Figure 8-6).*
- 2) To promote the maritime theme of the boat harbour, and to encourage and facilitate tourism and boating on the Tweed River.*

This site will be the first within the Southern Boat Harbour to be redeveloped under the revitalisation controls since Section B2 of the DCP came into effect in 2013.

It is noted that development consent for a shop-top housing development comprising 34 dwellings and 2 commercial tenancies was granted for 151 Wharf Street, Tweed Heads immediately opposite the subject sites and adjacent to the Boat Harbour precinct (DA23/0314 approved on 20 February 2024).

A proposal for State Significant Development for a further key site just south of and also outside the Boat Harbour Precinct has also been recently submitted for 169-171 Wharf Street, Tweed Heads and is currently at ‘prepare EIS’ stage (SSD-83282213).

The Tweed Mall Shopping Centre (approximately 700m north of the site into the city centre) has also been the subject of a deferred commencement concept approval for redevelopment of the existing mall to provide a range of services including approximately 1,300 residential apartments and 13 buildings of varying heights to a maximum of 15 storeys (DA23/0209 approved on 21 June 2024).

The above applications highlight the nature of the city centre and entrance to the city centre as areas in transition where the density of development is increasing in an established brownfield area. As such there will inevitably be challenges in redeveloping, particularly for smaller lots, and those which are essentially ‘first off the rank’. Notwithstanding initial concerns

with operational issues such as parking and waste management, the proposal has been modified through the assessment process, and it is considered that subject to appropriate conditions of consent, the issues have been resolved.

8.0 Controls for special areas

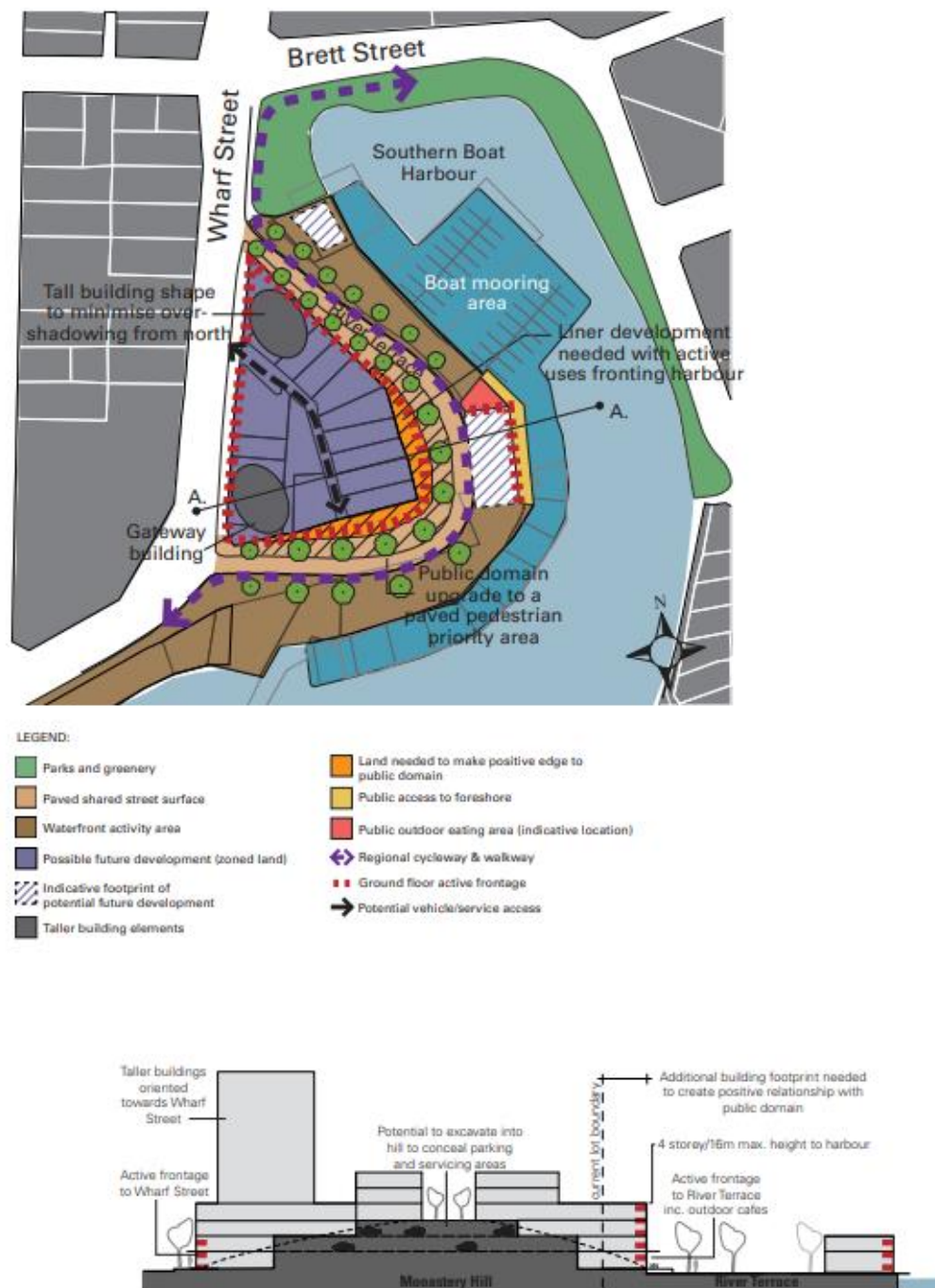


Figure 7: Extract of Figure 8-6 Southern Boat Harbour Special Area Plan from Section B2 of the DCP.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for a shop-top housing development comprising three levels of basement car parking, one (1) ground floor showroom retail premises, one (1) ground floor food and drinks retail premises and 72 residential units over Levels 01 to 13 above the ground floor.

The proposal recognises that the development is the first in a transitioning area and provides an adjacent development study to show how the development could potentially fit within the future context (although no works on other lots are proposed).

It is noted that various off-site works are proposed for this application include the widening of part of Monastery Lane, construction of a new footpath on Monastery Lane, associated services infrastructure works, restoration and/or full paving of road verges, relocation of power poles on Monastery Lane and relocation and undergrounding of power poles and powerlines on River Terrace.

The final design of off-site works including the design, materials and colours of paving, numbers and locations of street trees and Monastery Lane road location is proposed to be the subject of a future application under Section 138 of the *Roads Act 1993* as mandated in the recommended conditions. The final design of electrical works is to be the subject of further agreement between the developer and Essential Energy in accordance with conditions recommended by Essential Energy.

The proposal requires removal of all vegetation on site. The proposed vegetation includes eight (8) local native trees greater than 5.0m in height, one (1) very large Hill's Weeping Fig (*Ficus macrocarpa hillii*), approximately seven (7) non-locally occurring trees/vegetation and additional ground covers/shrubs. Replacement planting is mandated in the recommended conditions.

Following issue of a request for further information, the proposal was revised to include the following. These revisions are considered to substantially address the Council's initial concerns with the application subject to the recommended conditions of consent in Attachment A.

- widening of Monastery Lane to 6.0m and inclusion of a pedestrian footpath;
- change of proposed use of a retail premises to 'showroom' in accordance with Section B2 of the DCP to lower car parking space generation rates;
- provision of additional car parking in the basement;
- adjustment of basement car parking space dimensions in compliance with AS2890;
- relocation of residential waste collection to River Terrace including internal manoeuvring;
- adjustment of proposed bin sizes to bulk general waste bins in compliance with Section A15 of the DCP;
- updated Noise Impact Assessment addressing acoustic impacts;
- Remediation Action Plan addressing contamination concerns;
- updated Landscape Package addressing planter specifications, irrigation and maintenance;
- updated shadow diagrams, updated plans including additional windows to apartments with low sunlight and an updated daylight access assessment;

- updated Architectural Plans' legend addressing ventilation;
- addition of basement storage cages for each apartment;
- updated off-site works including removal of a shared pedestrian zone and planter boxes in favour of street trees; and
- undergrounding and relocation of overhead powerlines and power poles.

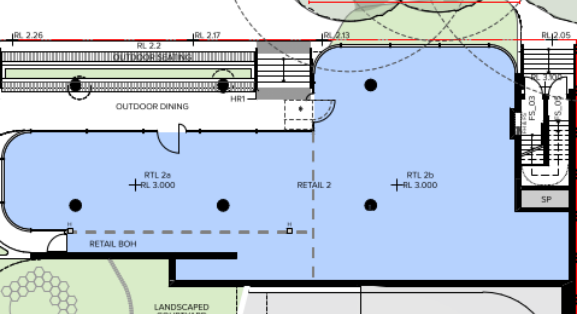
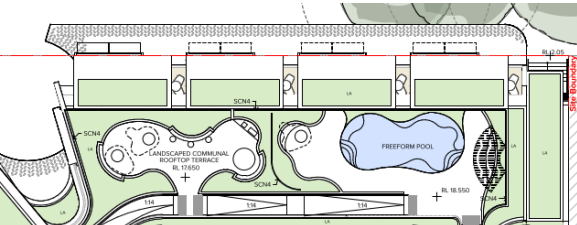
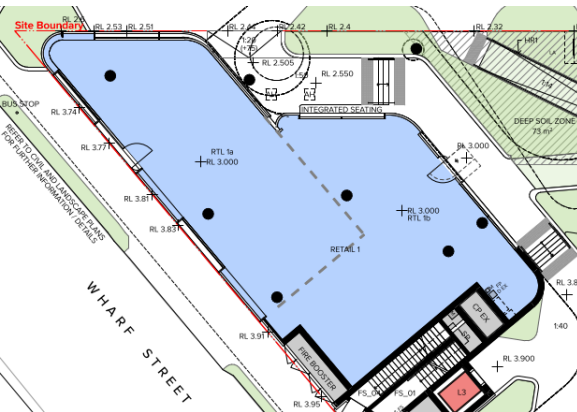
Specifically, the final proposal involves:



- a series of varied but highly-designed interconnected built form 'blocks' at each frontage including a slender tower to Wharf Street and block apartments to River Terrace (termed the "River Terrace Commons" by the applicant) and Monastery Lane;
- construction of 72 units over Levels 01 to 13 including a range of apartment designs and sizes comprising:
 - 15 x one (1) bedroom apartments;
 - 41 x two (2) bedroom apartments; and
 - 16 x (3) three bedroom apartments;
- 8 adaptable apartments and 15 silver level liveable housing design apartments;
- communal open space comprising:
 - a shared retail/residential greenspace on the ground floor;
 - an open landscaped gully within the heart of the development; and
 - a resident exclusive rooftop terrace with communal facilities including BBQ, pool and seating areas on Level 04;
- substantial planter bed and soil on structure landscaping including a landscaped roof, cascading landscaped awnings, planter boxes in building indentations, raised planter beds on the ground floor, a feature tree on the River Terrace boundary and a second feature tree in a building 'cut-out' facing the adjacent residential boundary (9 River Terrace, Tweed Heads);
- an active retail frontage to River Terrace and Wharf Street including associated landscaping and stairs and ramps for access off the low-lying River Terrace;
- vehicle access via Monastery Lane comprising of:
 - residential vehicle access to basement parking;
 - service vehicle access to a loading area; and
 - service vehicle turnaround facilities via a turntable arrangement on-site (including for commercial waste collection);
- 3 basement levels containing building services and parking;
- parking comprising of:
 - 96 car parks;
 - 5 motorcycle spaces; and
 - 88 bicycle spaces;
- an electrical substation;
- clearing of all vegetation on the subject sites, including:
 - Eight (8) local native trees greater than 5.0 m in height (generally 10m in height) that qualify as prescribed vegetation under Section A16 of the DCP;
 - One (1) very large (trunk diameter greater than 80cm) Hill's Weeping Fig (*Ficus microcarpa hillii*) which would typically require a permit under Section A16 of the DCP; and
 - Approximately seven (7) non-locally occurring trees/vegetation and additional ground covers/shrubs that would not require a permit to remove under Section A16 of the DCP;
- and bulk excavation of 12-15m (including slab, lift and detention tank pits);
- stormwater infrastructure including an on-site stormwater detention tank below the basements; and


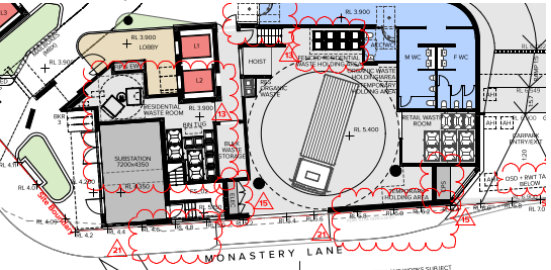

- internal ground floor waste storage rooms with a temporary residential waste collection point kerbside on River Terrace.

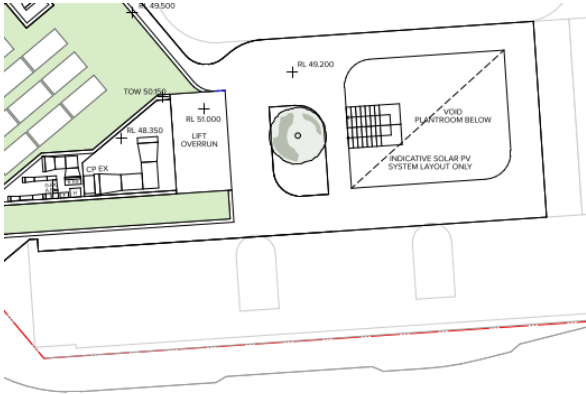
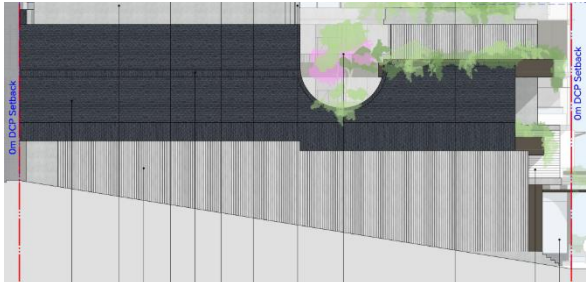
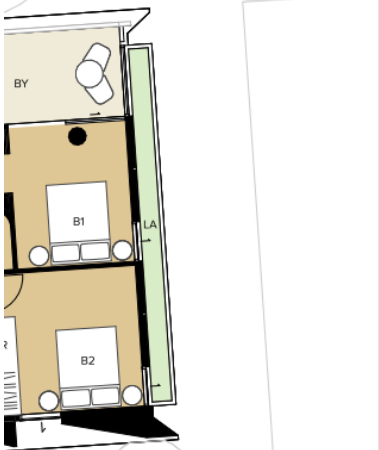
Table 1: Development Data

Control	Proposal
Site area	1,847m ²
GFA	7,211m ² 446m ² (retail) 6765m ² (residential) – variation required to the residential component of the residential/retail ratio
Clause 4.6 Requests	Yes Clause 4.3 Height of Buildings Maximum permitted height - 49.5m Proposed height – 51.0m Variation – 3% Clause 4.4(2C) Floor Space Ratio Maximum residential component floor space ratio – 2.60:1 Proposed residential component floor space ratio – 3.66:1 Variation – 1.06:1 or 40.7%
No of apartments	72
FSR (total/residential)	3.91:1 (total) 3.66:1 (residential only)
Max Height	49.5m roof 51.0m lift overrun and rooftop services
Landscaped area	1,937m ² including 1,532m ² of soft landscaping and 405m ² of hard landscaping
Car Parking spaces	96
Setbacks	Basements: <ul style="list-style-type: none"> • 0.0m to all boundaries excluding the tip of the corner of Wharf Street and River Terrace and excluding a small cutout for Basement Level 01

Control	Proposal
	<ul style="list-style-type: none"> 0.0m for Retail 2b to the rooftop of Level 04 at 17.0m height (River Terrace Commons) to River Terrace  <p>Figure 12: Retail 2b 0.0m setback to River Terrace.</p>  <p>Figure 13: River Terrace Commons building 0.0m setback to River Terrace (17.0m height).</p> <p>Wharf Street (including awning intrusion into road reserve air space):</p> <ul style="list-style-type: none"> 0.0m setback for Retail 1a, 1b and services to Wharf Street  <p>Figure 14: Retail 1a 0m setback to Wharf Street.</p> <ul style="list-style-type: none"> 0.0m-1.0m setbacks for Levels 01-13 of the tower to Wharf Street (with varied screens and vertical fins protruding to boundary for 1.0m setback sections)

Control	Proposal
	 <p>Figure 15: 0.0m-1.0m setbacks for tower building Levels 01-13 to Wharf Street (with vertical fins extending into setback) (Level 02 shown).</p>  <p>Figure 16: 0.0m-1.0m setbacks for tower building to Wharf Street (Level 07-09 shown).</p> <ul style="list-style-type: none"> 0.0m rooftop setback (with cutout) of the tower to Wharf Street

Control	Proposal
	 <p>Figure 17: 0.0m rooftop setback of tower building (with cutout) to Wharf Street.</p> <p>Monastery Lane:</p> <ul style="list-style-type: none"> 0.0m setback for substation and service area to Monastery Lane  <p>Figure 18: 0.0m setback to Monastery Lane (Ground Floor shown).</p> <ul style="list-style-type: none"> 0.0m setback to rooftop of Level 04 at 17.0m height (Monastery Lane apartments) with building indentations to Monastery Lane  <p>Figure 19: 0.0m setback for Monastery Lane apartments to Monastery Lane (Level 04 at 17.0m height max).</p>

Control	Proposal
	<ul style="list-style-type: none"> <li data-bbox="576 275 1284 383">6.0m setback for Monastery Lane tower apartments from Level 05 (17.0m) to rooftop of Level 12 (Level 13 terrace)  <p data-bbox="663 831 1284 898"><i>Figure 20: 6.0m setback for Monastery Lane tower apartments from Level 05 to rooftop.</i></p> <p data-bbox="576 943 798 976">9 River Terrace:</p> <ul style="list-style-type: none"> <li data-bbox="576 981 1203 1014">0.0m setback for 12.5m to 9 River Terrace  <p data-bbox="663 1305 1284 1373"><i>Figure 21: 0.0m setback to 9 River Terrace (12.5m height).</i></p> <ul style="list-style-type: none"> <li data-bbox="576 1417 1284 1485">6.0m-6.5m setback to 9 River Terrace for Levels 05-09  <p data-bbox="663 1955 1284 2022"><i>Figure 22: 6.0m-6.5m setback to 9 River Terrace for Levels 05-09.</i></p>

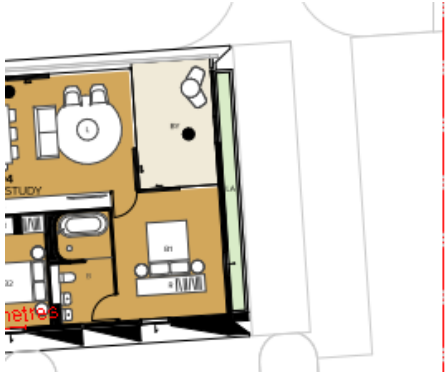
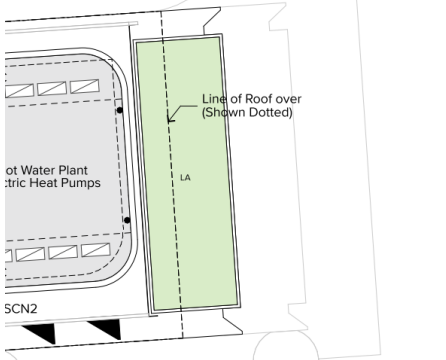
Control	Proposal
	<ul style="list-style-type: none"> <li data-bbox="574 309 1284 376">8.0m-8.5m setback to 9 River Terrace for Levels 10-12  <p data-bbox="662 761 1284 828"><i>Figure 23: 8.0m-8.5m setback to 9 River Terrace for levels 10-12.</i></p> <ul style="list-style-type: none"> <li data-bbox="574 873 1284 940">10.5m-11.0m setback to 9 River Terrace for rooftop of Level 12  <p data-bbox="662 1321 1284 1433"><i>Figure 24: 10.5m-11.0m setback to 9 River Terrace for rooftop of Level 12 (Level 13 terrace).</i></p>



Figure 25: Landscape Plan prepared by Turner Architects and Arcadia showing off-site works (subject to future s138 application) and internal landscaping (ground only) and floor area.

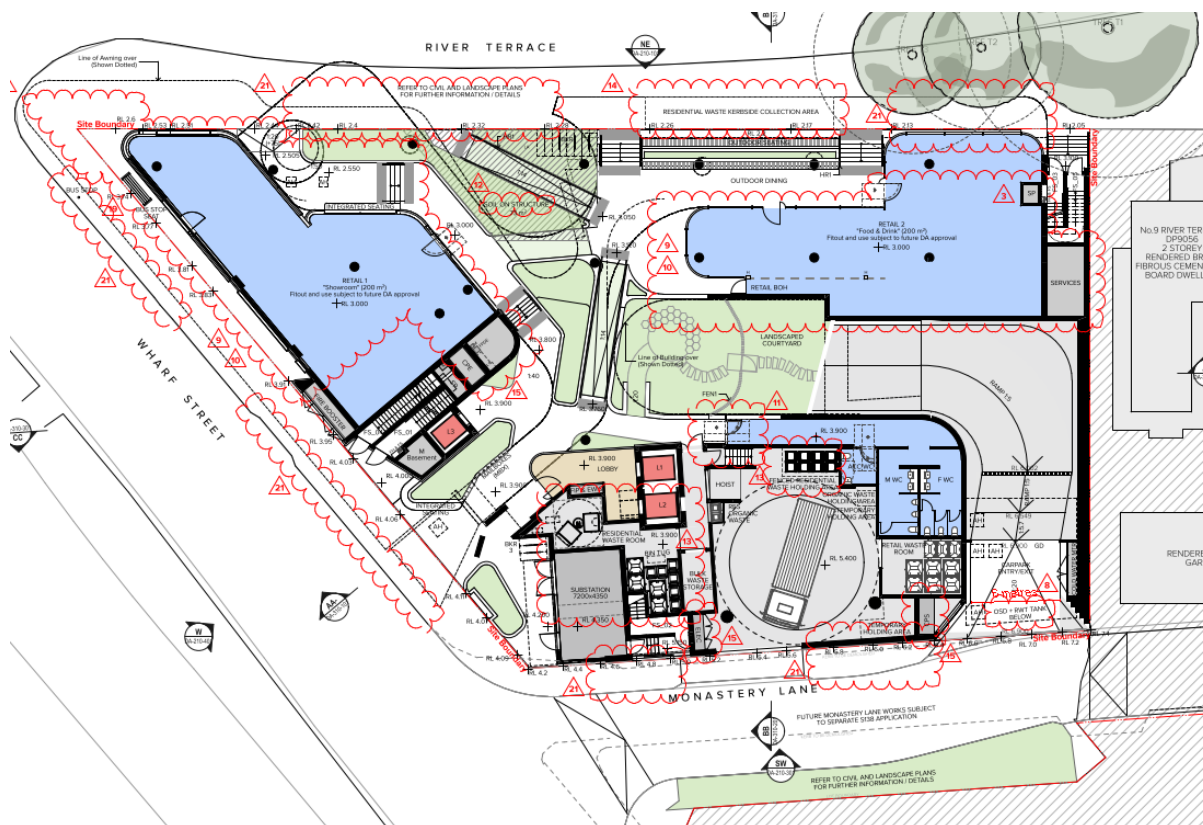


Figure 26: Ground floor plan (Revision H) prepared by Turner Architects.



Figure 27: 3D view of “the Landmark” tower building (prepared by Turner Architects).



Figure 28: 3D view of the “River Terrace Commons” (prepared by Turner Architects).



Figure 29: 3D view of Monastery Lane (prepared by Turner Architects).



Figure 30: 3D view of the “Gateway” (Wharf Street) (prepared by Turner Architects).

2.2 Background

A pre-lodgement meeting was held with Council’s Development Assessment Panel (DAP) on 29 October 2021 to present preliminary testing for the site and potential design options.

On 1 September 2022, Council resolved to endorse an application for a waiver to the requirements to undertake an architectural design competition pursuant to Section 6.10(5) of the TCC LEP.

1. Endorses the waiver of an architectural design competition in lieu of an architectural design review process on the Nos. 3-7 River Terrace Tweed Heads site relating to the development of a multi-storey mixed-use development scheme and that written correspondence confirming Council's endorsement of the waiver be forwarded to the NSW Government Architects.
2. Delegates the selection of Council's design representative(s) on the architectural design review panel to the General Manager to be undertaken in consultation with the NSW Government Architects.
3. Advises the applicant of Council's fees and charges which will be based on a cost recovery basis to be established via an endorsed Design Review Process and Fee Agreement where the rates for design panel members will be in alignment with the State Design Review.
4. Considers a further report at the conclusion of the architecture design review panel process to inform Council of the design review panel recommendations and outcomes over both sites.
5. ATTACHMENTS 1 and 2 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret

Figure 31: Extract of the Council Resolution for the design waiver pursuant to Section 6.10(5) of the TCC LEP.

It is noted that the information submitted to Council that accompanied the waiver request, expressly stated that the development would be “**within the maximum building height envelope of RL49.5m AHD**” and “...**additional height or floor space is not being sought as part of the application**” (emphasis added).

Following grant of the waiver, three (3) DRP assessments were undertaken between the applicant's design team and a DRP facilitated by Council's then Strategic Urban Designer and now Acting Coordinator Strategic Planning and Urban Design under the 3-7 River Terrace Design Review Process and Fees Agreement 2 March 2023 (Design Review Agreement).

The development's design has evolved to that now sought for approval in this development application including the requests for variation to the height and floor space ratio controls.

To address any potential confusion arising from the discrepancy between the waiver application's statement that additional height and floor space ratio would not be sought and the final application which seeks such variations, this matter was brought to the attention of the Councillors.

Council officers considered that the Design Waiver applies generally to the development proposed on the Nos. 3-7 River Terrace Tweed Heads site for the development of a multi-storey mixed-use development scheme (including as it has evolved over time) and is not limited by the references in the waiver application to height or floor space ratio. The Councillors raised no objection to this approach.

The development application was lodged on 20 June 2024 and the Northern Regional Planning Panel were briefed on 11 December 2024.

Following the briefing, a request for further information (RFI) was issued on 16 January 2025. Further information was submitted on 15 April 2025.

In accordance with the Design Review Agreement and Section 145 of the *State Environmental Planning Policy (Housing) 2021*, a further design review meeting was undertaken to review the amended proposal on 5 May 2025.

A chronology of the development application is outlined below including the DRP and the Northern Regional Planning Panel's involvement to date.

Table 2: Chronology of the DA

Date	Event
29 October 2021	DAP meeting
1 September 2022	Design Competition Waiver granted
12 May 2023	DRP meeting 01
8 June 2023	DRP meeting 02
17 November 2023	DRP meeting 03
20 June 2024	DA lodged
17 July 2024	Commencement of exhibition of the application for 28 days
2 July 2024	Referral to Water NSW and Essential Energy Referral to Gold Coast Airport
4 July 2024	Referral to Crown Lands
16 July 2024	Preliminary correspondence from Council to applicant: <ol style="list-style-type: none">1. Advising Water NSW Request for Information;2. Advising Gold Coast Airport Advice; and3. Seeking Confirmation on Proposal for Demolition.
17 July 2024	Crown Land advice received noting no objections (Attachment B)
22 July 2024	Essential Energy advice received noting potential safety risks
23 July 2024	Correspondence from applicant to Council: <ol style="list-style-type: none">1. Noting Water NSW and advising of response to be confirmed (TBC);2. Noting Gold Coast Airport Advice; and3. Advising Demolition was approved under CDC and is not the subject of this application.
1 August 2024	Additional information received from applicant responding to Water NSW advising groundwater study yet to be conducted and requesting conditions.
20 August 2024	Water NSW Issued General Terms of Approval

Date	Event
7 November 2024	Memorandum provided to Councillors to advise of Waiver and Council officers' position that Waiver continues to apply (no objection received)
11 December 2024	Northern Regional Planning Panel briefing
16 January 2025	Correspondence from Council to applicant requesting further information and revisions to application (Request for Further Information)
21 February 2025	Online meeting between Council officers and applicant including relevant consultants to discuss their preliminary response to Council's RFI
28 February 2025	Correspondence received from applicant attaching preliminary response to Council's RFI (Preliminary Response to Request for Further Information)
26 March 2025	Correspondence from Council to applicant responding to preliminary response to Council's RFI
15 April 2025	Further information and revised application received from applicant (Final Response to Request for Further Information) accepted by Council under Section 38(1) of the <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Regulations)
5 May 2025	DRP meeting 04
4 June 2025	Site visit attendance with the Northern Regional Planning Panel

A full summary of the applicant's response to Council's RFI can be reviewed in the following combined documents submitted with the applicant's Final Response to Request for Further Information:

1. Architect's Response to Council Matters dated 21 February 2025 (this document includes the Preliminary Response to Request for Further Information).
2. Response to Additional Information Cover Letter prepared by Sutherland & Associates Planning and dated 15 April 2025.
3. Architect's Response Letter prepared by Turner and dated 9 April 2025.

In summary, Council is satisfied with the Final Response to Request for Further Information as assessed in this report, subject to the conditions set out in **Attachment A**.

2.3 Site History

The subject site holds a previous approval for demolition and multi-dwelling housing comprising of 9 x 2 bedroom and 4 x 3 bedroom units & swimming pool approved on 28 February 2006 (DA05/0658).

DA05/0658 was later modified on 14 July 2011. Council holds insufficient information to determine whether DA05/0658 (as amended) has lapsed. However, it is clear that neither demolition nor construction under DA05/0658 (as amended) have occurred since approval.

This application does not propose to utilise DA05/0658 (as amended) and does not rely on any works (including demolition) approved under DA05/0658 (as amended).

3. STATUTORY CONSIDERATIONS

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

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (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 considered further below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Integrated Development (s4.46) – Section 91(2) of the *Water Management Act 2000*
- Requiring concurrence/referral (s4.13) –
 - Section 2.48 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*
 - Clause 6.9 of *Tweed City Centre Local Environmental Plan 2012*

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

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

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

The following Environmental Planning Instruments are relevant to this application:

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

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in Table 3 and considered in more detail in Tables 4-8 below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 4: Koala habitat protection 2021 No mapped Koala habitat occurs across the subject site. No preferred Koala food trees or Preferred Koala Habitat were identified on the subject site. No evidence of Koala occupation/activity was observed on-site.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 4: Design of residential apartment development The consent authority has considered the quality of the design of the development, in accordance with the design principles, the Apartment Design Guide (ADG) and advice received from the DRP. No concerns are raised subject to conditions of consent and supported variations to the ADG design criteria for deep soil zone, communal open space, building separation, maximum habitable room depths and minimum balcony depths.	Y
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage <ul style="list-style-type: none"> • Section 3.6 – Granting of consent to signage • Section 3.11(1) – Matters for consideration 	Y
State Environmental Planning Policy	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 	Y

EPI	Matters for Consideration	Comply (Y/N)
(Planning Systems) 2021	6 as it comprises development with an estimated development cost of more than \$30 million.	
SEPP (Resilience & Hazards) 2021	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none"> • Section 2.10(1) & (2) - Development on land within the coastal environment area • Section 2.11(1) - Development on land within the coastal use area • Section 2.12 - Development in coastal zone generally — development not to increase risk of coastal hazards. • Section 2.13 - Development in coastal zone generally - coastal management programs to be considered. <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered in the Contaminated Land Site Investigation Report and Remediation Action Plan and the proposal is satisfactory subject to conditions. 	Y
State Environmental Planning Policy (Sustainable Buildings) 2022	Chapter 2: Standards for residential development – BASIX No compliance issues identified subject to conditions of consent.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. 	Y
Tweed City Centre Local Environmental Plan 2012	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 – Height of buildings Subject to Clause 4.6 – Variation to building height • Clause 4.4 – Floor space ratio Subject to Clause 4.6 – Variation to residential floor space ratio • Clause 4.6 – Exceptions to development standards • Clause 5.21 – Flood planning • Clause 6.1 – Acid sulfate soils • Clause 6.6 – Minimum building street frontage • Clause 6.8 – Ground floor and first floor development in Zones E2 and MU1 • Clause 6.9 – Airspace operations • Clause 6.10 – Design excellence 	Y

State Environmental Planning Policies

Consideration of the relevant State Environmental Planning Policies (SEPPs) is provided below.

Table 4: Assessment of State Environmental Planning Policies

Chapter	Matters for Consideration				
State Environmental Planning Policy (Biodiversity & Conservation) 2021					
Chapter 4 Koala habitat protection 2021	<p>Chapter 4 applies to the site as the site is located in a local government area listed in Schedule 2 (Section 4.4). As a koala plan of management applies to the site (Tweed Coast Comprehensive Koala Plan of Management 2020) (TCCCKPoM), the council's determination of the development application must be consistent with the plan (Section 4.8).</p> <p>No mapped Koala habitat occurs across the site. No preferred Koala food trees or Preferred Koala Habitat was identified on the subject site. No evidence of Koala occupation/activity was observed on-site. No further consideration of the TCCCKPoM or Section 4.8 of the SEPP is considered warranted.</p>				
State Environmental Planning Policy (Housing) 2021					
Chapter 4 Design of residential apartment development	<p>Chapter 4 applies to the site as the site is located in the State and is not located within land to which Chapter 4 of the <i>State Environmental Planning Policy (Precincts-Regional) 2021</i> applies (Section 143). Chapter 4 further applies as the development is for the purpose of erection of a new building that is greater than 3 storeys (13 storeys proposed), that contains at least 4 dwellings (72 dwellings proposed) and is for mixed use development with a residential accommodation component (<i>shop top housing</i> proposed) (Section 144).</p> <p><u>Referral to DRP</u> The application was referred to the DRP on 5 May 2025 for final advice on the quality of the design of the development in accordance with Section 145.</p> <p><u>Determination of development applications for residential apartment development</u> Development consent must not be granted to residential apartment development, unless the consent authority has considered (Section 147(1)):</p> <ol style="list-style-type: none"> the quality of the design of the development in accordance with the design principles set out in Schedule 9; the Apartment Design Guide (ADG); any advice received from a DRP within 14 days after referral. <p><u>Quality of the design in accordance with the design principles</u> The quality of the design has been evaluated in accordance with the design principles set out in Schedule 9, set out below.</p> <p>It is considered that the application satisfactorily meets the design principles.</p> <table border="1"> <thead> <tr> <th>Design principle</th><th>Comment</th></tr> </thead> <tbody> <tr> <td> 1 Context and neighbourhood character (1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions. </td><td> <p>The development has been subject to four (4) DRP assessments and recommendations and has evolved in accordance with these recommendations.</p> <p>The application considers its responsibility as a landmark building for both the redevelopment of the Southern Boat Harbour and a gateway building to</p> </td></tr> </tbody> </table>	Design principle	Comment	1 Context and neighbourhood character (1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.	<p>The development has been subject to four (4) DRP assessments and recommendations and has evolved in accordance with these recommendations.</p> <p>The application considers its responsibility as a landmark building for both the redevelopment of the Southern Boat Harbour and a gateway building to</p>
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Chapter	Matters for Consideration	
	<p>(2) Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>(3) Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>(4) Consideration of local context is important for all sites, including sites in the following areas—</p> <ul style="list-style-type: none"> (a) established areas, (b) areas undergoing change, (c) areas identified for change. 	<p>the Tweed City Centre. The application takes into account the natural sloping features of the site and surrounds, makes appropriate use of water views, seeks to create an active ground floor with well landscaped pedestrian links and open space and takes into consideration the amenity impacts that follow from being the first development of its kind in a transitioning area dominated by single dwellings.</p> <p>The application seeks to engage with the public domain by way of the active frontage and has put forward reports that demonstrate how future interaction with River Terrace could occur and how the locality could be redeveloped in harmony with the proposed built form on this site.</p>
	<p>2 Built form and scale</p> <p>(1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>(2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—</p> <ul style="list-style-type: none"> (a) building alignments and proportions, (b) building type, (c) building articulation, (d) the manipulation of building elements. <p>(3) Appropriate built form—</p> <ul style="list-style-type: none"> (a) defines the public domain, and (b) contributes to the character of streetscapes and parks, including their views and vistas, and (c) provides internal amenity and outlook. 	<p>The proposal is architecturally well designed to manage the impact of the building's scale in the area of transition while also considering how the development will fit into the post-developed larger scale locality.</p> <p>The massing of the buildings' various forms has been described by the DRP as:</p> <p><i>"a series of interconnected but varied building forms (River Terrace podium, Tower form, Monastery Lane) with each elevation addressing different street edge conditions, solar orientations and opportunities articulated through differing façade systems, detailing, landscape treatment and material palettes which come together as a cohesive whole".</i></p>
	<p>3 Density</p> <p>(1) Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>(2) Appropriate densities are consistent with the area's existing or projected population.</p> <p>(3) Appropriate densities are sustained by the following—</p>	<p>The application seeks approval for variations to the height and residential floor space ratio standards.</p> <p>The variations are assessed in the assessment of the TCC LEP and the matters required by Clause 4.6 are considered satisfied. The proposed residential density is greater than would have been permissible under Section 4.4(2C). This notwithstanding, the proposed density is appropriate to the</p>


Chapter	Matters for Consideration	
	<p>(a) existing or proposed infrastructure, (b) public transport, (c) access to jobs, (d) community facilities, (e) the environment.</p>	<p>height, complies with the maximum total FSR applicable to the site and is considered to be appropriate for the locality.</p> <p>Public transport seating is retained for the existing bus stop and will be sheltered by the proposed awnings.</p> <p>The ground floor retail provides for additional job opportunities.</p> <p>The apartment mix appropriately provides for a range of diverse residences appropriate for a city centre.</p>
	<p>4 Sustainability (1) Good design combines positive environmental, social and economic outcomes. (2) Good sustainable design includes— (a) use of natural cross ventilation and sunlight for the amenity and liveability of residents, and (b) passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs. (3) Good sustainable design also includes the following— (a) recycling and reuse of materials and waste, (b) use of sustainable materials, (c) deep soil zones for groundwater recharge and vegetation.</p>	<p>The proposal is accompanied by an Ecological Sustainable Development report, BASIX certificate, Section J assessment and Accessibility Report that provide details as to compliance with relevant sustainability standards and accessibility.</p> <p>In relation to passive design, the development proposes strong cross-ventilation outcomes and complies with the solar access requirements of the ADG for the proposed apartments.</p> <p>Separate recycling and organic waste collection is also proposed.</p> <p>While compliant deep soil zones are not proposed, the application proposes for approximately 80% of the site to be soft landscaped including areas that are capable of providing for stormwater infiltration. Rainwater collection is proposed and reuse of this water will occur for the extensive landscaped areas.</p> <p>The proposed building materials are also robust and unlikely to need easy replacement (subject to glazing required for the permeable retail frontages).</p>
	<p>5 Landscape (1) Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity. (2) A positive image and contextual fit of well designed development is achieved by contributing to the landscape</p>	<p>The proposed scheme is considered to provide a good mix of landscape opportunities which contribute to amenity; and the overall design strength from surrounding streetscapes.</p> <p>The upper-level landscape opportunities have the effect of balancing and softening the elevations. Conditions are</p>

Chapter	Matters for Consideration
	<p>character of the streetscape and neighbourhood.</p> <p>(3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—</p> <p>(a) the local context,</p> <p>(b) co-ordinating water and soil management,</p> <p>(c) solar access,</p> <p>(d) micro-climate,</p> <p>(e) tree canopy,</p> <p>(f) habitat values,</p> <p>(g) preserving green networks.</p> <p>(4) Good landscape design optimises the following—</p> <p>(a) usability,</p> <p>(b) privacy and opportunities for social interaction,</p> <p>(c) equitable access,</p> <p>(d) respect for neighbours' amenity.</p> <p>(5) Good landscape design provides for practical establishment and long term management.</p> <p>also recommended to ensure native planting.</p> <p>The Communal Terrace on Level 04 and the Courtyard Gully on Level 01 are the primary examples of well designed landscape areas with the latter providing visual amenity for the pedestrian link through the site from Wharf Street to River Terrace.</p> <p>The Courtyard Gully also provides for a unique landscape opportunity that turns an area unavailable for ground floor use due to basement access and surrounding slopes into a unique landscape opportunity as well as a separate pedestrian access between the ground level and podium levels.</p> <p>Water and soil management is proposed by way of maintenance and irrigation.</p> <p>A cutout in the 0.0m boundary wall to adjoining 9 River Terrace is also proposed to expose a feature tree for view.</p>
	<p>6 Amenity</p> <p>(1) Good design positively influences internal and external amenity for residents and neighbours.</p> <p>(2) Good amenity contributes to positive living environments and resident well-being.</p> <p>(3) Good amenity combines the following—</p> <p>(a) appropriate room dimensions and shapes,</p> <p>(b) access to sunlight,</p> <p>(c) natural ventilation,</p> <p>(d) outlook,</p> <p>(e) visual and acoustic privacy,</p> <p>(f) storage,</p> <p>(g) indoor and outdoor space,</p> <p>(h) efficient layouts and service areas,</p> <p>(i) ease of access for all age groups and degrees of mobility.</p> <p>As the first large scale development to occur in the transitioning area, amenity impacts are to be expected.</p> <p>The key amenity impacts on neighbours are setback/separation to the adjoining 9 River Terrace, overshadowing, visual privacy and acoustic privacy.</p> <p>It is considered that while the boundary wall to 9 River Terrace is 12.5 metres at its highest, the scale is broken down via the introduction of different material finishes and form, including an arch cut-out framing a feature tree. The proposed design provides for an acceptable outcome to the existing single dwelling house and a desirable outcome for future development on this site which is also likely to have a 0.0m setback structural wall to this edge.</p> <p>Overshadowing and privacy impacts are assessed in the ADG assessment in Attachment C and are considered acceptable noting the slim building form, screening to lower Monastery Lane balconies, siting and orientation of</p>

Chapter	Matters for Consideration	
		<p>apartments adequately ameliorates the impacts where possible.</p> <p>Appropriate room shapes and dimensions are proposed to promote solar access, natural ventilation, outlook, privacy and use.</p> <p>Storage has been confirmed to be compliant following receipt of further information.</p>
	<p>7 Safety</p> <p>(1) Good design optimises safety and security within the development and the public domain.</p> <p>(2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose.</p> <p>(3) Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>(4) A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>CPTED principles are considered in the assessment of Section B2 in Attachment D and are considered adequately addressed subject to conditions of consent in relation to a detailed lighting design, maintenance of landscaping and technical surveillance in the internal areas of the site not covered by passive surveillance.</p> <p>In this regard it is noted that the building proposes territorial ownership of the ground floor, secure access including a bounding fence and gateway for the Courtyard Gully pedestrian entrance and good sightlines in common circulation spaces subject to the lighting design to be conditioned.</p> <p>With the extensive balconies that are proposed, passive surveillance is not generally considered a concern noting the recommendation for technical surveillance for internal areas of the site.</p>
	<p>8 Housing diversity and social interaction</p> <p>(1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>(2) Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>(3) Good design involves practical and flexible features, including—</p> <p>(a) different types of communal spaces for a broad range of people, and</p> <p>(b) opportunities for social interaction among residents.</p>	<p>A mix of apartment mixes and designs provide for different demographics noting that the following mix is proposed:</p> <ul style="list-style-type: none"> • 1 bedroom (20.9%), • 2 bedroom (34.7%), • 2 bedroom with study (22.2%), • 3 bedroom (18.1%) and • 3 bedroom with study (4.2%). <p>The building does not specifically provide for affordable housing and there is no indication that the proposed apartments will be of a price to be considered affordable. This notwithstanding, the units will contribute to the housing stock catering for households ranging from single and couples to small household units.</p>

Chapter	Matters for Consideration					
		The design includes communal space for a range of people of differing abilities and provides for opportunities for social interaction in the communal open space, public open space (ground floor), Courtyard Gully, Communal Terrace and seating on the podium levels.				
	9 Aesthetics (1) Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. (2) Good design uses a variety of materials, colours and textures. (3) The visual appearance of well designed residential apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	<p>The design achieves a good balance of architectural elements including form, materials and colour that reflect the proposed use and context of each elevation.</p> <p>The exposure of the internal building forms to River Terrace including the River Terrace apartments and the tower itself provides a clear demonstration of the internal layout and structure and treatment of River Terrace as a primary active frontage.</p> <p>No concerns are raised with the visual appearance of the development including its impact on the streetscape, noting the various comments of support in the DRP recommendations set out in Attachment I and considered in Attachment J.</p>				
	Apartment Design Guide The application has been assessed against the objectives and design criteria set out in the ADG. The assessment is set out in Attachment C. It is considered that the application satisfactorily meets the objectives and design criteria subject to the following design criteria variations which are supported and conditions of consent.					
	<table><tr><th>Variation</th><th>Reason for variation (supported)</th></tr><tr><td>Objective 3D-1 Design criteria 1 “Communal open space has a minimum area equal to 25% of the site”</td><td><p>Minimum communal open space permitted: 25% of site Proposed communal open space: 21% of site</p><p>Justification: The applicant submitted 635m² of communal open space is provided (34.4%). Council calculates 392m² of communal open space (21.2% of site).</p><p>It is noted that most of the ground floor area included in the applicant’s calculations is not included in Council’s calculations as these areas will be principally used for circulation by the public or may be accessed for use by retail customers and therefore do not offer exclusive residential usability. Accordingly, these areas have been more appropriately characterised as ‘public’ open space. This is the primary reason for the discrepancy between the applicant’s and Council’s calculations.</p></td></tr></table>	Variation	Reason for variation (supported)	Objective 3D-1 Design criteria 1 “Communal open space has a minimum area equal to 25% of the site”	<p>Minimum communal open space permitted: 25% of site Proposed communal open space: 21% of site</p> <p>Justification: The applicant submitted 635m² of communal open space is provided (34.4%). Council calculates 392m² of communal open space (21.2% of site).</p> <p>It is noted that most of the ground floor area included in the applicant’s calculations is not included in Council’s calculations as these areas will be principally used for circulation by the public or may be accessed for use by retail customers and therefore do not offer exclusive residential usability. Accordingly, these areas have been more appropriately characterised as ‘public’ open space. This is the primary reason for the discrepancy between the applicant’s and Council’s calculations.</p>	
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Objective 3D-1 Design criteria 1 “Communal open space has a minimum area equal to 25% of the site”	<p>Minimum communal open space permitted: 25% of site Proposed communal open space: 21% of site</p> <p>Justification: The applicant submitted 635m² of communal open space is provided (34.4%). Council calculates 392m² of communal open space (21.2% of site).</p> <p>It is noted that most of the ground floor area included in the applicant’s calculations is not included in Council’s calculations as these areas will be principally used for circulation by the public or may be accessed for use by retail customers and therefore do not offer exclusive residential usability. Accordingly, these areas have been more appropriately characterised as ‘public’ open space. This is the primary reason for the discrepancy between the applicant’s and Council’s calculations.</p>					

Chapter	Matters for Consideration		
	<div data-bbox="695 280 1315 645">  </div> <p data-bbox="695 651 1315 712"><i>Figure 32: Excerpt of Ground Floor Landscape plan showing open space accessible by retail public.</i></p> <p data-bbox="695 741 1315 981">This notwithstanding, the combined space is well-designed and continues to contribute to landscaping, amenity and the opportunity for social interaction. The primary resident-exclusive communal open space is located in the Communal Terrace on the Level 04 roof which contains BBQ areas, seating, a pool and overlooks the landscaped courtyard gully. A variation to this design criteria is supported.</p> <div data-bbox="695 1010 1315 1352">  </div> <p data-bbox="695 1359 1315 1420"><i>Figure 33: Excerpt of Level 04 Landscape plan showing proposed Communal Terrace.</i></p> <div data-bbox="488 1442 1315 2020"> <table border="1"> <tr> <td data-bbox="488 1442 683 1749"> <p>Objective 3E-1</p> <p>Design criteria 1</p> <p><i>“Deep soil zones are to meet... [minimum dimensions of 6m and 7% of site area]”</i></p> </td><td data-bbox="695 1442 1315 2020"> <p>Minimum deep soil zone permitted: 7% of site Proposed deep soil zone: nil</p> <p>Justification: The soil on slab area adjacent to River Terrace (3.95% of site excluding the permeable ramp) serves a similar purpose to a deep soil zone even if the area does not technically qualify as a deep soil zone given the basement approximately 2.8m below.</p> <p>With sufficient vertical soil depth and located adjacent to the road reserve, no concerns arise with the area’s capacity to promote healthy growth of a large tree. This is notwithstanding the raised ramp proposed through the area. The ramp is raised and permeable to minimise impact on the ground and interference of stormwater infiltration.</p> <p>Significant other landscape areas are also proposed on the key landmark site with approximately 5% soil on structure,</p> </td></tr> </table> </div>	<p>Objective 3E-1</p> <p>Design criteria 1</p> <p><i>“Deep soil zones are to meet... [minimum dimensions of 6m and 7% of site area]”</i></p>	<p>Minimum deep soil zone permitted: 7% of site Proposed deep soil zone: nil</p> <p>Justification: The soil on slab area adjacent to River Terrace (3.95% of site excluding the permeable ramp) serves a similar purpose to a deep soil zone even if the area does not technically qualify as a deep soil zone given the basement approximately 2.8m below.</p> <p>With sufficient vertical soil depth and located adjacent to the road reserve, no concerns arise with the area’s capacity to promote healthy growth of a large tree. This is notwithstanding the raised ramp proposed through the area. The ramp is raised and permeable to minimise impact on the ground and interference of stormwater infiltration.</p> <p>Significant other landscape areas are also proposed on the key landmark site with approximately 5% soil on structure,</p>
<p>Objective 3E-1</p> <p>Design criteria 1</p> <p><i>“Deep soil zones are to meet... [minimum dimensions of 6m and 7% of site area]”</i></p>	<p>Minimum deep soil zone permitted: 7% of site Proposed deep soil zone: nil</p> <p>Justification: The soil on slab area adjacent to River Terrace (3.95% of site excluding the permeable ramp) serves a similar purpose to a deep soil zone even if the area does not technically qualify as a deep soil zone given the basement approximately 2.8m below.</p> <p>With sufficient vertical soil depth and located adjacent to the road reserve, no concerns arise with the area’s capacity to promote healthy growth of a large tree. This is notwithstanding the raised ramp proposed through the area. The ramp is raised and permeable to minimise impact on the ground and interference of stormwater infiltration.</p> <p>Significant other landscape areas are also proposed on the key landmark site with approximately 5% soil on structure,</p>		

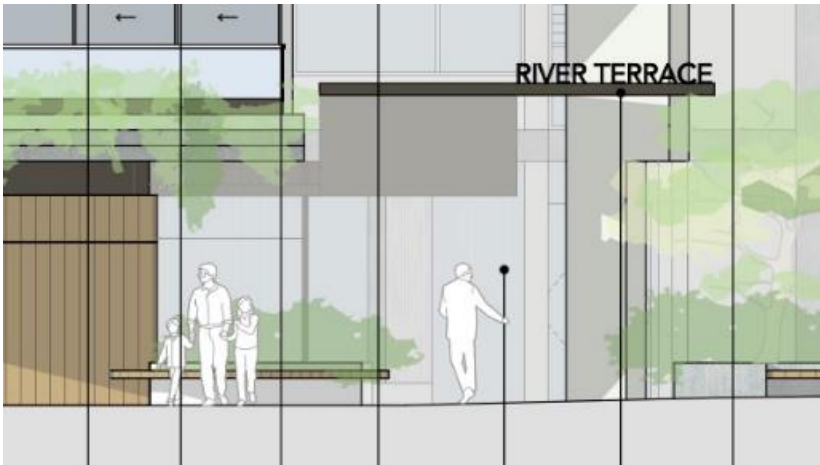
Chapter	Matters for Consideration										
		<p>23% planters above structure and 55% rooftop/cascading soft landscape proposed.</p> <p>Accordingly, impacts to residential amenity, water management and air quality caused by the absence of deep soil zones are successfully avoided and/or mitigated. A variation to this design criteria is supported.</p> <div><p>Development Soil Profiles</p><table><tr><td>SOIL ON STRUCTURE</td><td>APPROX. 75m²</td><td>5%</td></tr><tr><td>PLANTERS ABOVE STRUCTURE</td><td>APPROX. 435m²</td><td>23%</td></tr><tr><td>ROOFTOP / CASCADING SOFT LANDSCAPE</td><td>APPROX. 1,022m²</td><td>55%</td></tr></table></div> <p>Figure 34: Proposed Development Soil Profile.</p>	SOIL ON STRUCTURE	APPROX. 75m ²	5%	PLANTERS ABOVE STRUCTURE	APPROX. 435m ²	23%	ROOFTOP / CASCADING SOFT LANDSCAPE	APPROX. 1,022m ²	55%
SOIL ON STRUCTURE	APPROX. 75m ²	5%									
PLANTERS ABOVE STRUCTURE	APPROX. 435m ²	23%									
ROOFTOP / CASCADING SOFT LANDSCAPE	APPROX. 1,022m ²	55%									
<p>Objective 3F-1</p> <p>Design criteria 1</p> <p><i>“Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separations distances from buildings to the side and rear boundaries are... [up to 12m (4 storeys) = 6m, up to 25m (5-8 storeys) = 9m, over 25m (9+ storeys) = 12m]”</i></p>	<p>All site boundaries are to the public road network except for the boundary with 9 River Terrace, Tweed Heads.</p> <p>9 River Terrace is improved with a garage and 2 storey dwelling house. The dwelling house is set back approximately 1.5m from the relevant boundary. The development presents a blank wall and then habitable rooms (above the wall) to 9 River Terrace.</p> <p>For the purposes of height above the dwelling house and assessment of the future context, it is assumed (for the purposes of worst-case scenario assessment) that future development above the podium level and boundary wall would comprise of habitable rooms (similar the proposal).</p> <table><tr><th colspan="2">Separation from 9 River Terrace</th></tr><tr><th>Minimum separation</th><th>Proposed separation</th></tr><tr><td>Up to 12m (4 storeys) = 6m</td><td>Blank wall to 4 storeys = 0.0m (boundary)</td></tr><tr><td>Up to 25m (5-8 storeys) = 9m</td><td>Habitable rooms to 5-8 storeys = 6.0m</td></tr><tr><td>Over 25m (9+ storeys) = 12m</td><td>Habitable rooms to 9-12 storeys = 8.0m</td></tr></table> <p>No separation is required for blank walls. The ADG assessment sets out further assessment and satisfaction</p>	Separation from 9 River Terrace		Minimum separation	Proposed separation	Up to 12m (4 storeys) = 6m	Blank wall to 4 storeys = 0.0m (boundary)	Up to 25m (5-8 storeys) = 9m	Habitable rooms to 5-8 storeys = 6.0m	Over 25m (9+ storeys) = 12m	Habitable rooms to 9-12 storeys = 8.0m
Separation from 9 River Terrace											
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	<p>of the wall including materials, colours and feature cutout to minimise visual impact.</p> <p>The extent of variation required for the remainder of the building (being 5 storeys and more) is 30%.</p> <p>It is noted at the outset that the ADG expressly recognises the difficulty of achieving building separation distances in transitioning areas:</p> <p style="padding-left: 40px;"><i>"In areas undergoing transition from low density to higher densities, minimum building separation distances may not be achieved until the area completes its transition."</i> (Figure 2F.2).</p> <p>Justification: Habitable rooms to 5-8 storeys = 6m where 9m is required Habitable rooms to 9-12 storeys = 8m where 12m is required</p> <p>Objective 3F-1 and the matters addressed in the summary of 3F Visual privacy are satisfied as follows:</p> <ol style="list-style-type: none"> 1. Solar access – sunlight access is naturally constrained due to the south-easterly lot position of 9 River Terrace. The application proposes a sympathetic design with Levels 05 and above sited as far north and west as possible to permit sunlight to permeate to 9 River Terrace and beyond for as long as possible. Due to the scale of the building, increasing separation would provide only minimal additional benefits in this regard and almost none to 9 River Terrace itself. 2. Open space – open space for the existing dwelling house is naturally constrained due to the slope of Monastery Lane and significant coverage of usable areas of the site. In any event, the combined height (Level 05+), setback (6.0-8.0m) and minimal narrow windows result in minimal impact to the use of the existing open space. <p>Open space for adjoining future developments likely to proposed will likely be available at ground retail level or on a podium rooftop (similar to the subject design) causing the Levels 05+ separation to be of little relevance to open space.</p> <p>It is also considered such adjoining open space would be oriented eastward towards River Terrace (similar to the subject design) to take advantage of sunlight and water views. As the separation concerns are on the western boundary, enforcing further separation on the western boundary would have minimal impact on the eastward facing open space.</p> <ol style="list-style-type: none"> 3. Visual privacy – Impacts on visual privacy are considered to be of minimal concern. The relevant elevation of the development requiring variation is narrow with two (2) tall windows for each apartment on Levels 05-09 (afforded a minimum 6m separation)

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		<p>and one (1) narrow window for each apartment on Levels 10-12 (afforded a minimum 9m separation). The proposed separation distance is sufficient for the proposed openings. It is considered any future development on 9 River Terrace will be capable of putting forward a design that adequately takes these windows and the proposed separation distances into account.</p> <p>4. Acoustic amenity – Impacts on acoustic amenity is similarly of minimal concern, noting the minimal openings that face 9 River Terrace and the lack of reliance on the elevation for ventilation. Acoustic amenity is also adequately managed in accordance with the noise impact assessment requirements for bedrooms and other conditions recommended by Council officers.</p> <p>5. Urban form - no urban form concerns have been raised by the DRP or Council's Strategic Planning and Urban Design unit.</p> <p>Internal separation Internal separation is addressed in the ADG Assessment. While there are evidences of non-compliance with the design criteria, the impacts are assessed as minimal and capable of being addressed by way of elevation and/or window treatment. Conditions have been recommended accordingly.</p>								
	<p>Objective 4D-2</p> <p>Design criteria 2</p> <p><i>"In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window"</i></p>	<p>Maximum habitable room depth: 8.0m</p> <table><tr><th colspan="2">Proposed habitable room depths which exceed 8m</th></tr><tr><th>Apartment</th><th>Proposed depth from balcony doors</th></tr><tr><td>103, 203, 303, 403, 503, 603, 703, 803, 903, 1003, 1103, 1203, 1303</td><td>8.6m</td></tr><tr><td>505, 605, 705, 805, 905</td><td>9.5m</td></tr></table> <p>Justification: 8.6m depths (13 apartments -18% of units) The subject apartments receive significant sunlight courtesy of large sliding doors and additional balconies. The proposed variation is not considered to give rise to amenity concerns and is capable of support.</p> <p>Justification: 9.5m depths (5 apartments – 7% of units) The subject apartments receive significant sunlight from the east and north-east courtesy of the large sliding doors shown below. Noting that the need for variations to this extent is minimised to 5 apartments across the 72 proposed (7%), and due to the presence of full height openable sliding doors for the length of the relevant walls, the proposed variation is capable of support.</p>	Proposed habitable room depths which exceed 8m		Apartment	Proposed depth from balcony doors	103, 203, 303, 403, 503, 603, 703, 803, 903, 1003, 1103, 1203, 1303	8.6m	505, 605, 705, 805, 905	9.5m
Proposed habitable room depths which exceed 8m										
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103, 203, 303, 403, 503, 603, 703, 803, 903, 1003, 1103, 1203, 1303	8.6m									
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	<div data-bbox="694 280 1252 616"> </div> <p data-bbox="694 638 1324 705">Figure 35: Excerpt of Level 07-09 plan showing apartment 705.</p> <div data-bbox="486 728 662 996"> <p>Objective 4E-1</p> <p>Design criteria 1</p> <p><i>“All apartments are required to have primary balconies as [adjacent]”</i></p> </div> <table data-bbox="694 750 1316 1086"> <tr> <th colspan="2">Minimum balcony dimensions</th></tr> <tr> <th>Dwelling type</th><th>Minimum balcony depth</th></tr> <tr> <td>Studio</td><td>-</td></tr> <tr> <td>1 bedroom</td><td>2m</td></tr> <tr> <td>2 bedrooms</td><td>2m</td></tr> <tr> <td>3+ bedrooms</td><td>2.4m</td></tr> </table> <table data-bbox="694 1108 1316 1489"> <tr> <th colspan="2">Proposed balcony dimensions</th></tr> <tr> <th>Apartment</th><th>Proposed balcony depth</th></tr> <tr> <td>101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, 1201, 1301 - All 3 bed units</td><td>1.4 - 3.0m (irregular shape)</td></tr> <tr> <td>205, 206, 305, 306, 405, 406 – All 2 bed units</td><td>1.4 - 2.0m (L shape)</td></tr> </table> <p data-bbox="694 1512 1324 1937"> Justification: 1.4-3.0m The ‘01’ apartments are at the ‘tip’ of the tower as it protrudes towards the corner of Wharf Street and River Terrace. The result is an irregularly shaped balcony as shown below. With 3 bedrooms, the ‘01’ apartments are required to demonstrate a 2.4m balcony depth. The ‘01’ balconies contain areas that comply with the minimum depth and retain adequate space to fit a table and 2-4 chairs in line with Figure 4E.2 of the ADG. It is also noted that the ‘01’ balconies exceed the minimum balcony area under this design criteria by greater than 3m² (15.3m² proposed versus 12m² required). The proposed variation is supported. </p>	Minimum balcony dimensions		Dwelling type	Minimum balcony depth	Studio	-	1 bedroom	2m	2 bedrooms	2m	3+ bedrooms	2.4m	Proposed balcony dimensions		Apartment	Proposed balcony depth	101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, 1201, 1301 - All 3 bed units	1.4 - 3.0m (irregular shape)	205, 206, 305, 306, 405, 406 – All 2 bed units	1.4 - 2.0m (L shape)
Minimum balcony dimensions																					
Dwelling type	Minimum balcony depth																				
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	<div data-bbox="691 320 1260 613" data-label="Figure"> </div> <div data-bbox="691 618 1323 676" data-label="Caption"> <p>Figure 36: Excerpt of Level 02 plan showing the 201 apartment balcony with measurement notations.</p> </div> <div data-bbox="691 707 967 734" data-label="Section-Header"> <p>Justification: 1.4 - 2.0m</p> </div> <div data-bbox="691 736 1323 947" data-label="Text"> <p>These balconies belong to apartments fronting Monastery Lane. Their balconies are 'L' shaped with the narrower area fronting the lane. With 2 bedrooms, these apartments are required to demonstrate a 2m balcony depth. The balconies contain areas that comply with the minimum depth and retain adequate space to fit a table and 2-4 chairs in line with Figure 4E.2 of the ADG.</p> </div> <div data-bbox="691 978 1323 1402" data-label="Text"> <p>The balconies also exceed the minimum balcony area under this design criteria by greater than 6m² (16.1m² proposed versus 10m² required). It is also noted that the narrower area of the 'L' shape fronting the lane is preferable to greater balcony depth as it assists to maximise available sunlight for the open plan layout. This is important as these same apartments (which face southwest) will already receive minimal sunlight (see the assessment of Objective 4A-1 in Attachment C). Note, in relation to solar access, the development complies with the requirements of design criteria 1 of Objective 4A-1 as 70.83% of the 72 apartments receive 3 hours of direct sunlight between 9am and 3pm. The proposed variation to the minimum balcony depths is supported.</p> </div> <div data-bbox="691 1431 1206 1785" data-label="Figure"> </div> <div data-bbox="691 1809 1323 1868" data-label="Caption"> <p>Figure 37: Excerpt of Level 02 plan showing the 205 apartment balcony with measurement notations.</p> </div> <div data-bbox="469 1910 798 1937" data-label="Section-Header"> <p>Advice received from a DRP</p> </div> <div data-bbox="469 1939 1334 1998" data-label="Text"> <p>Following a meeting of the DRP on 5 May 2025, the panel provided the advice set out in Attachment I. The DRP's advice has been taken into account in this</p> </div>

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	<p>assessment and conditions recommended by the panel have been recommended as conditions of consent.</p> <p><u>Non-discretionary development standards for residential apartment development</u></p> <p>The non-discretionary standards set by the SEPP are complied with as follows (Section 148):</p> <table border="1" data-bbox="475 510 1334 963"> <thead> <tr> <th colspan="2" data-bbox="475 510 898 566">Non-discretionary standard</th></tr> <tr> <th data-bbox="475 566 898 622">Standard</th><th data-bbox="898 566 1334 622">Response</th></tr> </thead> <tbody> <tr> <td data-bbox="475 622 898 734">Car parking must comply with the recommended amount of car parking in Part 3J</td><td data-bbox="898 622 1334 734">Minimum car park spaces: 96 spaces Proposed car park spaces: 96 spaces</td></tr> <tr> <td data-bbox="475 734 898 846">Internal area must comply with the recommended minimum area in Part 4D</td><td data-bbox="898 734 1334 846">Internal areas are assessed in Attachment C and are compliant.</td></tr> <tr> <td data-bbox="475 846 898 963">Ceiling heights must comply with the recommended minimum heights in Part 4C</td><td data-bbox="898 846 1334 963">Ceiling heights are assessed in Attachment C and are compliant.</td></tr> </tbody> </table>	Non-discretionary standard		Standard	Response	Car parking must comply with the recommended amount of car parking in Part 3J	Minimum car park spaces: 96 spaces Proposed car park spaces: 96 spaces	Internal area must comply with the recommended minimum area in Part 4D	Internal areas are assessed in Attachment C and are compliant.	Ceiling heights must comply with the recommended minimum heights in Part 4C	Ceiling heights are assessed in Attachment C and are compliant.
Non-discretionary standard											
Standard	Response										
Car parking must comply with the recommended amount of car parking in Part 3J	Minimum car park spaces: 96 spaces Proposed car park spaces: 96 spaces										
Internal area must comply with the recommended minimum area in Part 4D	Internal areas are assessed in Attachment C and are compliant.										
Ceiling heights must comply with the recommended minimum heights in Part 4C	Ceiling heights are assessed in Attachment C and are compliant.										
State Environmental Planning Policy (Industry and Employment) 2021											
<p>Chapter 3 Advertising and signage</p>	<p>Chapter 3 applies to the site as the site is located in the State and signage is proposed that can be displayed with development consent and is visible from the public road (Sections 3.3 and 3.4).</p>  <p><i>Figure 38: Excerpt of Elevations plan showing proposed River Terrace signage.</i></p> <p>Development consent must not be granted to display signage, unless the consent authority is satisfied that (as set out in Section 3.6):</p> <ol style="list-style-type: none"> the signage is consistent with the objectives set out in Section 3.1(1)(a); and the signage satisfies the assessment criteria specified in Schedule 5. <p>The application has been assessed against the objectives and assessment criteria set out in Section 3.1(1)(a) and Schedule 5 respectively. The assessment is set out in Attachment E. It is considered that the proposed signage satisfactorily meets the objectives and design criteria.</p>										

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State Environmental Planning Policy (Planning Systems) 2021	
Chapter 2 State and regional development	The proposal is regionally significant development pursuant to Section 2.19(1) as the proposal is for development that has an estimated development cost of more than \$30 million (Clause 2 of Schedule 6). Accordingly, the Northern Regional Planning Panel is the consent authority for the application.
SEPP (Resilience & Hazards) 2021	
Chapter 2 Coastal management	<p>Chapter 2 applies to the site as the site is located within a <i>coastal zone</i> (as defined by Section 5 of the <i>Coastal Management Act 2016</i>).</p> <p><u>Development on land within the coastal environment area</u></p> <p>Development consent must not be granted to development on land within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on:</p> <ul style="list-style-type: none"> (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, (b) coastal environmental values and natural coastal processes, (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1, (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, (f) Aboriginal cultural heritage, practices and places, (g) the use of the surf zone. <p>Development consent must not be granted to development on land to which this Section 2.10 applies unless the consent authority is satisfied that (Section 2.10(2)):</p> <ul style="list-style-type: none"> (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact. <p>Relevant to this application are paragraphs (a), (c) and (e) of Section 2.10(1).</p> <p>In relation to paragraphs (a) and (c), conditions of consent are recommended to manage any dewatering and erosion and sediment control necessary for the development.</p> <p>In relation to paragraph (e), impacts on public open space include impacts on views to and from public open space. These impacts have been assessed in accordance with the principles set out in <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140 and <i>Rose Bay Marina Pty Limited v Woollahra Municipal Council</i> [2013] NSWLEC 1046 and are considered reasonable in that assessment. The assessment is set out in Attachment D.</p> <p>Notwithstanding the assessment of the views as acceptable in relation to the above principles, it is agreed that there is an inevitable impact on views associated</p>

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	<p>with a building of this scale that cannot be avoided. However, it is considered that the development has been architecturally designed and sited to minimise that impact where possible, including by use of high architectural quality, landscaping and a slim tower form improving visibility from certain aspects. The proposed ongoing management of landscaping also contributes to minimising the impact to views during the use period of the development. It is considered that the consent authority can be satisfied that the development is designed, sited and will be managed to minimise the impact in accordance with Section 2.10(2).</p> <p><u>Development on land within a coastal use area</u></p> <p>Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:</p> <ul style="list-style-type: none"> (a) has considered whether the proposed development is likely to cause an adverse impact on the following— <ul style="list-style-type: none"> i. existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, ii. overshadowing, wind funnelling and the loss of views from public places to foreshores, iii. the visual amenity and scenic qualities of the coast, including coastal headlands, iv. Aboriginal cultural heritage, practices and places, v. cultural and built environment heritage, and (b) is satisfied that— <ul style="list-style-type: none"> i. the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or ii. if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or iii. if that impact cannot be minimised—the development will be managed to mitigate that impact, and (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. <p>Relevant to this application are subparagraphs (ii) and (iii) of Section 2.11(1)(a).</p> <p>In relation to impacts on views and visual amenity, the reasons set out above in the assessment of Section 2.10 are repeated here. In relation to overshadowing and wind funnelling, these matters have been assessed in the ADG assessment set out in Attachment C.</p> <p>In summary, the proposed overshadowing to neighbouring properties is acceptable. No overshadowing of public places or coastal use areas is raised of concern, noting that any overshadowing will be limited to a portion of the commercial marina dock from 4.45pm.</p> <p>Wind assessments are contained within the Pedestrian Wind Environment Statement that accompanied the application which recommends measures to mitigate any impacts of wind on the active frontage area in the road reserve. It is considered that the consent authority can be satisfied that the development avoids overshadowing impacts where possible and is otherwise designed, sited and will be managed to minimise the unavoidable impacts in accordance with Section 2.11(1)(b)(ii).</p> <p><u>Development in the coastal zone generally – development is not to increase risk of coastal hazards</u></p> <p>Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed</p>

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	<p>development is not likely to cause increased risk of coastal hazards (Section 2.12). The site is not subject to coastal hazards. It is not considered that the development is likely to cause increased risk of any coastal hazard.</p> <p><u>Development in coastal zone generally – coastal management programs to be considered</u></p> <p>Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land (Section 2.13).</p> <p>The site is located approximately 50m from the Terranora Inlet coastal waters under the Coastal Zone Management Plan for Cobaki and Terranora Broadwater. The application is proposed to incorporate suitable stormwater management, dewatering and erosion and sediment conditions. Subject to compliance with these conditions, the proposal is considered consistent with the intent of this Management Plan.</p>
<p>Chapter 4 Remediation of land</p>	<p>Chapter 4 applies to the site as the site is located in the State (Section 4.4).</p> <p>A consent authority must not consent to the carrying out of any development on land unless (Section 4.6):</p> <ul style="list-style-type: none"> (a) it has considered whether the land is contaminated, and (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose. <p>A Contaminated Land Site Investigation Report accompanied the application at lodgement. Following review, it was identified that the report did not address potential contamination arising from the demolition of concrete slabs on the site and that asbestos and elevated concentrations of zinc and copper were identified in the soil at the site.</p> <p>A Remediation Action Plan (RAP) accompanied the application as part of the Final Response to RFI. A pre-demolition sampling program and groundwater sampling program are proposed to occur after demolition has occurred under CDC24/0070. The RAP considered that removal of all contaminated soil to an approved landfill facility was likely the most feasible remediation strategy (noting that excavation of the entirety of the site is proposed). This will effectively mitigate the potential health and ecological risks associated with materials in the soil for future use of the site.</p> <p>A search of historical records has also been undertaken. The search did not reveal any potentially contaminating activities for the site.</p> <p>Subject to imposition of relevant conditions of consent in relation to remediation works during construction, it is considered that the consent authority can be satisfied that the land will be suitable for the proposed use following remediation in accordance with Section 4.6(1).</p>
<p>State Environmental Planning Policy (Sustainable Buildings) 2022</p>	

Chapter	Matters for Consideration
Chapter 2 Standards for residential development – BASIX	<p>The objectives of this SEPP are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.</p> <p>The application is accompanied by BASIX Certificate No.1746832M prepared by Aspire Sustainability Consulting Pty Ltd dated 9 May 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by Chapter 2.</p>
State Environmental Planning Policy (Transport and Infrastructure) 2021	
Chapter 2 Infrastructure	<p>Chapter 2 applies to the site as the site is located in the State (Section 4.4).</p> <p><u>Referral to the electricity supply authority – development within 5m of an exposed power line</u></p> <p>Section 2.48 applies to development that is (relevantly) carried out within 5m of an exposed overhead electricity power line (Section 2.48(1)(b)(iii)).</p> <p>If Section 2.48 applies, the consent authority must give written notice to the electricity supply authority for the area, inviting comments about potential safety risks and take into consideration any response to the notice that is received within 21 days (Section 2.48(2)).</p> <p>In accordance with Section 2.48, The application was referred to Essential Energy for comment as, once constructed, the development will be within 5m of overhead power lines on River Terrace. Essential Energy responded within 21 days advising of potential safety concerns to these power lines. As part of the Preliminary Response to RFI, the applicant proposed to:</p> <p><i>“...reposition power poles along Monastery Lane outside of the proposed laneway and to place power underground along River Terrace in front of the site. The existing overhead power lines crossing Wharf Street to remain with the power pole on the corner of Wharf Street and River Terrace [are] to be repositioned to suit.”</i></p> <p><i>Figure 39: Excerpt of Preliminary Response to RFI showing a plan loosely identifying proposed and future locations of electricity infrastructure on River Terrace and Monastery Lane.</i></p>

Chapter	Matters for Consideration
	<p>An updated Building Services Infrastructure Report (Revision D) was submitted with the Final Response to RFI providing substantially similar information to that provided above (page 10-11). It is further noted in the report that the above proposal is subject to a Level 3 accredited service provider and requirements from Essential Energy (page 11).</p> <p>On 12 May 2025, Essential Energy provided the following updated advice (Attachment K):</p> <p><i>"Note: This development has lodged a DIP (Development Information Plan) with Essential Energy and would be satisfied to approve this DA provided ECN-113546 is completed before construction begins."</i></p> <p>Additional general comments including compliance with SafeWork clearance requirements were also provided.</p> <p>Noting Essential Energy's advice that they would be satisfied to approve the DA provided ECN-113546 is completed before construction begins, it is considered that the safety concern can be addressed to Essential Energy's satisfaction. Essential Energy's comments are recommended to be imposed as conditions of consent.</p> <p><u>Development with frontage to classified road</u></p> <p>The consent authority must not grant consent to development on land with frontage to a classified road unless satisfied of the matters set out in Section 2.119(2). It is noted that while Wharf Street is a highly trafficked road, it is not a classified road pursuant to Administrative Agreement. Wharf Street has a gazetted road number of 7733. 7000 series roads are "Unclassified Regional Roads" under the Schedule of Classified Roads and Unclassified Regional Roads issued by Transport for NSW. Accordingly, Section 2.119 does not apply.</p> <p><u>Impact of road noise or vibration on non-road development</u></p> <p>Section 2.120 applies to development for (relevantly) residential accommodation that is on land in or adjacent to a road corridor with an annual average daily traffic volume of more than 20,000 vehicles per day (vpd) in accordance with NSW Transport data (Section 2.120(1)).</p> <p>If Section 2.120 applies, the consent authority must take into consideration any guidelines issued by the Planning Secretary (Section 2.120(2)). Additionally, the consent authority must not grant consent unless it is satisfied that appropriate measures will be taken to ensure the LAeq levels specified in Section 2.120(3) are not exceeded.</p> <p>It is noted that the relevant NSW Transport data did not include records for Wharf Street. Council records indicate that prior to COVID-19, traffic records reached the upper levels of 19,000 vpd.</p> <p>A revised Noise Impact Assessment was submitted as part of the Final Response to RFI. The revised Noise Impact Assessment references internal noise criteria for road traffic noise from Wharf Street as per the SEPP and NSW Development of Planning and Environment Development Near Rail Corridors and Busy Roads – Interim Guideline 2008 and requires compliance in accordance with the relevant internal noise requirements. It is noted that the Noise Impact Assessment references the correct internal noise levels and extracts the relevant table of noise criteria (Table 3.1) from the Interim Guidelines. However, the Noise Impact Assessment later incorrectly summarises the internal noise levels for sleeping areas.</p>

Chapter

Matters for Consideration

Table 3 Extract - DNRCBR - Table 3.1.

Table 3.1: Noise criteria

Residential Buildings		
Type of occupancy	Noise Level dBA	Applicable time period
Sleeping areas (bedroom)	35	Night 10 pm to 7 am
Other habitable rooms (excl. garages, kitchens, bathrooms & hallways)	40	At any time
Non-Residential Buildings		
Type of occupancy	Recommended Max Level dBA	
Educational Institutions including child care centres	40	
Places of Worship	40	
Hospitals	- Wards	35
	- Other noise sensitive areas	45

Note: airborne noise is calculated as $L_{Aeq}(9h)$ (night) and $L_{Aeq}(15h)$ (day). Groundborne noise is calculated as L_{Aeq} (slow) for 95% of rail pass-by events.

Figure 40: Excerpt of Noise Impact Assessment referencing the internal noise levels for sleeping areas. Note, the shown requirements match those specified in Section 2.120(3) including the highlighted noise level for sleeping areas.

4.4 Project Noise Requirements

Based on the details included in the sections above, the project internal noise levels requirements are summarised in Table 4 below.

Table 4 Project Airborne Internal Noise Level Requirements.

Type of Occupancy/Activity	Design sound level maximum (LAeq,t)
Apartment common areas (e.g. foyer, lift lobby)	55 dB(A) 15 hours
Residential - Living areas	40 dB(A) 15 hours
Residential - Sleeping areas (night time)	45 dB(A) 9 hours
Toilets	55 dB(A) 15 hours
Retail areas	50 dB(A) 15 hours

Note 1: The relevant time period includes the night time period of 10pm to 7am

Figure 41: Excerpt of Noise Impact Assessment summarising required internal noise levels. Note, the shown requirement for sleeping areas does not match the previously referenced noise levels in Figure 40 above.

It is considered the above reference to 45 dBA (instead of 35 dBA) is a minor clerical error only as Section 4.4 is expressed as a summary of the information already “included in the sections above”.

The Noise Impact Assessment goes on to provide for acoustic construction (external glass elements) which “ensure the recommended internal noise levels detailed above are achieved.”

It is considered that conditions of consent can be imposed requiring compliance with the recommendations to Council’s satisfaction. Subject to compliance with the relevant conditions, it is considered the consent authority can be satisfied the development will comply with the required LAeq levels in Section 2.120(3).

Tweed City Centre Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Tweed City Centre Local Environmental Plan 2012* (‘the TCC LEP’).

The aims of the TCC LEP include (relevantly) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council’s adopted strategic planning documents (Section 1.2(2)(a)), to promote employment, residential and social opportunities in Tweed City Centre (Section 1.2(2)(b)), to promote development that is consistent with the

principles of ecologically sustainable development (Section 1.2(2)(d)) and to promote the economic revitalisation of Tweed City Centre (Section 1.2(2)(e)) and to facilitate building design excellence appropriate to a regional city in Tweed City Centre (Section 1.2(2)(h)).

The application is consistent with the aims of the TCC LEP as the application seeks approval for a mixed use building including 72 apartments and two (2) ground floor retail premises in an appropriate location designated for a landmark redevelopment in Section B2 of the Tweed Development Control Plan 2008. An Ecologically Sustainable Development report accompanied the application, as has a BASIX certificate and Section J assessment.

The application proposes significant landscaping to combat urban heat, consistent with Council's Cool Towns policy. The proposed redevelopment will assist to revitalise the Southern Boat Harbour precinct of the Tweed City Centre and will provide for a building that has presents design excellence to people entering and leaving the Tweed City Centre.

Zoning and Permissibility (Part 2)

The site is located within Zone MU1 Mixed Use pursuant to Clause 2.2 of the TCC LEP.

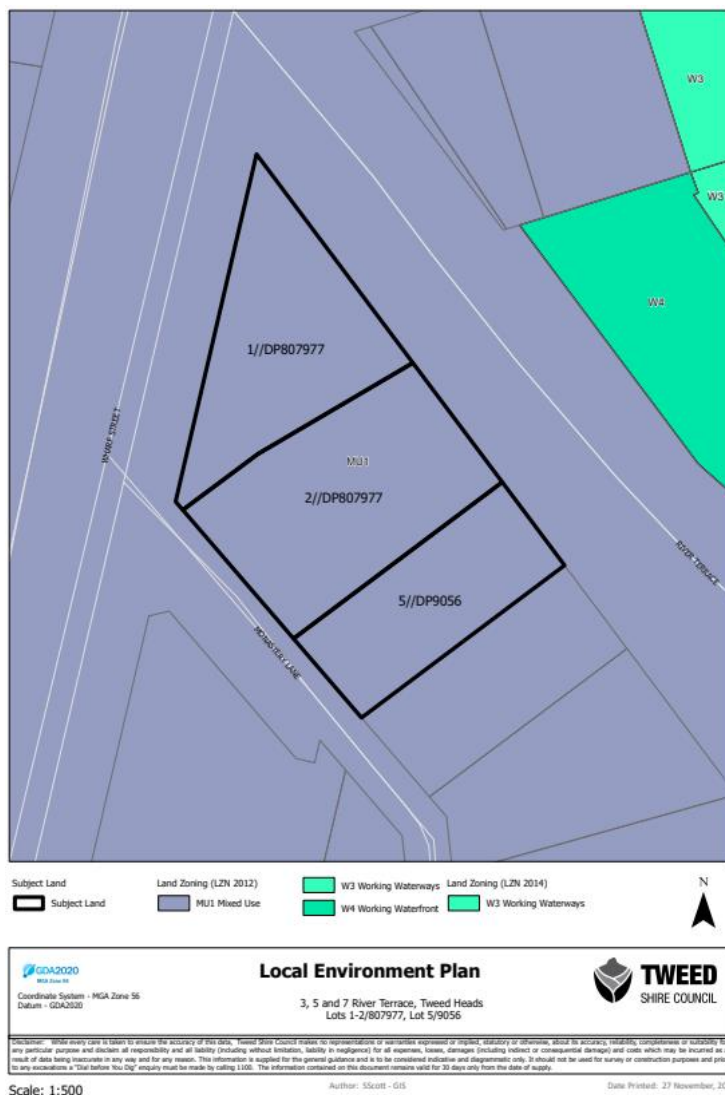


Figure 42: TCC LEP Land Zoning Plan.

According to the definitions in Clause 1.4 (contained in the Dictionary), the proposal satisfies the definition of *shop top housing* which is a permissible use with consent in the Land Use Table in Clause 2.3.

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Note—

Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The application proposes retail uses capable of generating employment opportunities.
- The application provides for active street frontages in line with the desired future context of a revitalised Southern Boat Harbour precinct.
- The site and the surrounding area are zoned MU1 Mixed Use. While a contrast will arise between the scale of the buildings, the scale is managed by other TCC LEP controls and applies equally to the site and surrounding buildings (subject to any bonuses applicable under Section 6.10 which are not sought under this application).
- The application is for shop top housing which seeks approval for two (2) retail premises (one (1) showroom and one (1) food and drinks premises) on the ground floor.
- The application seeks approval for 72 apartments to assist in delivering a more active local centre in accordance with the desired future context for the locality.

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

The TCC LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below. The proposal does not comply with the development standards in Clauses 4.3(2) and 4.4(2C) of the TCC LEP. Clause 4.6 variation requests have been provided with the application for the exceedance of the maximum building height and residential floor space ratio respectively.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Complies
Height of buildings (Clause 4.3(2))	49.5 metres	51.0 metres (3% variation)	No Clause 4.6 variation request submitted (Attachment G)
FSR (Clause 4.4(2))	4.5:1 (8,311.5m ²)	Not applicable. The floor space ratio is specified in Clauses 4.4(2B) and 4.4(2C).	N/A
FSR adjusted (Clause 4.4(2B))	(1 + (3.5 x ((1,847 - 600)/1400)):1 4.12:1 (7,609.64m ²)	The proposed floor space ratio is: GFA / Site area:1 Commercial GFA + Residential GFA / 1,847m ² :1 (446m ² + 6,765m ²) / 1,847m ² :1 3.91:1	Yes
Residential FSR (Clause 4.4(2C))	(MaxFSR x (Commercial GFA / Total GFA)) + (2.5 x Residential GFA / Total GFA):1 (4.15 x 446 / 7211) + (2.5 x 6,765 / 7,211):1 2.60:1 (4,802.2m ²)	Residential GFA / Site area: 6,765m ² / 7,211m ² 3.66:1 (40.7% variation)	No Clause 4.6 variation request submitted (Attachment H)
Flood planning (Clause 5.21)	The consent authority must be satisfied of the development set out in Clause 5.21(2). In deciding whether to grant development consent, the consent authority must consider the matters set out in Clause 5.21(3).	The site is mapped as subject to the Probable Maximum Flood (PMF). River Terrace is partially mapped as subject to the Design Flood Level (2.6mRL). The proposed ground floor is to be elevated to River Terrace to take into account the possibility of a design flood on River Terrace. No concerns arise with respect to the habitable floor level with all residential apartments located	Yes

Control	Requirement	Proposal	Complies
		on Level 01 and above. Access points to the basement and lift well are also protected to the habitable floor level of 3.1m. No concerns arise with safe occupation in the event of a flood and no concerns are raised with respect to the impact on a flood itself.	
Acid sulphate soils (Clause 6.1)	Development consent must not be granted unless an acid sulfate soils management plan has been prepared in accordance with the Acid Sulfate Soils Manual and provided to the consent authority.	The site is mapped as Class 5 for acid sulfate soils. An Acid Sulfate Soil Investigation accompanied the application. The investigation included a treatment plan. Council officers have raised no concerns in relation to the proposed acid sulfate soils investigation or treatment plan.	Yes
Minimum building street frontage (Clause 6.6)	Development consent must not be granted unless the site has at least one (1) street frontage of 20m or more.	The site has a frontage of approximately 68m to River Terrace, 47m to Wharf Street and 38 metres to Monastery Lane.	Yes
Ground floor and first floor development in Zones E2 and MU1 (Clause 6.8)	Development consent must not be granted unless the consent authority is satisfied that (relevantly) the building will have an active street frontage and the ground floor will be used for commercial activities.	The application includes ground floor retail premises including one (1) showroom (Retail 1) and one (1) food and drinks premises.	Yes
Airspace operations (Clause 6.9)	The consent authority is required to consult with the relevant body if (relevantly) the development will penetrate the Operations Surface (Clause 6.9(2)).	The site is shown within the Inner Horizontal Area in the Obstacle Limitations Surface Map between 49.5RL contours. The proposed maximum building height is 51m. The application was referred to the Gold Coast Airport who requested a condition be imposed on any consent requiring an	Yes

Control	Requirement	Proposal	Complies
	The consent authority must not grant development consent if the relevant body advises the development will penetrate the Operations Surface and should not be constructed (Clause 6.9(4)).	application for approval before construction.	
Design excellence (Clause 6.10)	<p>Development consent must not be granted unless the consent authority considers that the development exhibits design excellence (Clause 6.10(2)).</p> <p>The consent authority must have regard to the matters set out in Clause 6.10(3).</p>	The application has been assessed against the matters set out in Clause 6.10(3). The assessment is set out below this table (Table 6). It is considered that the application satisfactorily meets the matters set out in Subclause (3) and demonstrates design excellence.	Yes
	<p>Development consent must not be granted unless a competitive design process has been held in relation to the proposed development (Clause 6.10(4)).</p> <p>Subclause (4) does not apply if the matters set out in subclause (5) are satisfied (Clause 6.10(5)).</p>	<p>The application relies on the matters set out in Subclause (5). The matters include the consent authority certifying in writing that a competitive design process is not required, a DRP reviews the development and the consent authority takes into account the DRP's advice.</p> <p>On 1 September 2022, Council resolved to endorse an application for a waiver to the requirements to undertake an architectural design competition. A DRP was constituted for the development. Four (4) DRP meetings (including 3 pre-lodgement and 1 post-lodgement) have occurred.</p>	Yes

Control	Requirement	Proposal	Complies
		The DRP's advice for each meeting is set out in Attachment I. The DRP's advice has been taken into account in each iteration of the development leading up to lodgement. A detailed consideration of the DRP's advice is set out in Attachment J. The most recent advice contains predominantly comments of support for the design elements as well as recommended conditions to ensure the design is constructed as presented.	

Clause 6.10(2) and 6.10(3) Design excellence

Table 6: Consideration of Clause 6.10 Design excellence

Clause 6.10(3) Assessment	
Matter	Response
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	<p>The proposed design achieves varied articulation across each elevation with varied forms of different scales addressing each different street edge context. The curving splay of the north facing balconies on the corner of Wharf Street and River Terrace is considered a defining architectural feature appropriate for the 'gateway' to and from the Tweed. Further architectural design features are set out in the row below.</p> <p>The applicant advises that the design team set a target of 100% of the site area to contain landscaping in different pockets across the ground plane, awning roof, podium roof, each level and roof top landscaping. The result is approximately 80% of the site being reserved for soft landscaping presenting a green building on the landmark site. A strong mix of materials and detailing are present at street frontage with a strong presence of glass and detailed awning design (see below row) to the main streets and an appropriate darker urban form presented to the residential Monastery Lane.</p>
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	At ground level, the combination of through block connection, retail land uses and edge treatment to the two main street frontages provides good opportunity for the proposal to activate and engage with the street. The landscape drawing packages also provide detail of the ground level set-out, landscape areas and material palette which is considered to draw on local character elements and is appropriately robust for the envisaged use and climatic and marine context.

Clause 6.10(3) Assessment	
Matter	Response
	<p>The submitted design incorporates a stepped tapering awning soffit and landscaped awning roof which wraps around the corner. A second awning design proposing a mirror design and finish is also proposed to intersperse sections of the awning predominantly fronting River Terrace.</p> <p>One of the key design outcomes achieved is the central landscape courtyard area. This space functions as circulation connecting the ground floor with the podium level, an area of landscape but also as void space to draw through natural light and ventilation. While the majority of this space is not accessible by the public, the visibility of the space from the pedestrian linkages is well supported.</p>
(c) whether the development detrimentally impacts on view corridors,	<p>View impacts have been assessed in accordance with the principles set out in <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140 and <i>Rose Bay Marina Pty Limited v Woollahra Municipal Council</i> [2013] NSWLEC 1046 and are considered reasonable in that assessment. The assessment is set out in Attachment D.</p> <p>It is considered that the development has been architecturally designed and sited to minimise that impact where possible, including by use of high architectural quality, landscaping and a slim tower form improving visibility from certain aspects. The proposed ongoing management of landscaping also contributes to minimising the adversity of the impact to views during the use period of the development.</p>
(d) the requirements of the Tweed City Centre DCP,	An assessment of Section B2 Tweed City Centre is set out in Attachment D. Subject to supported variations in relation to street frontage heights, setbacks and vehicle crossing width (increased width), no concerns arise.
(e) how the development addresses the following matters—	As below.
(i) the suitability of the land for development,	The suitability of the site is assessed elsewhere in this report. The site is considered suitable for the development.
(ii) existing and proposed uses and use mix,	The proposed site planning is considered to have regard for the two main street frontages as well as residential properties on Monastery Lane in terms of natural sunlight and privacy. While future uses on River Terrace are beyond the scope of this application, the site design with ground level retail units, through connection between Wharf Street and River Terrace and 'blurring' of the edges of private and public realms on the ground floor, the site is well positioned to complement the future street activation.

Clause 6.10(3) Assessment	
Matter	Response
(iii) heritage issues and streetscape constraints,	<p>The landscape drawings provide a detailed analysis of landscape context from the Tweed region including references to cultural seasons and endemic species.</p> <p>No Aboriginal cultural heritage or other heritage concerns apply to the site or surroundings.</p> <p>Landscape opportunities for the streetscape have been maximised to achieve a better built form and landscape proportion at the streetscape level. It is acknowledged that Council's officers have recommended additional street trees in the road reserve in place of the initially proposed planter boxes. The final design of the streetscape under a Section 138 <i>Roads Act</i> 1993 application will take into account Council recommendations as well as any constraints from services infrastructure such as undergrounded powerlines.</p>
(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	<p>Initial DRP suggestions to offset the building envelope from the south-eastern boundary were not pursued. However, building separation from 9 River Terrace has been achieved through the siting of the fire stairwell and area of landscaping against that boundary interface. The 0.0m setback interface wall is broken down with the introduction of different material finishes and form, including an upside down arch framing a feature tree.</p> <p>The single detached dwelling on 9 River Terrace and dwelling opposite Monastery Lane (100-104 Wharf Street) will be impacted by the proposal by way of the boundary wall (to 9 River Terrace), overshadowing and overlooking. This is mitigated by the separation across the Monastery Lane road reserve, the stepped building form at the south-eastern edge and the screened Monastery Lane balconies. In this regard, it is noted that 9 River Terrace retains the sunlight required under the ADG and 100-104 Wharf Street retains the substantial majority of required sunlight (see the ADG assessment in Attachment C for more detail).</p> <p>As an area in transition, some amenity impacts on existing lower scale adjoining properties are inevitable. However, the design approach of interfacing those properties with a lower scale podium level building form has achieved a degree of transition that will still allow a degree of natural sunlight sharing across those properties.</p>
(v) bulk, massing and modulation of buildings,	<p>The DRP summarised their satisfaction in relation to bulk and mass as</p> <p><i>"a series of interconnected but varied building forms (River terrace podium, Tower form, Monastery Lane) with each elevation addressing different street edges conditions, solar orientations and view opportunities articulated through differing façade systems, detailing,</i></p>

Clause 6.10(3) Assessment	
Matter	Response
	<p><i>landscape treatment and material palettes which come together as a cohesive whole."</i></p> <p>The above comments are supported here.</p>
(vi) street frontage heights,	Street frontage height has been assessed in the Section B2 of the DCP assessment set out in Attachment D. Variations to the DCP controls are supported noting also the comments in relation to each elevation set out above.
(vii) solar access controls,	Solar access for the development and for adjoining properties has been assessed in the ADG assessment set out in Attachment C. The proposed solar access is compliant for the development and overshadowing is limited to an acceptable degree for the area in transition.
(viii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,	<p>The reasons set out in row (ix) below are repeated here in relation to sustainable design. The applicant also notes that long lasting and robust materials have been chosen for the building envelope design (Architect Response Letter dated 9 April 2025).</p> <p>Overshadowing and wind is addressed elsewhere in this report and is considered acceptable.</p> <p>Standard conditions are recommended to manage reflectivity including submission of a reflectivity report prepared by a suitably qualified consultant prior to issue of a construction certificate.</p>
(ix) the achievement of the principles of ecologically sustainable development,	An Ecologically Sustainable Development report accompanied the application, as has a BASIX certificate and Section J assessment. The application also proposes significant landscaping to combat urban heat, consistent with Council's Urban Heat policy. A rainwater tank to reuse collected stormwater for landscaping purposes is also proposed along with appropriate irrigation infrastructure.
(x) pedestrian, cycle, vehicular and service access, circulation and requirements,	Access has been assessed elsewhere in this report. The proposed access arrangements including circulation and associated parking are considered acceptable.
(xi) the impact on, and any proposed improvements to, the public domain.	<p>The proposed public domain improvements will be the subject of a Section 138 <i>Roads Act 1993</i> application. The final design will be determined in that application noting that initial proposals for road paving, shared pedestrian/vehicle roads and planter boxes in the road reserve have been reviewed and rejected by Council's officers due to requirements for maintenance and blocking of pedestrian routes.</p> <p>Additional street trees are recommended by Council's officers. Monastery Lane is to be widened within the</p>

Clause 6.10(3) Assessment	
Matter	Response
	existing road reserve to ensure adequate turning circles for MRVs entering the site's loading dock. A pedestrian footpath on Monastery Lane and relocation and/or undergrounding of power poles and power lines are also proposed. The surrounding verge is also proposed to be fully paved to facilitate active use subject to Council's requirements for landscaping.

The proposal is considered to be consistent with the TCC LEP subject to assessment of the Clause 4.6 variation requests addressed below.

Clause 4.6 Request – maximum building height

The application requires a variation to Clause 4.3(2) in respect of the maximum building height. The variation request is in Attachment G.

The Development Standard to be varied and extent of the variation

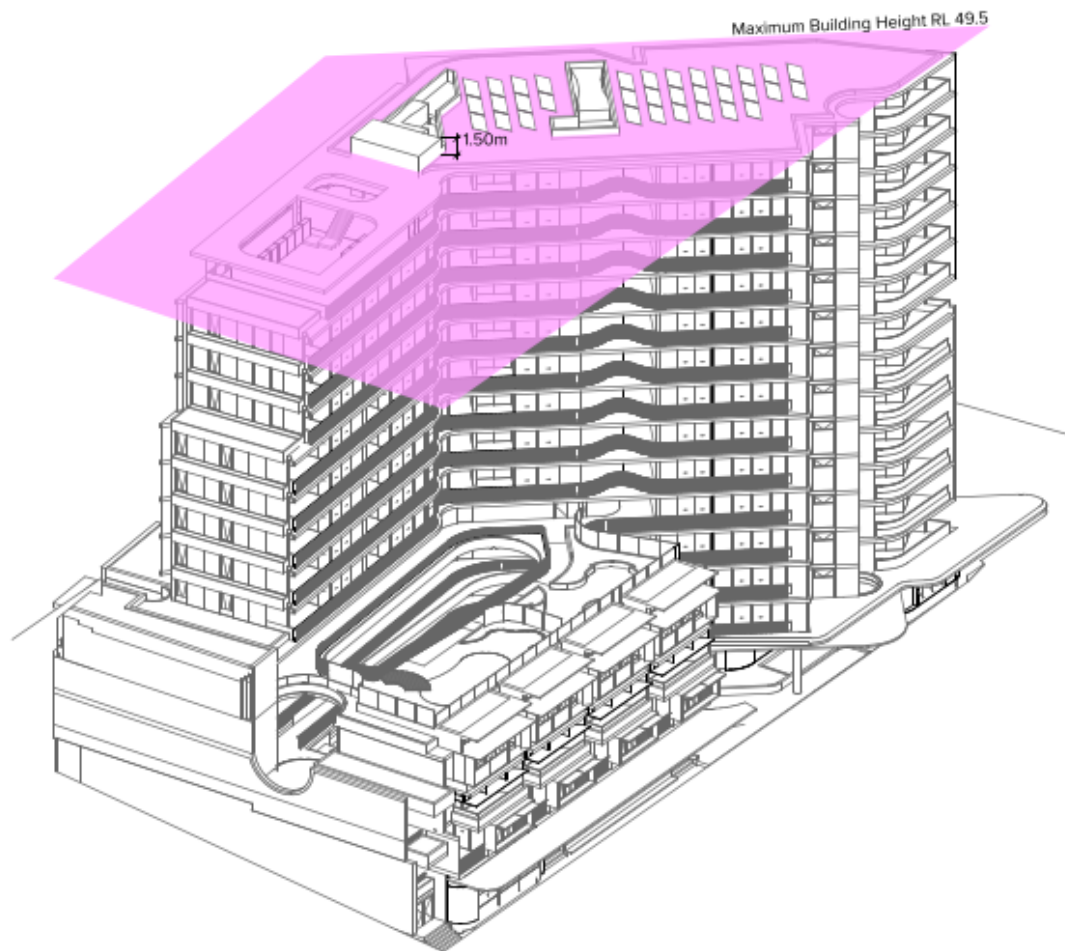
4.3 Height of buildings

(1) *The objectives of this clause are as follows—*

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

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum height for the site is 49.5m. The proposed maximum height is 51.0m (3% exceedance).



Height Plane Diagram

Figure 43: Height Plan Diagram.

Preconditions to be satisfied

Clause 4.6(3) of the TCC LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard subject to preconditions.

The two preconditions are the tests to be satisfied pursuant to Clause 4.6(3) which requires that the consent authority must be satisfied the applicant has demonstrated that:

1. compliance with the development standard is unreasonable and unnecessary in the circumstances of the case (Clause 4.6(3)(a)); and
2. there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

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

Compliance with the development standard is unreasonable and unnecessary (Clause 4.6(3)(a))

The applicant refers to *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) and *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] and specifically the finding that an applicant can demonstrate that compliance is unreasonable and unnecessary where the objectives of the standard are achieved notwithstanding non-compliance. This was the first method of five alternative methods set out in *Wehbe*. Notwithstanding this reference to this particular method, the applicant goes on to address each of the five methods set out in *Wehbe* to demonstrate compliance is unreasonable and unnecessary.

It is not proposed to replicate or assess each of the methods here. In this regard, it is considered that the first method has been satisfactorily demonstrated for the reasons discussed in the Clause 4.6 variation as summarised below.

Table 7: Clause 4.3(1) objectives assessment

Clause 4.3(1) objectives assessment		
Matter	Applicant's response	Council's comment
(a) to establish the maximum height for which a building can be designed,	Clause 6.10(6) and (7) of the TCC LEP permit a 10% increase to the building height, subject to a competitive design review process. The development was granted a waiver to this requirement on the basis that a reputable design team had been engaged with demonstrated experience in achieving high quality design outcomes and design excellence. A similar or better outcome has been achieved than if a design competition had been held. It is therefore reasonable to take into account the 10% bonus height which is significantly greater than the proposed 3%.	It is considered that this objective is aimed at creating the quantitative measure for assessment rather than providing for an objective to be achieved. In any event however, the applicant's comments in relation to the design competition waiver are relevant to satisfaction of the objective.
(b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,	The proposed variation does not relate to habitable floor space but to a small part of the site with other parts of the site sitting well below the maximum height permitted. The proposed variation relates to roof top structures, including plant and solar panels. These structures are setback from the parapet and will generally not be visible from the public domain. There will therefore be no impact on the character of the locality or surrounding amenity.	The location of the roof top structures and their lack of impact is relevant to the maintenance of appropriate character and amenity (see also <i>Initial Action Pty Ltd v Woollahra Municipal Council</i> [2018] NSWLEC 118 [94] and <i>Randwick City Council v Micaul Holdings Pty Ltd</i> [2016] NSWLEC 7 [34]). As shown in the height plan diagram (Figure 43 above), the extent of visible development for the site (being the roof parapet) complies with the height limit imposed to represent the appropriate urban character and amenity. The only location of visibility would be future large-scale development higher up Monastery Hill. The proposed justification shows a lack of impact on overshadowing, privacy or view lines and therefore on amenity.
(c) to ensure that taller development	The proposed tower form is supported by the character statement for the Boat	The proposed development is agreed to be on a landmark site provided for in Section

Clause 4.3(1) objectives assessment		
Matter	Applicant's response	Council's comment
is located in more structured urbanised areas that are serviced by urban support facilities,	Harbour Precinct which indicates that landmark buildings, up to 13 storeys, will be encouraged on key sites on the northern side of Terranora Terrace and on Monastery Hill. The part of the building in the northern corner contains up to 14 storeys with a height of 49.5RL, with only roof top plant and solar panels exceeding the height limit.	B2 of the DCP. While it is noted that landmark sites are not entitled to variations, it is agreed that the tower forms a part of the building containing 14 storeys that substantially complies with the height limit.
(d) to encourage greater population density in less car-dependant urban areas,	The proposed variation does not result in any inconsistency with this objective. The site is well located in terms of access to local bus routes and it is noted that Transport for NSW are investigating a potential light rail corridor connecting Tweed Heads South with the Tweed-Coolangatta airport.	It is agreed that the proposal is not inconsistent with an objective to achieve greater population density. It is noted that the area is serviced by bus routes with a bus stop located outside 3 River Terrace on Wharf Street.
(e) to enable a transition in building heights between urban areas comprised of different characteristics,	The building complies with the 49.5RL standard, with the exception of rooftop plant and solar panels. The elements above the height limit will generally not be visible from the public domain and will therefore have no impact on the transition in building heights.	It is agreed that the elements that exceed the building height limit will generally not be visible from the public domain and have minimal impact on any transition between heights.
(f) to limit the impact of the height of a building on the existing natural and built environment,	The proposed variation will not result in any material impact on the natural and built environment having regard to: the minor extent of the variation, the setback of the elements that exceed the height limit and the limited visibility of these elements.	It is agreed that the elements that exceed the building height limit will generally not be visible from the public domain and have minimal impact on the built environment.
(g) to prevent gross overshadowing impacts on the natural and built environment.	Having regard to the minor exceedance of the height limit, of a maximum of 1.5m (3%) for a building that has a height above natural ground level of over 45m and considering the substantial movement of the shadow throughout the day so that no one site is unduly burdened, the non-complying elements of the building will have no material impact on the surrounding natural and built environment as demonstrated by the shadow diagrams.	Overshadowing has been assessed in the ADG assessment. The assessment is set out in Attachment C. It is agreed that due to the movement of shadow, no one site is unduly burdened, noting also that while a variation to solar access is required for 100-104 Wharf Street (2.5 hours of sunlight rather than 3 hours) such a variation would not be alleviated by reducing the building height to 49.5RL due to its proximity to the site. It is considered the applicant has demonstrated a lack of gross overshadowing in compliance with this objective.

It is considered that the applicant has demonstrated the development meets the objectives of the relevant standard and that compliance with the numerical standard is unreasonable and unnecessary.

Environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b))

The applicant refers to *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018 (Initial Action), *Eather v Randwick City Council* [2021] NSWLEC 1075 (Eather) and *Petrovic v Randwick City Council* [2021] NSWLEC 1242 (Petrovic) which indicate (relevantly) that there is no requirement the non-compliant development have a neutral or beneficial effect relative to a compliant development and that a small departure from the actual numerical standard and the lack of any material impacts are environmental grounds.

The applicant goes on to provide a number of environmental planning grounds that support the proposed variation, including (in summary):

1. The proposed variation is numerically minor (3% exceedance).
2. A design waiver has been granted on the basis a reputable design team was engaged and has resulted in a similar if not better outcome to a competitive design review process which would entitle the development to 10% bonus height.
3. The varied height of the building and design of the tower element is the result of a detailed site analysis. The variation to the height standard is therefore not a result of poor design.
4. The proposed variation does not result in any material adverse impacts on amenity.

It is agreed that the above reasons could constitute *environmental planning grounds* within the meaning expressed in *Initial Action* [23] and discussed further in *Pritchard v Northern Beaches Council* [2020] NSWLEC 1310.

The numerically minor exceedance and lack of material impacts (points 1 and 4 above) are expressly acknowledged in *Eather*, *Petrovic* and *Pritchard* as potentially comprising *environmental planning grounds* noting that *Pritchard* [70] discussed further that the nature and reason for the lack of impact can also be relevant to any justification weight. It is not considered in this case that the lack of impact is a product of the nature of the application such as it was in *Pritchard* (floor space in an undercroft) and therefore no such concerns as to weight apply. It is also agreed that the proposed variation is not a result of poor design and therefore required to avoid deficiencies in the application such as discussed in *Pritchard* [70].

It is considered that the applicant has demonstrated sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

Based on the above assessment, it is considered that the consent authority can be satisfied that the applicant has demonstrated the matters set out in Clause 4.6(3). As the development is not for subdivision of land (Clause 4.6(6)) and the variation is not for a standard set out in Clause 4.6(8), development consent may be granted for the development even though the development contravenes the maximum building height development standard in Clause 4.3(2) (Clause 4.6(2)).

Clause 4.6 Request – residential floor space ratio

The application requires a variation to Clause 4.4(2C) in respect of the residential floor space ratio. The variation request is in Attachment H.

The Development Standard to be varied and extent of the variation

4.4 Floor space ratio

(1) *The objectives of this clause are as follows—*

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

(2A) Despite subclause (2), the maximum floor space ratio for a building on a site area that is on land in Zone E2 Commercial Centre for which the maximum floor space ratio is as specified in Column 1 of the Table to this subclause is—

- (a) if the site area is no more than 1,000 square metres—the ratio specified opposite that ratio in Column 2 of that Table, and
 - (b) if the site area is more than 1,000 square metres, but less than 2,000 square metres—the ratio specified opposite that ratio in Column 3 of that Table,
- where—

$$Z = (\text{the area of the land in square metres} - 1000) / 1000$$

Table—Maximum FSR in Zone E2 Commercial Centre

Column 1	Column 2	Column 3
3.25:1	2.25:1	$2.25 + Z:1$
4.5:1	3:1	$(3 + (1.5 \times Z)):1$
5:1	3.5:1	$(3.5 + (1.5 \times Z)):1$
6:1	4:1	$(4 + (1.5 \times Z)):1$

(2B) Despite subclause (2), the maximum floor space ratio for a building on a site area that is on land in Zone MU1 Mixed Use for which the maximum floor space ratio is as specified in Column 1 of the Table to this subclause is—

- (a) if the site area is no more than 600 square metres—1:1, and
 - (b) if the site area is more than 600 square metres, but less than 2,000 square metres—the ratio specified opposite that ratio in Column 2 of that Table,
- where—

$$Z = (\text{the area of the land in square metres} - 600) / 1400$$

Table—Maximum FSR in Zone MU1 Mixed Use

Column 1	Column 2
2.25:1	$(1 + (1.25 \times Z)):1$
2.5:1	$(1 + (1.5 \times Z)):1$
2.75:1	$(1 + (1.75 \times Z)):1$
3.25:1	$(1 + (2.25 \times Z)):1$
3.5:1	$(1 + (2.5 \times Z)):1$
4:1	$(1 + (3 \times Z)):1$
4.5:1	$(1 + (3.5 \times Z)):1$

(2C) Despite subclauses (2), (2A) and (2B), the floor space ratio for the residential component of a building that is a mixed use development that includes shop top housing or serviced apartments is to be calculated as follows—

(a) if the building is in Zone E2 Commercial Centre—
 $[(\text{MaxFSR} \times (\text{NR}) / 100) + (2 \times \text{R} / 100)] : 1,$

(b) if the building is in Zone MU1 Mixed Use—
 $[(\text{MaxFSR} \times (\text{NR}) / 100) + (2.5 \times \text{R} / 100)] : 1,$

where—

MaxFSR is the first term of the maximum floor space ratio permitted for the building under either subclause (2), (2A) or (2B).

NR is the percentage of the building's floor space to be used for purposes other than shop top housing or serviced apartments.

R is the percentage of the building's floor space to be used for the purpose of shop top housing or serviced apartments.

residential component means the part of the development used for the purpose of shop top housing or serviced apartments, or both.

Clause 4.4(2C) applies as the site is located on land in Zone MU1 Mixed Use and is for a mixed use development. Under Clause 4.4(2C), the maximum residential component of floor space ratio is 2.60:1 (4,802.2m²). The proposed residential component of floor space ratio is 3.66:1 (1.06:1 or 1,957.6m² or 40.7% exceedance).

Preconditions to be satisfied

Clause 4.6(3) of the TCC LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard subject to preconditions.

The two preconditions are the tests to be satisfied pursuant to Clause 4.6(3) which requires that the consent authority must be satisfied the applicant has demonstrated that:

1. compliance with the development standard is unreasonable and unnecessary in the circumstances of the case (Clause 4.6(3)(a)); and
2. there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)).

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

Compliance with the development standard is unreasonable and unnecessary (Clause 4.6(3)(a))

The applicant refers to *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) and *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] and specifically the finding that an applicant can demonstrate that compliance is unreasonable and unnecessary where the objectives of the standard are achieved notwithstanding non-compliance. The applicant goes on to address each of the five methods set out in *Wehbe* to demonstrate compliance is unreasonable and unnecessary.

It is not proposed to replicate or assess each of the methods here. In this regard, it is considered that the first method has been satisfactorily demonstrated for the reasons discussed in the Clause 4.6 variation as summarised below.

Table 8: Clause 4.4(1) objectives assessment

Clause 4.4(1) objectives assessment		
Matter	Applicant's response	Council's comment
(a) to define the allowable development density of a site and for particular classes of development,	<p>The development complies with the maximum FSR in Clause 4.4(2B). The quantum of residential floor space is acceptable because:</p> <ul style="list-style-type: none"> • The site is identified as a location for a slim-line, tall building. The limited floorplate size is more suited to residential development than non-residential. • It is unnecessary to provide additional non-residential floor space in order to achieve compliance with the DCP requirement for active frontages. 	<p>It is considered that the class of development for which the objective defines the density is large-scale mixed-use buildings in line with the zoning and substantial maximum FSR permitted (highest in the TCC LEP). As the rezoning is a direct reflection of the desired development vision in the DCP and the aims of the TCC LEP to promote the economic revitalisation of Tweed City Centre (Clause 1.2(e)), it is considered that the applicant's reference to the class of development in the DCP and the identified suitability of development is relevant.</p> <p>The slim-line nature of the tower discussed in the DCP and proposed in this development is agreed to be more suited to residential development and therefore the residential component. Accordingly, it can be considered the applicant has demonstrated the development is consistent with objective (a).</p>
(b) to enable an alignment of building scale with the size of a site,	<p>The quantum of residential floor space provided does not result in a building of excessive scale. Residential floor space is suited to the tower form that is encouraged on the site. Compliance with the maximum FSR demonstrates that the intensity of the development, or the amount of floor space on the site is appropriate for the size of the site. All the habitable floor space sits below the maximum height of 49.5RL.</p>	<p>It is agreed that compliance with the maximum FSR in this instance can demonstrate that the intensity of the development and amount of floor space on the site is appropriate for the size of the site.</p>
(c) to provide flexibility for high quality and innovative building design,	<p>The building design has been developed through a design review process as a supported means of achieving design excellence and has been thorough reviews leading to a high quality design. The proposed variation has not compromised on the ability of the development to deliver and appropriate amount of non-residential floor space, necessary to comply with the requirement to provide an active frontage to Wharf Street and River Terrace and does not give rise to any inconsistencies with the Boat Harbour Precinct provisions.</p>	<p>It is agreed that the development represents a high quality in design achieved through the design review process.</p>
(d) to limit the impact of new development on the existing and planned natural	<p>The proposed variation does not result in any impact on the natural or built environment, noting that the overall floor space on the site is lower than permitted in accordance with Clause 4.4(2B).</p>	<p>It is not considered that the nature of the additional floor space ratio as residential (the residential component) results in natural or built environment impacts in these circumstances. It is agreed that the proposed total FSR is less than the whole</p>

Clause 4.4(1) objectives assessment		
Matter	Applicant's response	Council's comment
and built environment,		of the FSR permitted on site. Accordingly, the development operates within the limits imposed by objective (d). In this regard (and in line with the applicant's comments), it is not considered that the residential nature of the subclause 2C exceedance results in material impacts to the natural and built environment. For example, no additional car parking or privacy concerns associated with residential use arise.
(e) to encourage increased building height and site amalgamation at key locations in the area of Tweed City Centre.	<p>Despite Clause 4.4(2) which permits an FSR of 4.5:1, the site is required to comply with a reduced FSR as it is less than 2,000m² in area to encourage amalgamation. Three (3) allotments are proposed to be amalgamated, resulting in 1,849m² site area, only 151m² smaller than the 2,000m². The building complies with the reduced FSR of 4.12:1. The proposed variation to the residential FSR is unrelated to the provisions of Clause 4.4 that encourage site amalgamation.</p> <p>The DCP encourages a slim-line tower. The building height proposed is related to the tower element which is more suited for a residential use.</p>	The applicant's comments in relation to site amalgamation are relevant. In relation to building height, it is agreed that the encouraged building is a slim-line tower which is more suited to a residential use.

It is considered that the applicant has demonstrated the development meets the objectives of the relevant standard and that compliance with the numerical standard is unreasonable and unnecessary.

Environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b))

The applicant refers to *Initial Action*, *Eather* and *Petrovic* which indicate (relevantly) that there is no requirement the non-compliant development have a neutral or beneficial effect relative to a compliant development and that a small departure from the actual numerical standard and the lack of any material impacts are environmental grounds.

The applicant goes on to provide a number of environmental planning grounds that support the proposed variation, including (in summary):

1. A design waiver has been granted on the basis a reputable design team was engaged with demonstrated experience in achieving high quality design outcomes and design excellence. The waiver was also granted on the basis that a staged design review process would result in a more efficient and effective process. As the design has been the subject of a thorough design review process, it is reasonable to assume that the design incorporates a quantum of non-residential floor space that enables the desired future character of the Southern Boat Harbour precinct to be achieved.
2. The proposed variation does not result in any material adverse impacts on amenity.

It is agreed that the above reasons could constitute *environmental planning grounds* within the meaning expressed in *Initial Action* [23] and discussed further in *Pritchard v Northern Beaches Council* [2020] NSWLEC 1310.

The lack of material impacts (point 2 above) is expressly acknowledged in *Eather, Petrovic and Pritchard* as potentially comprising *environmental planning grounds* noting that *Pritchard* [70] discussed further that the nature and reason for the lack of impact can also be relevant to any justification weight. It is not considered in this case that the lack of impact is a product of the nature of the application such as it was in *Pritchard* (floor space in an undercroft) and therefore no such concerns as to weight apply. It is also agreed that the proposed variation is not a result of poor design and therefore required to avoid deficiencies in the application such as discussed in *Pritchard* [70]. It is also agreed that the promotion of good design and amenity (Objective (g) in Section 1.3 of the *EP&A Act*) and the giving effect to desired outcomes in Council's adopted strategic planning documents (Aim (a) in Clause 1.2 of the TCC LEP) can constitute *environmental planning grounds* for Clause 4.6(3)(b).

It is considered that the applicant has demonstrated sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

Based on the above assessment, it is considered that the consent authority can be satisfied that the applicant has demonstrated the matters set out in Clause 4.6(3). As the development is not for subdivision of land (Clause 4.6(6)) and the variation is not for a standard set out in Clause 4.6(8), development consent may be granted for the development even though the development contravenes the residential floor space ratio development standard in Clause 4.4(2C) (Clause 4.6(2)).

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

There are no proposed instruments relevant to this application.

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

The Tweed Development Control Plan 2008 is relevant to this application, including the following Sections:

- *Section B2 – Tweed City Centre*
- *Section A1 – Residential and tourist development – Section A1 Part C – Residential Flat Buildings and Shop-Top Housing*
- *Section A2 – Site Access and Parking Code*
- *Section A3 – Development of flood liable land*
- *Section A4 – Advertising Signs Code*
- *Section A15 – Waste minimisation and management*
- *Section A16 – Preservation of trees or vegetation*

Section B2 – Tweed City Centre

Section B2 was prepared to complement the provisions of the TCC LEP for development that will contribute to the growth and character of the Tweed City Centre and protect and enhance the public domain.

The site is located within the Boat Harbour Precinct which is allocated the following character statement:

The Boat Harbour Precinct is the southern gateway to Tweed Heads just north of the Boyds Bay Bridge and Terranora Terrace. The precinct has a distinctive character reflective of the former Monastery Hill and the adjoining intimate Boat Harbour which functions as a popular tourist destination and as the boat maintenance area. The objective for this precinct is to promote the maritime theme of the Boat Harbour and provide pedestrian access along the waterfront and to water based tourist activities. At the land/water interface, low scale commercial activities such as restaurants, cafés and tourist activities and facilities are encouraged.

To make an entry statement as people enter the precinct over the Boyds Bay Bridge landmark buildings up to 13 storeys are encouraged on key sites on northern side of Terranora Terrace and on Monastery Hill and could accommodate a mixture of business and residential uses and tourist accommodation.

A continuation of the mixed retail and residential development from the northern end of the City Centre along Wharf Street is promoted with buildings of eight storeys stepping down to six storeys on the eastern side of Recreation Street.

The site is located within the Southern Boat Harbour area which is allocated the following site-specific objectives:

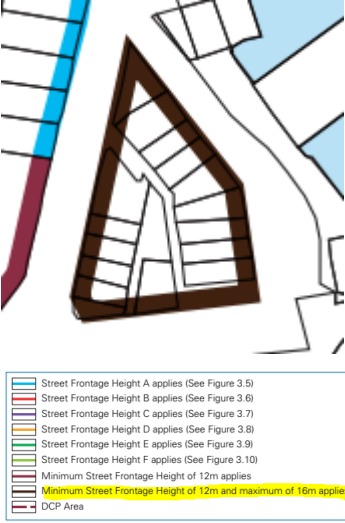


1. *To create a revitalised southern gateway to Tweed City Centre. This highly attractive location has good exposure to the main street and boat harbour. There is an opportunity to rejuvenate this intimate boat harbour and tourist area into a mixed-use destination containing residential uses, tourist activities and accommodation, a function centre, and restaurants and cafés addressing the boat harbour frontage (as indicated in Figure 8-6).*
2. *To promote the maritime theme of the boat harbour, and to encourage and facilitate tourism and boating on the Tweed River.*

It is noted that a number of Section B2 controls are addressed in the ADG. In accordance with Section 149 of the *SEPP (Housing) 2021*, the ADG prevails in relation to the following requirements:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

The application has been assessed against the controls of Section B2. The assessment is set out in Attachment D. It is considered that the application satisfactorily meets the controls of Section B2 subject to the following supported control variations and conditions of consent.

Table 9: Section B2 variations

Variation	Reason for variation (supported)
<p>Section 3.2 Street Frontage Height</p> <p>a) Buildings are to comply with Figure 3-4 street frontage heights and as illustrated in Figures 3-5 to 3-10.</p>  <p>Figure 44: Extract of Section B2 showing maximum street frontage height.</p>	<p>Maximum: 16.0m Proposed: 48m for sections of the development frontage to Wharf Street</p> <p>Justification: The proposed Wharf Street frontage extends to the 0.0m frontage by bladed fins and parts of the 01 and 03 apartments until Level 04 at 16m height. Screens for accessways and points of the irregularly shaped 01 apartments then extend to the Wharf Street boundary for the remainder of the tower. Noting the purpose of this building is to provide for a landmark building and that the proposed street frontage is significantly articulated and well-designed, the proposed street frontage is supported.</p>  <p>Figure 45: Level 04 Floor plan excerpt.</p>  <p>Figure 46: Rooftop plan excerpt.</p>
<p>Section 3.2.1 Side and rear building setbacks and separation</p>	<p>9 River Terrace setback Maximum (rear boundary): 6m (to 12m high), 9m (to 25m high), 12m to 40m high</p>

Variation	Reason for variation (supported)
<p>a) The minimum building setbacks from the front, side and rear property boundaries are specified in Table 3-2, and the associated explanatory notes, and illustrated generically in Figure 3-12.</p> <p>Note: The explanatory notes outline development that may depart from the minimum setback distances outlined in Table 3-2.</p>	<p>Proposed: 0.0m to 12.5m, 6.0m to Level 09, 8.0m to Level 12, 10.5m for rooftop of Level 12</p> <p>Justification: Building separation has been assessed extensively in the ADG assessment set out in Attachment C and considered acceptable. The primary concerns of visual privacy, acoustic privacy and solar access are considered satisfied noting that this development is the first redevelopment of its kind in the existing predominantly single-dwelling precinct.</p> <p>River Terrace and Wharf Street Maximum: 0.0m (to SFH, 16m), 6m (to 40m+) Proposed: 0.0m to rooftop (as set out in the SFH assessment)</p> <p>Justification: The 0.0m setback is limited to the tower 'tip' apartments above the compliant SFH (16m high). The reasons for approval of the SFH exceedance (above) are repeated here.</p> <p>Monastery Lane Maximum: 0.0m (to SFH, 16m), 6m (to 40m+) Proposed: 0.0m to 17m, 6.0m to rooftop</p> <p>Justification: Footnote 1 requires that the development must be built to boundary with the minimum SFH requirement. In this regard, an SFH of 16m drawn from Section 3.2 would apply. With a sloping lane, the proposed 0.0m setback to 17m for a small portion of the frontage before receding to a compliant setback due to the hill is acceptable.</p>
<p>Section 4.6 Vehicle Footpath Crossing</p> <p>d) Wherever practicable, vehicle access is to be a single lane crossing with a maximum width of 2.7 metres over the footpath, and perpendicular to the kerb alignment. In exceptional circumstances, a double lane crossing with a maximum width of 5.4 metres may be permitted for safety reasons (refer to Figure 4-12).</p>	<p>A double lane crossing of 6.0m plus splay is proposed off Monastery Lane. Council's officers has raised no concerns in relation to the proposed vehicle access. It is noted that a single lane width crossing would not be appropriate for the site.</p>

Section A1 – Residential and tourist development – Section A1 Part C – Residential Flat Buildings and Shop-Top Housing

Section A1 – Part C has the following objectives:

- To provide a building form that complements commercial uses.
- To provide more compact housing in proximity to centres.
- To create an urban building form and strong built edge along the street.
- To define the street space.

- To provide quality commercial buildings.

It is noted that a number of Section A1 – Part C controls are addressed in the ADG and/or Section B2. In accordance with Section 149 of the SEPP (Housing) 2021, the ADG prevails in relation to the following requirements

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

In the event of any inconsistency between Section B2 and other Sections of the DCP, Section B2 prevails.

The application has been assessed against the controls of Section A1 – Part C. The assessment is set out in Attachment D. It is considered that the application satisfactorily meets the controls of Section A1 – Part C subject to the following control variation which is supported and conditions of consent.

Table 10: Section A1 – Part C variations

Variation	Reason for variation (supported)
Shop-top Residential Buildings e. The internal space of the ground floor of the development is to be at the ground level of the street.	'Retail 2' (the food and drinks premises) is not at ground level relative to River Terrace to compensate for the potential of flooding on River Terrace and the fall across the site – though it is at ground level relative to Wharf Street No concerns arise with approving a variation noting the significant pedestrian amenity afforded by linkages and the use of the terrace as a place for casual interaction.

Section A2 – Site Access and Parking Code

Section A2 has the following aims:

- Provide safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users.
- Provide facilities and infrastructure that encourage movement by means other than private vehicle.
- Encourage car park design and landscaping to enhance visual amenity, provide pedestrian comfort, legibility and minimise impacts from stormwater runoff and pollution.
- Provide off street parking facilities that satisfy the demand of residents, visitors, staff, customers, servicing, loading and unloading.
- Provide integrated transport opportunities within business centres to improve their amenity, accessibility and sustainability.

Section A2.2.2 Public Transport, Pedestrian and Cyclist Access and Amenity

The controls in Section A2.2.2 relate to the design and treatment of pedestrian and cyclist movement to, from and within the site. Circulation has been assessed in the ADG assessment (Attachment C) and the Section B2 assessment (Attachment D). In relation to Section A2.2.2, no concerns arise with compliance with the relevant controls with the exception of the proposed bicycle parking space rates.

In summary, the development proposes to utilise Austroad parking space rates where Section A2 provides its own rates for compliance. Further assessment of the bicycle parking rates is set out in the ADG assessment in Attachment C. In summary, Council's officers have raised no concerns in relation to the proposed use of Austroad rates.

In relation to footpathing outside the site, Council's officers have recommended conditions requiring a new footpath on Monastery Lane for the length of the development for pedestrian safety.

Section A2.2.3 Vehicle Access and Parking

The controls in Section A2.2.3 relate to the design and treatment of vehicle access and parking.

In relation to parking, following the applicant's amended plans, no concerns remain with compliance with the relevant controls noting that the required car parking and motorbike parking space rates are governed by the ADG (for residential parking) and Section B2 (for commercial parking). In this respect, it is noted that Section B2 prevails over Section A2 in relation to the assessment of parking rates. Further assessment of the parking rates is set out in the ADG assessment in Attachment C.

While the application initially sought approval for a shortfall of 11 car spaces, the application now proposes to provide parking equal to that generated by the development (96 car spaces). The compliance with required car parking space rates was primarily achieved by changing the use of 'Retail 1' to 'Showroom' which generates less car parking demand under Section B2.

No motorbike parking space concerns are raised.

It is noted that parking circulation requires the use of traffic signals in the basements which is supported subject to appropriate marking in accordance with AS2890. A condition is recommended in this respect.

Initial concerns were also raised in relation to car park space widths. Revised plans were submitted with the Final Response to RFI demonstrating compliant parking space widths.

In relation to service vehicle parking, a separate loading dock is proposed with a turntable to facilitate forward-moving entrance and egress.

In relation to access, no concerns remain with compliance with the relevant controls following resolution of the issues discussed below. Initial concerns were raised in relation to whether adequate sight lines and turning circles could be provided, noting that the proposed width of Monastery Lane was also insufficient for the proposed use. Revised plans showing a widened Monastery Lane (to 6.0m), turning paths and sight lines were submitted with the Final Response to RFI.

Council's officers have confirmed:

1. **Monastery Lane width** – The new 6.0m width for Monastery Lane is acceptable noting that sufficient width remains in the road reserve (4.0m) for a separate footpath.
2. **Turning paths** – The revised swept path diagrams demonstrate a service vehicle reversing onto the site and exiting in a forward gear. This is without utilising the turntable. It was also noted that residential waste collection is to occur off River Terrace resulting in use of the service dock being for commercial loading and refuse collection and residential moving trucks only, which is anticipated to be of low frequency (weekly basis). It is considered that sufficient information has been provided to demonstrate forward entrance and egress in accordance with C2 and Section A2.2.4 Technical Notes. A condition is recommended requiring forward entry and egress only. It is also considered that as service vehicle use is infrequent, the occasional delay to vehicles exiting Monastery Lane is accepted.
3. **Sight lines** – The proposal requires traffic calming measures to slow vehicles to ensure adequate sight lines are provided. A condition is recommended in this respect and will apply to Monastery Lane (immediately uphill of the site) and within the property. A proposal for exit warning lights to alert oncoming traffic to the potential movements of egressing vehicles was not supported due to the risk of egressing drivers assuming they have right of way when entering Monastery Lane.

Section A3 – Development on Flood Liable Land

Section A3 has the following aims:

- Present Council's Flood Mitigation Strategy.
- Set detailed standards for land development in order to minimise the adverse effect of flooding on the community.
- Progressively implement the provisions of the NSW Floodplain Development Manual (April 2005).
- Implement Part 1 of the Tweed Valley Floodplain Risk Management Plan 2005 – Establish Appropriate Flood Planning Levels for Residential Development.
- Implement Part 2 of the Tweed Valley Floodplain Risk Management Plan 2005 - Planning Controls for High Flow Areas.
- Implement Part 3 of the Tweed Valley Floodplain Risk Management Study – Habitable Land Use on the Floodplain Implement the Flood Risk Management Policy.

The controls in Section A3 relate to the design and treatment of development in flood liable land.

The site is mapped as subject to the Probable Maximum Flood. River Terrace is partially mapped as subject to the Design Flood Level (2.6RL) on the development frontage.

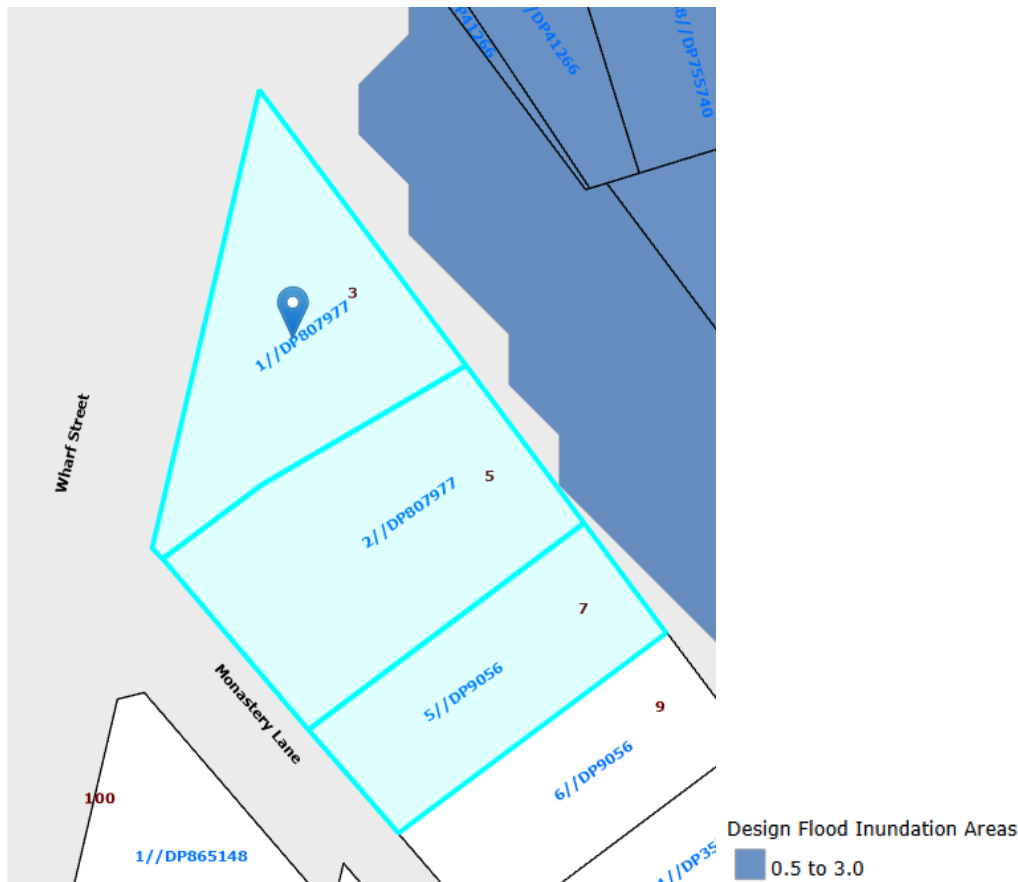


Figure 47: Council mapping showing the subject site and land subject to the Design Flood Level.

The controls in Section A3 can be separated into emergency response provisions and other controls (noting that the site is not subject to high flow or high hazard flooding).

Emergency Response Provisions

The emergency response provisions are set out in Section A3.2.6 and require (relevantly) that all new development have permanent high level road/pedestrian evacuation route(s) to land above PMF level and/or adequate PMF refuge, subject to the recommendations of an acceptable Flood Response Assessment Plan. Further notes (Notes 3 and 4) are provided that note that evacuation is the preferred risk management approach.

Council's officers have raised no concerns with the proposed emergency response management noting:

1. **Commercial** – The commercial component is located just below the flood planning level, which is acceptable as Section A3 does not nominate a floor level for commercial development.
2. **Residential** – The lowest residential level (Level 1) is located above the PMF level. In relation to the emergency response provisions, shelter in place is acceptable.

Other controls

Other controls apply to the site as set out in Section A3.3 Lower Tweed.

The controls in Section A3.2 apply generally to development on flood liable land in the Lower Tweed. Relevantly, no concerns are raised with respect to the requirement to use building materials that are not susceptible to water damage under the design flood level, electrical supply or car parking subject to conditions.

In relation to car parking in the basement, Council's officers have confirmed that the access points to the basement and lift wells are protected to 3.1m AHD which complies with the local controls in Section A3 for the area.

The controls in Section A3.3.3 apply to residential development. Relevantly, no concerns arise with respect to the habitable levels of the development (including recreation areas).

The controls in Section A3.3.4 apply to commercial development. Relevantly, no concerns arise with respect to the provision of flood free storage areas subject to conditions.

Section A4 – Advertising Signs Code

Section A4 has the following aims:

- Promote a high standard of signage quality and prevent excessive advertising and visual clutter by encouraging the rationalisation of existing and proposed signs.
- Ensure that advertising signs do not detract from the scenic beauty and amenity of the Shire.
- Ensure that advertising and advertising structures are compatible and compliment the character of a building site or area.
- Promote adequate and effective advertising and recognise the legitimate need for signs to provide for directions, business identification and promotion.
- Provide appropriate opportunities for advertising signs for the Tourist Industry to give effect to the Tweed Shire Tourism Strategy.
- Ensure that advertising signs do not reduce the safety of any road, pedestrian path or navigable waterway.
- Ensure that advertising signs are constructed and maintained in a safe and tidy condition.
- Ensure that a fair and consistent approach is taken by Council in dealing with advertising sign applications.

The application seeks approval for the following signage with an area of 0.9m².

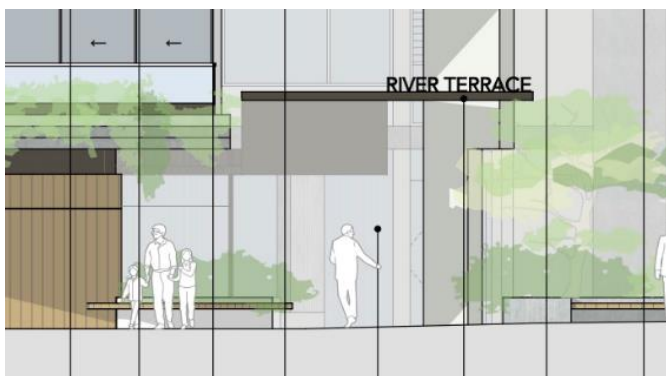


Figure 48: Excerpt of Elevations showing proposed 'River Terrace' sign on Wharf Street.

The proposed signage has been assessed against the controls of Section A4. The assessment is set out in Attachment E. It is considered that the application satisfactorily meets the controls of Section A4.

Section A15 – Waste minimisation and management

Section A15 has the following objectives:

- Waste minimisation
 - To minimise resource requirements and construction waste through reuse and recycling and the efficient selection and use of resources.
 - To minimise demolition waste by promoting adaptability in building design and focussing upon end-of-life deconstruction.
 - To encourage building designs, construction and demolition techniques which minimise waste generation.
 - To maximise reuse and recycling of household waste and industrial/commercial waste.
- Waste management
 - To assist applicants in planning for sustainable waste management, through the preparation of a Waste Management Plan.
 - To assist applicants to develop systems for waste management that ensure waste is transported and disposed of in a lawful manner.
 - To provide guidance in regards to space, storage, amenity and management of waste management facilities.
 - To ensure waste management systems are compatible with collection services. To minimise risks associated with waste management at all stages of development.

The controls in Section A15 provide for submission requirements relating to a Waste Management Plan and for controls that apply to assessing the adequacy of the Waste Management Plan.

The initial application included a Waste Management Plan. Council's officers raised initial concerns in relation to the proposed use of the turntable to service residential waste collection (including associated issues such as bin manoeuvring) and in relation to proposed bin sizes.

It is noted that the primary concern was the reliability of the turntable arrangement and the turntable arrangement's reliance on rear-load trucks where Council's contracted waste trucks are side-load. Accordingly, residential waste collection was required to be kerbside. In relation to an appropriate kerbside location, the sole option put to the applicant by Council officers was River Terrace. While River Terrace is the primary active frontage for the Southern Boat Harbour, Monastery Lane and Wharf Street were unworkable for the reasons set out below:

1. Monastery Lane – the current servicing arrangement for Monastery Lane results in waste vehicles driving up Monastery Lane to collect the existing dwellings' bins and then reversing back down the hill. Council was unable to support worsening the existing unfavourable arrangement or creating a bottleneck at the lower end of Monastery Lane during collection times.
2. Wharf Street – Wharf Street is the primary access road from Tweed Heads to the lower areas with a potential daily traffic volume of 20,000 vehicles per day.

A revised Waste Management Plan was submitted with the Final Response to RFI that provides for kerbside pickup of residential bins from River Terrace and for the correct bin sizes (6 bulk bins for general waste and 14 360L bins for recycling) to be provided (as per Section A15 requirements).

The Waste Management Plan also includes a plan demonstrating the internal transfer path for residential bins from the storage area to River Terrace.

Following revision, Council's officers raised no further concerns in relation to residential collection. Conditions have been recommended to strictly require removal of bins after they have been serviced on the day of collection.

Commercial waste is to remain serviced from the loading dock and turntable arrangement off Monastery Lane. Conditions have been recommended time-limiting the use of the loading dock including for servicing of non-residential waste facilities.

No concerns have been raised with respect to waste storage areas, waste generation rates, bin sizes, amenity or internal chutes.

It is noted that separate bins are available for recycling and organics.

Subject to compliance with conditions of consent, it is considered that the revised Waste Management Plan sufficiently meets the requirements of Section A15.

Section A16 – Preservation of trees or vegetation

Section A16 contains the following objectives:

- To ensure the preservation of locally indigenous trees and vegetation which contribute to the biodiversity, social and amenity value of the Tweed Shire;
- To recognise and conserve very large trees (locally indigenous or otherwise) of amenity, heritage or habitat value;
- To provide a process for identifying, listing and preserving trees of ecological, heritage, aesthetic and cultural significance through a Significant Vegetation Register;
- To minimize, and avoid where possible, unnecessary clearing of native trees and vegetation;
- To provide advice to applicants regarding how to proceed with an application to clear vegetation to which this DCP applies;
- To provide a process for the submission, assessment and determination of an application to clear vegetation to which this DCP applies; and
- To specify types of vegetation clearing that is exempt from this DCP.

Vegetation removal will comprise the following:

- Eight (8) local native trees greater than 5.0 m in height (generally 10m in height) that qualify as prescribed vegetation under DCP A16 – Preservation of Trees or Vegetation. However, these trees are located within 5.0m of the dwellings and therefore could be removed without a permit under Schedule 1 (b) of Section A16.
- One (1) very large (trunk diameter greater than 80cm) Hill's Weeping Fig (*Ficus microcarpa hillii*) which would typically require a permit under Section A16. However, given it is growing immediately adjacent to the dwelling and in contact with the dwelling a permit would likely be given.
- Approximately seven (7) non-locally occurring trees/vegetation and additional ground covers/shrubs that would not require a permit to remove under Section A16.

Council's officers has also provided the following comments in relation to replacement landscaping:

Landscaping on-site through raised planters and "soil on structure" plantings will allow for the planting of local native trees which will help to compensate for the loss of

prescribed vegetation. As such the proposed development shall generally satisfy Section A16.

It is also noted that there are three (3) street trees in the River Terrace road reserve that are proposed to be retained. Council's officers have also recommended conditions requiring additional street trees in line with Council's Cool Town's policy.

It is noted that the future planting of street trees on Monastery Lane will be restricted due to overhead power lines in the Monastery Lane road reserve.

Contributions

The following contributions plans are relevant pursuant to Sections 7.11 and 7.18 of the *EP&A Act* and have been considered in the recommended conditions:

- *No. 4 – Tweed Road Contribution Plan version 6.3.11 dated September, 2016*
- *No. 5 – Local Open Space version 7.1.10 dated October 2022*
- *No. 11 – Shirewide Library Facilities version 3.0.10 dated December 2009*
- *No. 12 – Bus Shelters version 1.3.11 dated December 2009*
- *No. 13 – Eviron Cemetery version 4.0.11 dated December 2009*
- *No. 15 – Development Contributions for Community Facilities version 7.0.2 dated November 2022*
- *No. 18 – Council Administration Offices & Technical Support Facilities version 2.3.12 dated September 2016 in force December 2016*
- *No. 22 – Cycleways version 3.0.12 dated December 2009*
- *No. 26 – Shirewide/Regional Open Space version 4.0.12 dated December 2009*

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

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

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

Section 61 of the *EP&A Regulations* contains matters that must be taken into consideration by a consent authority in determining a development application. As demolition of the existing buildings is to occur under CDC24/0070, no Section 61 matters are relevant to the proposal.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the *EP&A Regulations* are not relevant to the proposal.

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

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

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

- Context and setting – The proposal is considered to be consistent with the context of the site, in that the proposed development is appropriate as a result of the desired redevelopment of the Southern Boat Harbour that has been in place since 2013 and the commencement of Section B2 of the DCP. The existing context and setting is dominated by single dwellings on the Monastery Hill itself (including the current use of the subject site) with commercial buildings located opposite the development on Wharf Street and an operating commercial marina opposite the development on River Terrace. The site has been marked for a landmark development and due consideration has been given to presenting a highly designed tower building to travellers coming to and leaving Tweed Heads by engaging with a DRP. The ADG assessment set out in Attachment C contains assessments in relation to view impacts, overshadowing and privacy. While impacts are unavoidable for a large development of this kind in a transitioning area, the impacts are considered mitigated where possible by way of siting, orientation and design.
- Access and traffic – The proposed road network, traffic generation, car parking and access design requirements have been considered by Council's officers. An assessment of the proposed access and parking arrangements is set out in the assessment of Section A2 of the DCP elsewhere in this report. In summary, the revised access and parking arrangements are considered appropriate. In relation to road capacity, capacity was considered adequate in Wharf Street, River Terrace and the adjoining network subject to the revisions in the Final Response to the RFI and conditions requiring widening of the Monastery Lane laneway and construction of a pedestrian footpath.

An existing bus stop was also noted on the Wharf Street frontage in front of 3 River Terrace. The bus stop seating is proposed to be retained and will be sheltered by the proposed awning.

In relation to the awnings, Council's officers have advised that a minimum clearance of 600mm is required from the road to account for road fall. A condition is recommended in this respect.

- Public Domain – The application includes an assessment of the potential for redevelopment of adjoining sites and the public domain in line with the DRP recommendations and Section B2 of the DCP. On-site, the development provides for active retail frontages including a food and drinks premises to River Terrace. This is in line with the desired activation of the boundaries of the Southern Boat Harbour in Section B2 of the DCP. The ground floor is well designed in terms of permeability, pedestrian links and changes in levels that encourage active use and exploration. Landscaping internally on the site has achieved an approximately 80% coverage including most prominently a feature tree facing River Terrace and a distinctive courtyard gully.

The initial proposal also put forward options for engaging further with the public domain including transitioning River Terrace into a shared plaza for pedestrians and vehicles. While this has not been supported by Council's officers due to additional maintenance and a lack of population and use to support such an arrangement, the investigation reveals a strong connection and awareness of the future public domain. Council's priority for additional street trees is reflected in revised designs subject to agreement under a post-consent Section 138 *Roads Act 1993* application.

It is also noted that the electrical infrastructure in the form of overhead powerlines, power poles and light poles are present on River Terrace and Monastery Lane. The

revised application following the Final Response to RFI provides for undergrounding of the River Terrace powerlines and relocation of the Wharf Street/River Terrace corner power pole. Monastery Lane power poles and one (1) light pole are proposed to be adjusted/relocated to the other side of Monastery Lane within the road reserve. Essential Energy has confirmed they are satisfied with the proposal subject to conditions.

- Utilities – A revised Building Services Infrastructures Report was submitted with the Final Response to RFI which details the provision of electricity, communications infrastructure, stormwater drainage, sanitary drainage and potable cold water. No concerns have been raised in relation to the proposed infrastructure works subject to conditions.
- Heritage – The site and surrounding area is not mapped as subject to Aboriginal cultural heritage or other heritage. A condition is nevertheless recommended requiring standard due diligence and notification in the event of any suspected finding.
- Groundwater – A Preliminary Geotechnical Assessment accompanied the initial application that noted groundwater was encountered during investigations. The application was lodged and referred to Water NSW as integrated development under Section 4.46 of the *EP&A Act* and Section 91 of the *Water Management Act 2000*. Water NSW initially requested further information to enable assessment of the application. Following a request from the applicant to supply the information post-consent and for conditions to be issued, Water NSW issued General Terms of Approval for the development dated 20 August 2024 (Attachment L).

It is noted that further information in relation to groundwater was requested in Council's RFI. Following discussions with the applicant, it was agreed that conditions could be imposed in respect of groundwater and dewatering in line with Water NSW's decision to issue GTAs.

- Flora and fauna impacts – Tree and vegetation removal has been assessed in the assessment of Section A16 of the DCP. No concerns arise with respect to flora impacts.

In relation to fauna impacts, Council's officers have noted there is no record of threatened species including Bush Stone Curlews on site. However, it has been noted that 100m to the north, Bush Stone Curlews have been witnessed. Conditions have been recommended requiring a fauna spotter and Bush Stone Curlew management plan.

No concerns under Part 7 of the *Biodiversity Conservation Act 2016* apply.

- Natural environment – The above comments in relation to flora and fauna impacts are noted. The site will be significantly excavated to 12-15m to accommodate three (3) levels of basement parking and building services. As the site is currently improved with three (3) dwellings that are approved for demolition under CDC24/0070, no concerns with natural environment impacts are raised.
- Noise and vibration – Construction impacts are proposed to be managed by conditions. These impacts include those associated with excavation of the basement levels. Conditions requiring owners consent and appropriate shoring of adjoining land including 9 River Terrace are recommended in relation to excavation. Conditions managing the structural adequacy of the site and the adjoining site protection

measures are also conditioned. Dilapidation reports for any impacts (including vibration) are also recommended for adjoining properties.

Operational impacts include use of the loading dock and the retail areas. In relation to the loading dock, appropriate conditions time-limiting the use and requiring closure of the service dock are recommended. In relation to noise impacts from the retail areas, Council's officers have imposed conditions to limit hours of operation to daylight hours and requiring further studies noting the absence of quantitative data in the report.

- Natural hazards – The site is affected by the PMF and River Terrace is partially affected by the design flood level. Flooding has been assessed in the assessment of Section A3 of the DCP elsewhere in this report and considered to be satisfactorily managed by design and conditions.
- Safety, security and crime prevention – The CPTED principles have been considered in the Section B2 assessment set out in Attachment D. In summary, the proposal is considered to adequately address the principles of territorial reinforcement, surveillance, access control and space/activity management subject to conditions of consent in relation to a detailed lighting design, maintenance of landscaping and technical surveillance for minor areas not subject to passive surveillance.
- Social and Economic impact – The site provides for two (2) retail spaces on the ground level providing for some employment generation. The addition of 72 apartments with varied bedroom mix in the Tweed City is also capable of assisting the introduction of a diverse population demographic. The ground floor is well designed to encourage ownership of the active spaces and to promote casual interaction with the public. Casual interaction is also promoted on site by way of the Communal Terrace and seating opportunities on each level and in the Courtyard Gully.
- Site design and internal design – Site design and internal design have been extensively considered in the DRP advice recommendations. No concerns are raised in this respect.
- Cumulative impacts – The proposal is considered generally consistent with the planning controls and the matters assessed in this section that it will not result in an adverse cumulative impact.

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

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

The application has been extensively considered and found satisfactory in relation to impacts on the locality, available services, transport infrastructure, communal and publicly accessible open space, flooding, excavation, dewatering, flora and fauna, waste servicing, access design and public domain works (among other matters).

No further matters requiring assessment are considered relevant to the application.

Accordingly, it is considered that the site is suitable for the proposed use.

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

These submissions are considered in detail in **Table 12** below.

Table 11: Community submissions received during notification period assessment

Issue	No of submissions	Summary
Vehicle conflict and traffic on Monastery Lane, Wharf Street and River Terrace	12	<p>Monastery Lane is inappropriate for the development. Traffic will congest on Wharf Street while waiting for cars and service vehicles to access Monastery Lane. Traffic impacts on the intersection of Monastery Lane and River Terrace have not been assessed. Exiting Monastery Lane is difficult and dangerous. River Terrace may be more appropriate.</p> <p>Council comments The additional information received as part of the Final Response to RFI provides for appropriate widening of Monastery Lane in the road reserve and relocation of residential waste collection to River Terrace. Council's Engineers are satisfied the widened Monastery Lane can adequately accommodate the remaining service vehicles with infrequent delays if necessary. Council's Engineers have also considered the traffic generation of the development and is satisfied the existing road network is satisfactory. It is noted that the final design of the widened Monastery Lane including footpath and exit angles will be subject to a Section 138 <i>Roads Act</i> application and agreement with Council.</p>
Inadequate car parking	8	<p>Proposed car parking is insufficient and will result in parking impacts to the surrounding area including the local fish and chip shop.</p> <p>Council comments A revised car parking layout and a change of use to Retail 1 result in the application providing car parking in compliance with the ADG and Section B2 of the DCP. No car parking shortfall concerns remain.</p>
Inadequate hydraulic and ground testing investigations and construction impacts on structural integrity of neighbouring buildings	4	<p>The provided assessment into stability and potential impacts on neighbouring properties is scarce and recommends further investigations.</p> <p>Council comments The recommended further investigations are to occur prior to commencing any earthworks. Additional conditions relevant to developments proposing excavation close to neighbouring properties have also been imposed including requirements to protect adjoining land and undertake dilapidation reports.</p>

Solar access to neighbouring buildings	3	<p>Council comments</p> <p>Solar access is assessed in the ADG assessment in Attachment C and is considered acceptable noting that while the development will inevitably impact the area in transition, the design of the buildings' forms ameliorates the cumulative overshadowing impacts to a substantial degree.</p>
Television reception	1	<p>Council comments</p> <p>A submission raising concerns that the development will impact reception was received but is not considered a planning matter to be addressed here.</p>
Stormwater and rubbish impacts on the river	2	<p>Council comments</p> <p>Stormwater impacts have been assessed by Council's Engineers and appropriate conditions have been imposed in relation to stormwater infrastructure and a detailed stormwater management plan. Subject to compliance with conditions, no stormwater concerns arise.</p> <p>A waste management plan is to be approved as part of any approval. It is not considered that management of waste outside of the site require further consideration or conditions to manage.</p>
Loss of vegetation	1	<p>Council comments</p> <p>Vegetation removal has been assessed and found acceptable by Council's officers subject to appropriate native landscape planting in accordance with recommended conditions of consent.</p>
Non-compliance with setbacks, height standard and floor space ratio standard	6	<p>Council comments</p> <p>Setbacks, the height variation and floor space ratio variation have been assessed in the ADG assessment (Attachment C), Section B2 assessment (Attachment D) and in assessment of the TCC LEP section of this report respectively. Each matter has been considered on its merits and is considered capable of support notwithstanding variations. In relation to the TCC LEP variations, it is considered that the applicant demonstrates that compliance with the relevant numerical standard is unreasonable and unnecessary in accordance with Clause 4.6 of the TCC LEP and relevant case law.</p>
Impact on native wildlife	1	<p>Council comments</p> <p>Standard conditions requiring use of fauna spotters and preparation of a Bush-stone Curlew Management Plan are recommended by Council's officers. No other fauna concerns were raised.</p>
No public transport impact statement	1	<p>C11 of Section A2 of the DCP requires developments over 5,000m² GFA to submit a public transport impact statement.</p>

		<p>Council comments The site has a GFA of 7,315m².</p> <p>As a bus stop is located on the development frontage (south travel) and opposite the development with a nearby traffic light crossing (north travel), a full statement is not considered necessary. The bus stop seating on Wharf Street is proposed to remain and would be sheltered by the awning (noting that the final design of the road reserve works is subject to a <i>Section 138 Roads Act</i> application and Council agreement.</p>
Non-compliances with the NCC	1	<p>Council comments Council's officers have reviewed the BCA Assessment Report and proposed Fire Strategy and have confirmed the documents state performance solutions are available. Relevant conditions are recommended to ensure compliance.</p>
Impacts to residents during construction	6	<p>Council comments Submission of a Construction Environmental Management Plan (CEMP) which addresses construction impacts is recommended for condition.</p>
Privacy impacts	1	<p>Council comments Privacy is assessed in the ADG assessment set out in Attachment C and is considered acceptable noting that while the development will inevitably impact the area in transition, the design of the building forms, the placement of screening and apartment orientation ameliorate privacy impacts to a substantial degree.</p>
Noise impacts from loading dock	3	<p>Council comments The loading dock faces Monastery Lane.</p> <p>The revised Noise Impact Assessment contains mitigation measures from the loading dock on future residents and surrounding noise receivers. A revised Noise Impact Assessment including recommendations and additional information on all noise generated has been recommended for condition by Council officers. Restricted hours of use are also recommended for condition.</p>

A further submission received after closure of the relevant notification date is considered in the assessment of Section 4.15(1)(e) in this report.

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

The proposal is considered to generally be in the public interest as the application broadly aligns with and satisfies the intent of the advice provided by the DRP, the provisions of the

TCC LEP in terms of design excellence and the desired revitalisation of the South Boat Harbour in Section B2 of the DCP. The application provides for a landmark construction for the future redevelopment of the Monastery Hill area.

The proposal is also generally consistent with the applicable planning controls as outlined in this report subject to supported Clause 4.6 of the TCC LEP variations. It is acknowledged that the proposal will inevitably impact surrounding lower scale single dwellings as it is the first development of its kind in an area to be subject to transition. Despite the difference in scale, the design approach adequately achieves a degree of transition while factoring in the future development potential of the neighbouring sites. It is also considered conditions of consent can be imposed to ensure the health and safety of the public are appropriately addressed.

The application is considered to be consistent with the principles of ecologically sustainable development. Public submissions received during the notification period have been taken into account in this assessment. It is also noted that an additional submission was received outside of the notification period. The key matters in that submission are discussed below:

Table 12: Submission received after notification period assessment

Issue	Council Comments
Boundaries of neighbouring properties will be respected. No land is to be resumed.	The application does not require works on adjoining land other than may be required for shoring of adjoining properties or to conduct necessary works in the road reserve. No boundaries of land will be changed other than that required to consolidate 3, 5 and 7 River Terrace (the subject site). Appropriate conditions of consent are imposed to require owners consent if any works are proposed to occur on or under adjoining property for protection works. No land is to be resumed.
Repositioning of power poles will not intrude on private land	The power poles are not proposed to be relocated onto private property.
Traffic impacts	Traffic impacts have been assessed in the assessment of Section A2 elsewhere in this report. Council's officers are satisfied that the surrounding road network is suitable for the development and that the proposed road widening of Monastery Lane will suitably accommodate traffic in Monastery Lane.
Trades parking	This is not a planning matter for this assessment to address.
Impact of construction of basement and garages on property	Appropriate conditions have been recommended in relation to ensuring structural adequacy of the site and adjoining land. Dilapidation reports pre and post construction are also recommended for adjoining land.
Drainage impacts on	While a flush arrangement was proposed for Monastery Lane a standard kerb and gutter road is

neighbouring property	preferred by Council's officers. A detailed Stormwater Management Plan and Erosion and Sediment Control Plan are also recommended conditions. The development is unlikely to cause additional drainage issues on neighbouring sites.
Overshadowing	Overshadowing is assessed in the ADG assessment in Attachment C and is considered acceptable noting that while the development will inevitably impact the area in transition, the design of the buildings' forms ameliorates the cumulative overshadowing impacts to a substantial degree.
Visibility of nearby signage	Relevant signage includes billboards on 100-104 Wharf Street and 2 River Terrace. The development is not considered to impact either signage, noting in particular the separating road and (in the case of 100-104 Wharf Street) open space between the site and the signage.

It is considered that the proposal is consistent with the public interest.

REFERRALS AND SUBMISSIONS

3.6 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment and concurrence as required by the *EP&A Act* and outlined in Table 12 below.

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

Table 13: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	Not applicable	N/A
Referral/Consultation Agencies			
Rural Fire Service	S4.14 – EP&A Act	Not applicable. The subject site is not bushfire prone.	N/A

	Development on bushfire prone land		
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Referred for development within 5m from overhead powerlines. Safety concerns were returned as the plans do not show the proposed distance from powerlines. Revised comments confirming that Essential Energy would be satisfied to approve the development application subject to completion of ECN-113546 were issued following the applicant's lodgement of a design proposal with Essential Energy proposing to underground and relocate powerlines and power poles respectively. Essential Energy's final comments are set out in Attachment K.	Y
Transport for NSW	Section 2.122 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	Not applicable. The proposal is not of a size or capacity to trigger Section 2.122.	N/A
DRP	Clause 145 – <i>State Environmental Planning Policy (Housing) 2021</i> Advice of the Design Review Panel ('DRP')	The proposal has been subject to three (3) pre-lodgement DRP reviews and sets of recommendations. The final version of the plans was considered at a 4 th meeting on 5 May 2025 and recommendations have been issued by the DRP in response (Attachment I).	Y
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	Section 90(2) – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Referred for proposed dewatering activities. Water NSW initially requested further information of the proposed basement design and the proposed volume, duration and method of water to be taken. The applicant responded noting the basement would be tanked but that additional information could not be	Y

		provided as they were pending results of a Groundwater Study.	
		Water NSW elected to provide General Terms of Approval on 20 August 2024 (Attachment L).	

3.7 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined in Table 13 below.

Table 14: Consideration of Council Referrals

Officer	Comments	Resolved
Strategic Planning and Urban Design	<p>Council's Acting Coordinator Strategic Planning & Urban Design (SPUD) reviewed the DRP recommendations. The DRP recommendations include review of the Adjacent Development Potential Study and Landscape Package – Revision B.</p> <p>The application generally satisfies the DRP advice. Key DRP recommendations not addressed by the proposal include:</p> <ul style="list-style-type: none"> • an alternative option for a setback to the south-eastern boundary (9 River Terrace) in lieu of the zero-setback wall; • the subtle introduction of colour that reflects local ecology; • introduce a curving edge for the substation on the corner of Wharf Street and Monastery Lane (noting that the substation is partially obscured by a large planter area to the west); • explore the option to provide access from units to landscape podium areas (noting that visual connection from windows is available instead); and • explore the option for additional area of embellished communal open space for the tower building's roof top. <p>Notwithstanding the above suggestions not being adopted, the application is considered acceptable as the proposal:</p> <ul style="list-style-type: none"> • provides a demonstrated understanding of the design excellence criteria and desired future character of the precinct; • generously addresses each boundary street edge interface; 	Y

	<ul style="list-style-type: none"> • presents a strong design approach to character and context; • presents a strong design approach to siting the development, responding to different elevation orientations, edge conditions, public domain interface, communal open space and visual privacy; • has building design considerations including façade and roof design that are considered to satisfy relevant objectives and achieve design excellence; • anticipates the development yield across Monastery Hill and includes a concept structure plan that identifies context principles including consolidation of allotments, podium tower approach to site and distribution of height across the precinct; • mediates level differences across the site achieving an at grade and ramped transition from Wharf Street to River Terrace; • provides a legible point of site entry from Wharf Street and access to the landscape areas in the middle of the site and circulation across to River Terrace; • takes on board the advice of the design panel including consideration of climatic context, view lines, natural ventilation and articulation using a series of separate interconnected forms addressing the three site frontages; • presents a key design outcome in the central landscape courtyard area providing circulation connecting the ground floor with the podium level, an area of landscape but also as void space to draw through light and ventilation; • presents a curving splay of north pointing balconies on the corner of Wharf Street and River Terrace that is a defining architectural feature; and • presents an inevitable impact on lower scale adjoining properties but provides a sufficient degree of transition and still allows a degree of natural sunlight sharing across those properties. 	
Stormwater and Flood Engineering	<p>Council's Engineering Officer reviewed the Civil Design Report and Stormwater Management Plan.</p> <p><i>Stormwater</i> An infiltration tank is proposed beneath the basement carparking. Additional information was requested and submitted to confirm that proposed stormwater treatment complies with Council specifications and that the location of the detention tank does not conflict with the building footprint.</p> <p><i>Erosion and Sediment Control</i></p>	Y

	<p>No erosion and sediment control concerns were raised subject to conditions.</p> <p><i>Flooding</i></p> <p>No flooding concerns were raised with the site being located above the design flood level (2.6mRL) and basement and lift wells to be protected to 3.1m AHD in compliance with Section A3 of the DCP. Proposed shelter-in-place for Probable Maximum Floods is acceptable with the lowest residential floor located above the PMF level.</p> <p>Appropriate conditions of consent have been recommended in relation to flooding and stormwater infrastructure.</p>	
Traffic	<p>Council's Traffic Engineering Officer reviewed the initial Traffic Impact Assessment (TIA) and provided the following summarised comments:</p> <ul style="list-style-type: none"> • Monastery Lane will need to be widened to 6m of pavement for the frontage of the site to Monastery Lane (initially proposed to be widened to 5.7m) • revised sightline assessment is required as the sightline distances in the TIA are calculated off incorrect locations, do not consider obstructions and do not appear to be compliant; • insufficient assessment of Wharf Street traffic as truck swept paths in the TIA require trucks to wait on Wharf Street for exiting traffic on Monastery Lane to clear before utilising both using the full Monastery Lane width to turn; • revised assessments are to be submitted showing a footpath on Monastery Lane (required as vehicles per day (vpd) increase from 100vpd to 400vpd) and the consequent impact on swept paths; and • insufficient car parking is proposed. <p>A Traffic Impact Assessment Additional Information Response was submitted with the Final Response to RFI. The above matters are considered satisfied with revised widths to Monastery Lane, reduction in service vehicle use of Monastery Lane and revised car parking proposed. Traffic calming measures to lower speeds on Monastery Lane (from uphill) and coming out of the site are also recommended for condition.</p> <p>Appropriate conditions of consent have been recommended in relation to car parking provision and design, restriction of use to comply with car parking and off-site works.</p>	Y
Waste	<p>Council's Project and Operations Officer for Resource Recovery reviewed the Waste Management Plan and raised objections to the use of the proposed turntable for residential</p>	Y

	<p>bin collection (among other minor matters). This matter has been addressed in detail in the assessment of Section A15 of the DCP in this report.</p> <p>Following receipt of a revised Waste Management Plan providing for River Terrace kerbside collection of residential waste, no further concerns were raised subject to conditions relating to compliance with the revised Waste Management Plan and Section A15 of the DCP.</p> <p>Additional conditions have been recommended to manage the placement and removal of bins from the public domain to minimise amenity impacts on the use of the active frontage.</p>	
Environmental Health	<p>Council's Senior Program Leader – Environmental Protection reviewed the:</p> <ul style="list-style-type: none"> • Acid Sulfate Soils Investigation and Management Plan; • Noise Impact Assessment; • Contaminated Land Site Investigation Report (CLSIR); and • Preliminary Geotechnical Investigation. <p>Concerns were raised with respect to deficiencies in the Noise Impact Assessment, contamination assessment (noting asbestos and potential demolition of concrete slabs) and dewatering information.</p> <p>A revised Noise Impact Assessment and Remediation Action Plan were submitted as part of the Final Response to Council's RFI. Following review, it was identified that the Noise Impact Assessment retained some deficiencies in assessment. Conditions have been imposed to manage noise generated from the development including the service dock and retail uses as well as building services. A revised Noise Impact Assessment has also been conditioned.</p> <p>No concerns were raised with the Remediation Action Plan subject to conditions.</p> <p>In relation to dewatering, following a request from the applicant, conditions have been proposed in line with the General Terms of Approval issued by Water NSW.</p>	Y
Water & Wastewater	<p>Council's Engineering Officers reviewed the proposal for water & wastewater comments.</p> <p><i>Trade Waste</i></p> <p>No trade waste concerns were raised. Conditions are proposed requiring a Liquid Trade Waste Services Agreement, pre-treatment devices and servicing of the device by a Council approved contractor.</p> <p><i>Sewer & Water</i></p>	Y

	<p>The proposal does not calculate design loadings in accordance with the required specifications in Council's Design Specifications D11 and D12. Updated calculations have been conditioned for submission prior to issue of any construction certificate.</p> <p><i>Water meters and mains connection</i> Proposed locations for two bulk water meters have not been nominated and the required single water service connection to the 150mm main in Wharf Street is not shown. A condition is recommended requiring a plan detailing the locations of the meters and connections in compliance with Council's Design Specifications D11 and D15 prior to issue of any construction certificate.</p> <p><i>General</i> A plan displaying all proposed connections to Council's networks, easements and locations for metres has also been recommended to be submitted via condition.</p>	
Building Services	<p>Council's Building Officer reviewed the BCA Assessment Report, Fire Safety Strategy and Preliminary Geotechnical Investigation.</p> <p><i>BCA Compliance and Fire Safety</i> The proposal is unable to comply with all the Deemed to Satisfy Provisions of the BCA. However, the Fire Safety Strategy identifies performance solutions. No concerns were raised subject to conditions.</p> <p><i>Earthworks</i> Additional conditions have been imposed in relation to earthworks including structural adequacy of excavations, shoring of adjoining properties and consent requirements for any works on adjoining land including Council's road reserve.</p>	Y
Development Engineering	<p>Council's Senior Development Engineer reviewed the proposal including the Amended Civil Package and Civil Design Report and raised comments that are largely addressed in the Stormwater, Building and Roads comments. Following receipt of further information, no concerns have been raised subject to imposition of relevant conditions of consent.</p>	Y
Parks and Active Communities (PAC)	<p>Council's Recreation Planner and Team Leader of Open Space Planning and Design provided the following comments</p> <p><i>Awnings</i> Provision must be made from within the property to maintain awning landscaping. Irrigation plans were provided as part of the updated Landscape Package. A condition of consent is also recommended in this respect and as discussed further in the ADG Assessment in Attachment C.</p> <p><i>Streetscape Design</i></p>	Y

	<p>Off-site works are proposed to be co-ordinated with Council post-consent as part of the Section 138 <i>Roads Act 1993</i> application and Council's Parks and Active Communities unit and Roads section have raised no concerns in this regard.</p> <p>It is noted that the initial design included planter boxes in the road reserve and shared pedestrian zone in River Terrace. Neither of these options were supported and have been removed from the final design in favour of indicative street trees in line with Council's Cool Towns policy.</p>	
Ecology	<p>Council's Environmental Planning Officer reviewed the proposal in relation to vegetation removal and ecology and raised concerns as to the lack of detail about the planters, proposed plant types, irrigation and maintenance.</p> <p>Revised details were submitted part of the revised Landscape Package. No further flora concerns were raised subject to conditions relating to selection of plant species, replacement planting and maintenance. Additional conditions requiring submission of additional irrigation and soil profile details for the feature tree fronting 9 River Terrace have also been recommended as discussed in the ADG assessment in Attachment C.</p> <p>Conditions have been also been recommended in relation to fauna spotting and preparation of a Bush Stone Curlew management plan to address recordings of sighting 100m north of the site.</p>	Y

3.8 Community Consultation

The proposal was notified and advertised in accordance with Council's Community Engagement and Participation Plan 2019-2024 from 17 July 2024 until 14 August 2024. The notification/advertisement included the following:

- An advertisement in the local newspaper Tweed Valley Weekly;
- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (approximately 30); and
- Notification on Council's website.

The Council received a total of 11 unique submissions, comprising 12 objections to the proposal. These submissions are considered in Section 3.4 of this report.

An additional submission was received after the closing date for the notification period. This submission is considered in the assessment of Section 3.7 of this report (above).

It is noted that while the documents that comprise the Final Response to RFI were uploaded to Council's publicly accessible development application tracker, the application was not re-notified or the submitters otherwise directed to same. While most of the issues are resolved through the RFI response (e.g. traffic conflict and increased car parking provision), there was no worsening of impacts that might have triggered additional issues.

4. KEY ISSUES

The following key issues were relevant to the assessment of this application.

4.1 Traffic and Car Parking

Vehicle access (including for service vehicles) is to be via Monastery Lane. A loading dock with a turntable arrangement is provided for service vehicles which was also proposed to facilitate residential waste collection (as well as commercial). A separate access to basement parking for residents and visitors is also provided.

Council initially raised a number of concerns relating to traffic and car parking. Of key note were:

- whether the proposed width was adequate to accommodate turning service vehicles noting that swept path diagrams submitted at lodgement showed that the full use of the laneway would be required to accommodate service vehicles and delays on the main road (Wharf Street) could result due to waiting for egressing vehicles from Monastery Lane;
- insufficient sight distances from both access driveways (service and general);
- insufficient car parking with a shortfall of 11 car park spaces identified in addition to car park space width concerns.

Resolution: A revised Traffic Impact Additional Information Response report was provided as part of the Final Response to RFI. The revised report included (relevantly) an increased width for Monastery Lane (including a pedestrian footpath), additional sight distances assessment and revised car parking.

Council's Engineers are satisfied with the response subject to recommended conditions of consent, including traffic calming measures to ensure compliance with sight line distances are achievable.

4.2 Waste Collection

As above, the application initially sought for residential waste collection to occur via the turntable arrangement in the service dock. This would require a rear-load truck to enter the dock, driver manoeuvring of bins and use of the turntable to exit. Initial swept paths also did not consider how the waste truck could exit in a position to service the remainder of Monastery Lane.

In addition to the service of the remainder of Monastery Lane, Council's Resource Recovery unit advised that the proposed arrangement was not possible under Council's waste servicing contract. Kerbside pickup off River Terrace would be required. This advice was determined following comments from:

- Council's Roads section that Wharf Street was not suitable due to traffic; and
- Council's Resource Recovery unit that Monastery Lane was not suitable for kerbside pickup as the current servicing arrangement for Monastery Lane results in waste vehicles driving up Monastery Lane to collect the existing dwellings' bins and then reversing back down the hill. Council was unable to

support worsening the existing unfavourable arrangement or creating a bottleneck at the lower end of Monastery Lane during collection times.

Resolution: A revised Waste Management Plan was provided as part of the Final Response to RFI. The revised report provided for (relevantly) kerbside pickup of residential waste from River Terrace including internal paths for manoeuvring the bins to the kerb from the loading dock. The loading dock and turntable was to remain to service commercial waste collection.

Council's Resource Recovery unit are satisfied with the response subject to recommended conditions of consent. Additional conditions are recommended to minimise the time bins are on River Terrace in order to minimise any impact on the active River Terrace frontage.

4.3 Apartment Design Guidelines

The application initially provided insufficient or unclear assessment of a number of matters required by the ADG. These included the following:

- overshadowing;
- basement ventilation;
- lighting;
- solar access;
- planter information, planter infrastructure and maintenance;
- waste storage;
- weathering; and
- storage.

These were in addition to matters that cross-reference with impacts identified elsewhere in this report including vehicle access, car parking, waste collection and noise assessment.

Resolution: Additional information was provided in the Preliminary Response to RFI and Final Response to RFI addressing the above matters. These matters are assessed in the ADG assessment set out in Attachment C and are considered substantially satisfied subject to the supported variations to communal open space, deep soil zone, building separation, maximum habitable room depths and balcony depths outlined elsewhere in this report and in Attachment C.

It is noted that while the relevant variations might suggest amenity issues would follow, the development is well-designed to mitigate any impacts by way of alternative options (communal open space and deep soil zone), orientation, siting, materials and form (building separation), acceptable ventilation (habitable room depths) and the minor nature of the variation (balcony depths).

4.4 Essential Energy

The application was referred to Essential Energy for comment as, once constructed, the development will be within 5m of overhead power lines on River Terrace. Essential Energy responded within 21 days advising of potential safety concerns to these power lines.

Resolution: As part of the Preliminary Response to Request for Further Information, the applicant has now proposed to:

Council's officers initially raised concerns in relation to the noise assessment (including vibration) and contamination.

Resolution: Following receipt of an updated Noise Impact Assessment and Remediation Action Plan, conditions of consent have been recommended.

It is noted that the revised Noise Impact Assessment retains deficiencies that are to be addressed by way of a revised assessment and other conditions.

5. CONCLUSION

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

The key issues raised in the initial assessment and briefing report relating to traffic, car parking, waste collection, stormwater, dewatering, noise, vibration, contamination and electrical safety have been considered satisfactorily addressed by way of further information and/or conditions as recommended in Attachment A. Subject to works to widen Monastery Lane, the site is considered suitable for use and compatible with the locality noting the area's inherent nature as one designated for transition from single dwelling dominance to an active mixed-use precinct.

6. RECOMMENDATION

That Development Application DA24/0196 for construction of shop-top housing comprising three levels of basement carparking, ground floor retail premises and 72 residential units, pool, signage and associated vegetation removal be approved pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Crown Lands correspondence
- Attachment C: ADG Assessment Tables of Compliance
- Attachment D: DCP Assessment Tables of Compliance
- Attachment E: Signage Assessment Tables of Compliance
- Attachment F: Architectural Plans for Stamping
- Attachment G: Clause 4.6 Request – Building Height
- Attachment H: Clause 4.6 Request – Residential Floor Space Ratio
- Attachment I: Design Review Panel Meeting Advice Letters
- Attachment J: Assessment of Design Review Panel advice
- Attachment K: Essential Energy Comments
- Attachment L: Water NSW General Terms of Approval