

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNT-412 – DA25/0123
PROPOSAL	Construction of a seniors housing development consisting of 4 x 3 storey residential flat buildings, including the provision of 91 independent living units, provision of 132 car parking spaces over basement and at-grade level and the construction of 2 communal facility buildings. Additionally, the Development Application seeks approval for earthworks, dewatering, vegetation clearing, internal vehicular roads, pedestrian pathways and landscaping.
ADDRESS	Lot 1 DP 786570 [87-89 Tweed Coast Road, Hastings Point]
APPLICANT	Planit Consulting
OWNER	TriCare (Hastings) Limited
DA LODGEMENT DATE	20 March 2025
APPLICATION TYPE	Development Application (Integrated)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : development that had a capital investment value of more than \$30 million.
CIV	\$85,029,219.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 4.3 (Height of Buildings) of the <i>Tweed Local Environmental Plan 2014 – max height of 8m</i> Section 108(2)(a) (Non-discretionary development standards) of the <i>State Environmental Planning Policy (Housing) 2021 – which states 9.5m</i>
KEY SEPP/LEP	• State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (planning Systems) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • Tweed Local Environmental Plan 2014

TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	A total of six (6) unique submissions received (objections).
DOCUMENTS SUBMITTED FOR CONSIDERATION	The following documents were submitted and assessed: • Statement of Environmental Effects - Senior Housing TriCare Hastings Point, prepared by Planit Consulting Pty Ltd, version B and dated 14 February 2025 • Plan of Partial Detail and Levels, drawn by USHER & COMPANY Surveying & Land Development Consultants, issue C and dated 13 August 2024 • TriCare Hastings Point Architectural Plans (Part A & B), drawn by Arqus Design • Design Verification Statement, prepared by Arqus Design and dated 16 August 2024 • Construction Environmental Management Plan, prepared Planit Consulting Pty Ltd, version 2 and dated 12 December 2024 • Biodiversity Development Assessment Report, prepared Cumberland Ecology and dated 12 December 2024 • Preliminary Arborists Report, prepared by TPZ Project Arborists and dated 26 November 2024 • Detailed Site Investigation, prepared by Martens & Associates Pty Ltd, issue 1 and dated 21 October 2024 • Civil Engineering Report, prepared by Cozens Regan Group, revision D and dated 30 September 2024 • Stormwater Management Plan, prepared Cozens Regan Group, revision D and dated 30 September 2024 • Erosion and Sediment Control Plan, prepared Cozens Regan Group, revision D and dated 30 September 2024 • Traffic Impact Study, prepared by Planit Consulting Pty Ltd, revision 2 and dated 12 December 2024 • TriCare Hastings Point DA Report (Concept Landscape Plans), prepared by Arcadia, revision E and dated 24 October 2024 • Waste Management Plan, prepared by HMC Environmental Consulting, version A and dated 31 October 2024 • BASIX Certificate No. 1772823M_02, prepared by ADP Consulting, and date 14 March 2025 • BASIX Assessment Report, prepared by ADP Consulting Engineering, revision 1 and dated 13 November 2024 • Environmentally Sustainable Design (ESD), prepared by ADP Consulting Engineering, revision 1 and date 14 March 2025 • NatHERS Certificate No. #HR-M41GXU-01, prepared by ADP Consulting and dated 13 November 2024 • Hydrogeological Impact Assessment, prepared by Martens & Associates Pty Ltd, issue 1 and dated 9 October 2024 • Visual Impact Assessment, prepared by Envisage Consulting, revision 3 and dated 12 December 2024

	• Visual Analysis Appendix A, prepared by Envisage Consulting, version 6 and dated 8 July 2024 • Aboriginal Cultural Heritage Assessment, prepared by Tim Hill, version 1A and dated 23 August 2024 • Bushfire Assessment Report (Reference Number: 2400073B), prepared by Building Code & Bushfire Hazard Solutions Pty Limited, and dated 18 December 2024 • Request to Vary A Development Standard, prepared by Planit Consulting Pty Ltd, revision B and dated 14 February 2025 • Access Assessment Report (DA Stage), prepared by Credwell, revision 240600-Acess-r2 and dated 28 February 2025 • Acoustic Report Noise Impact Assessment and Construction Noise & Vibration Management Plan, prepared by ADP Consulting Engineering, revision 2 and dated 9 August 2024 • BCA Assessment Report (BCA 2022), prepared by Credwell, revision 240600-NCC-r1 and dated 20 September 2024 • Acid Sulfate Soil Management Plan and Radioactive Sands Assessment, prepared by ENV Solutions, revision 3 and dated 29 August 2024 • Geotechnical Assessment, prepared by Martens & Associates Pty Ltd, issue 1 and dated 9 October 2024 • Koala Habitat Assessment Report, prepared by Cumberland Ecology, and dated 12 December 2024 • Social Impact Assessment, prepared by HillPDA Consulting, and dated 12 December 2024 • Restoration Management Plan, prepared by Cumberland ecology, and dated 12 December 2024 • Biting Insect Impact Assessment, prepared by Darryl McGinn, issue 1.2 and dated 21 June 2024 • Aquatic Ecology Assessment, prepared by Cumberland ecology and dated 12 December 2024 • Construction Traffic Management Plan, prepared by Planit Consulting Pty Ltd, revision 2 and dated 12 December 2024
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not applicable
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	20 August 2025
PLAN VERSION	As originally submitted

PREPARED BY	Ashleigh McLean
DATE OF REPORT	8 August 2025

EXECUTIVE SUMMARY

The development application (DA25/0123) seeks consent for the construction of a seniors housing development consisting of 4 x 3 storey residential flat buildings, including the provision of 69 independent living units, the provision of 112 car parking spaces over 3 basements for residents and 20 at-grade car parking spaces for visitors and the construction of 2 communal facility buildings. Additionally, the Development Application seeks approval for earthworks, dewatering, vegetation clearing, internal vehicular roads, pedestrian pathways and landscaping. The development application has been submitted with a Clause 4.6 request to vary the maximum permissible building height of 8m under the Tweed Local Environmental Plan 2014 and 9.5m under SEPP Housing 2021 to 11.920m.

The development application is being referred to the Northern Regional Planning Panel ('the Panel') as it is 'regionally significant development', being development with a capital investment value of more than \$30 million. The subject site has an existing approval (DA06/0413) for the staged construction of 91 independent living units, 94 supported living units and 67 beds within a high care facility. The existing approval has been subject to multiple amendments and has been commenced with Stage 1 (being the provision of 91 independent living units) currently occupying the site. The current development application (DA25/0123) seeks approval for the construction of a further 69 independent living units in lieu of the approved 94 support living units and the high care facility and by way seeks to amend the use of the site from the approval under DA06/0413.

The Applicant has concurrently sought SEARS to lodge a separate State Significant Development Application (SSD-41110128) over the subject site for seniors living development comprising of 10 buildings, 91 independent living units (representing the current development on site), 74 proposed supported living units and 44 proposed beds within a residential care facility. The Applicant is required to prepare an Environmental Impact Statement to progress the assessment of SSD-41110128. To date no such application has been lodged.

The subject site contains areas of high ecological value, being mapped under the *State Environmental Planning Policy (Resilience and Hazards) 2021* as:

- Coastal Wetland
- Coastal Wetland and Littoral Rainforest Proximity Area
- Coastal Use Area; and
- Coastal Environment Area

The application is recommended for refusal as it is considered the development application is designated development under section 2.7(1)(c)(iii) of the *State Environmental Planning Policy (Resilience and Hazards) 2021*. The proposal and associated dewatering results in the draining of land mapped as Coastal Wetlands. It is considered that groundwater drawdown has the potential to alter the health, integrity and assemblage of the Cudgera Creek riparian habitat compromising the coastal wetland area. The application has not been supported by an Environmental Impact Statement (EIS) and therefore prohibits the consent authority from determining the application favourably.

The fifth order Strahler stream which forms part of the Mooball Creek sub-catchment supports key fish habitat under the *Fisheries Management Act 1994* and endangered ecological communities

under the *Biodiversity Conservation Act 2016*. The Application has not satisfactorily addressed that the development can proceed without significant adverse impact, particularly in relation to the protection of the Cudgera Creek riparian zone.

Without sufficient justification to contravene contemporary legislation, the significant departure from ecological buffers required under Tweed Development Control Plan (DCP) A19 to sensitive environmental values is not supported. The encroachment of the building envelope closer to Cudgera Creek and the resultant vegetation removal to provide the required asset protection zones (APZs) for Bushfire Protection results in removal of 1000m² of coastal vegetation, which supports threatened species including Mangrove Honeyeater (*Lichenostomus fasciolaris*) being a Serious and Irreversible Impact Species (SAIL).

The applicant has not provided sufficient information for the consent authority to determine the extent of contamination (i.e. radiation) and the ability to remediate the land in accordance with Chapter 4 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The Development Application has significant deficiencies and fails to demonstrate that the proposal can support ageing in place and the changing demands of care needs. Appropriate levels of accessibility have not been provided in accordance with the National Construction Certificate and Building Code of Australia. It is submitted that the identified non-compliances render the proposal incapable to of supporting seniors living and the required adaptability required under Chapter 3 of the *State Environmental Planning Policy (Housing) 2021* and Senior Housing Design Guide for seniors living.

The Applicant has submitted a Clause 4.6 request to vary s108 of the *State Environmental Planning Policy (housing) 2021* which states 9.5m and Clause 4.3 of the *Tweed Local Environmental Plan 2014* which imposes a 8m height limit at the site. It is not considered that the applicant has demonstrated that compliance with the development standards are unreasonable or unnecessary. In addition, the Applicant's reliance on the existing approval (DA06/0413) for justification, which was approved prior to the contemporary legislation is not considered to be a sufficient planning ground to vary the development standard.

The Development Application has provided insufficient information to support social planning outcomes (such as aging in place opportunities) that are in direct correlation with the public interest and required to be considered under s4.15 of the *Environmental Planning and Assessment Act 1997*. The supporting social impact assessment has key deficiencies against the provisions of the *Tweed Development Control Plan Section A13 – Socio-Economic Impact Assessment*. The deficiencies noted by Council Officers have been further supported by several submissions received during exhibition of the application and by the Applicant's own community engagement, as documented within the Statement of Environmental Effects.

In addition to the above mentioned issues, the development application has failed to be supported by key supporting documents to allow the consent authority to grant consent. These include suitable:

- Dewatering Management Plan,
- Acid Sulfate Soils Management,
- Compensation for the direct loss of Preferred Koala Habitat,
- Earthworks, and,
- Noise and vibration Assessment.

Following a detailed 4.15 merit assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA25/0123 is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is legally referred to as Lot 1 Deposited Plan (DP) 786570, also known as 87-89 Tweed Coast Road, Hastings Point (Figure 1).

The site has an irregular shape with a frontage (eastern boundary) to Tweed Coast Road of 163.9m and 264m frontage to Cudgera Creek (to the west). Vehicular access to the site is via an existing crossing from Tweed Coast Road. The total site area is 3.8 hectares. The site is zoned R1 General Residential.

The sites eastern most portion of the site is occupied by an existing seniors living development approved under DA06/0413 for a staged seniors living development under SEPP (Seniors Living) 2004 comprising 91 independent living units, 94 supported living units and 67 beds within a high care facility. The original development application was approved 14 July 2007 and has been modified several times. This approved situation accommodated aging in place where residents could have theoretically moved between the different sections of the site as they aged to seek better support as needed.

Only Stage 1 under DA06/0413 has been constructed which comprises 91 dwellings across 3 buildings with basement parking to each building. This current development includes a main entry to the site and interface to Tweed Coast Road in addition to servicing areas (loading, unloading, waste collection and site management areas). The western portion of the site is currently vacant as the supported living units and 67 beds in an aged care facility have not been built as per DA06/0413

The site gently grades to the west from an elevation of approximately R.L 7m AHD to R.L 1m AHD flanking Cudgera Creek which forms the western boundary of the site.

Undeveloped Crown land adjoins the site to the north (Lot 7013 DP1068898) and south (Lot 7015 DP1068895). A service station is located adjacent to the southeast portion of the site.

Land to the south comprises of undeveloped coastal bushland. To the west of the site are mapped Coastal Wetlands with undeveloped bushland beyond Cudgera Creek and the mapped Coastal Wetlands.

To the north of the site is a narrow strip of low-density residential development fronting Tweed Coast Road. To the west of this development is Cudgera Creek and mapped Coastal Wetlands.

The undeveloped Cudgera Beach coastal reserve is located to the east being a mix of Crown and Tweed Shire Council owned land.

The site is partially mapped as having the following land constraints:

- Acid sulfate soils class 1 & 3;
- Bushfire prone land
- Flood prone land
- Coastal Wetlands and Coastal Wetland proximity area;

- Littoral rainforest proximity area.

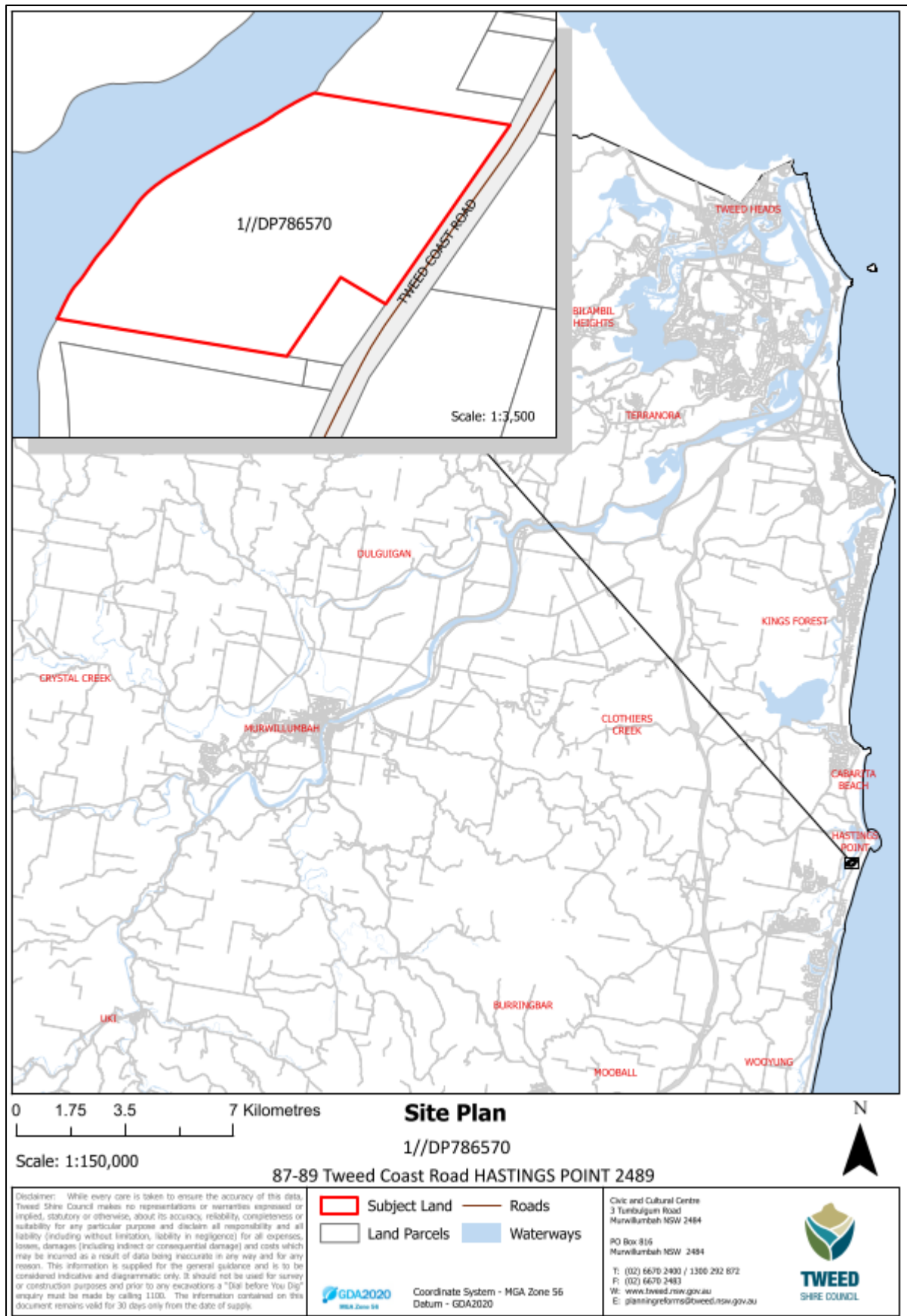


Figure 1 Site Location Plan

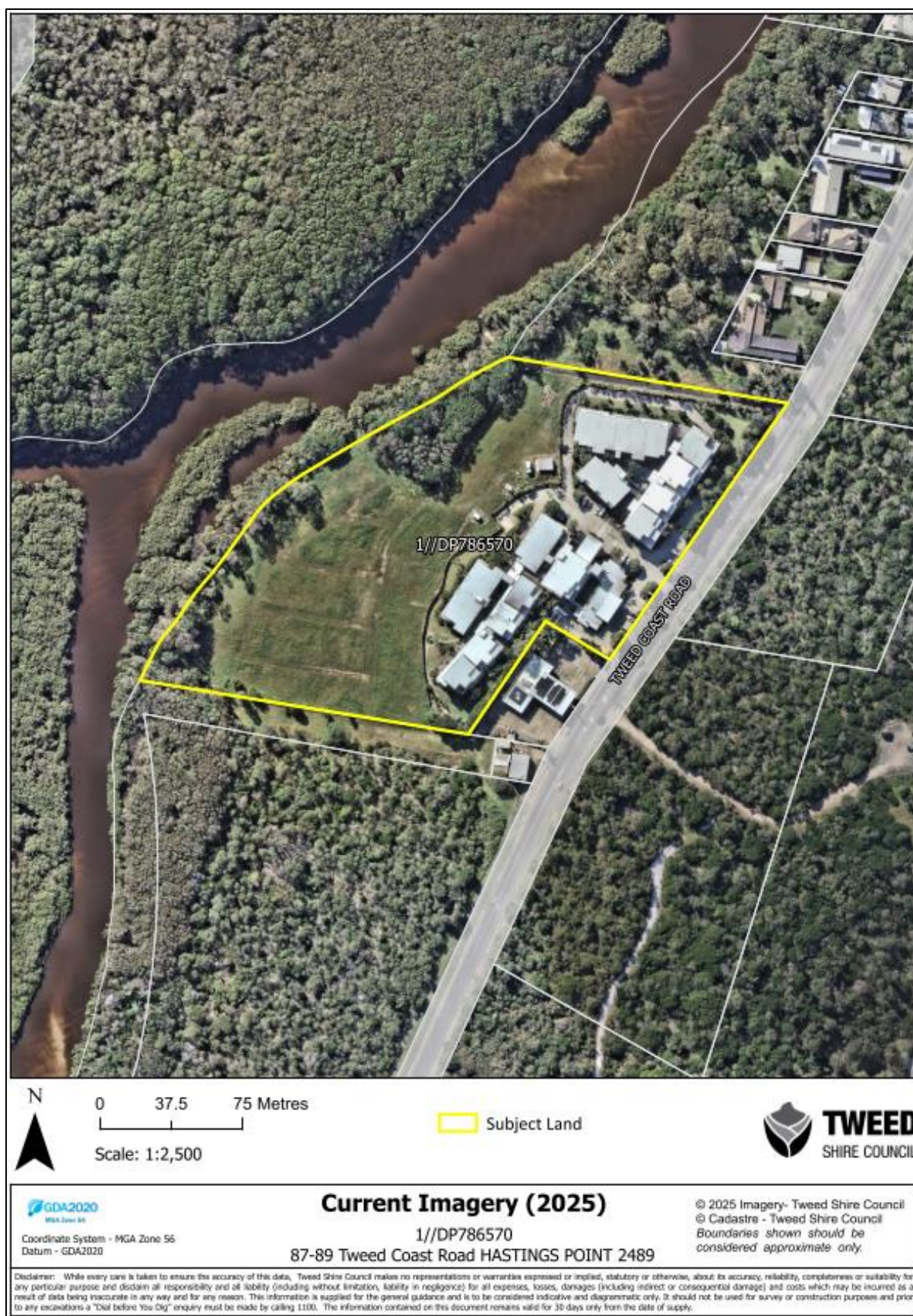


Figure 2 Aerial Imagery of the Subject Site

1.2 The Locality

The site is located approximately 250m from the coastline between the coastal villages of Hastings Point and Pottsville. The village of Hastings Point is located approximately 730m to the north of the site and the village of Pottsville is located approximately 2.2km to the south. The closest commercial centre is Kingscliff which is located approximately 14km to the north of the site.

The locality is characterised by fragmented urban development interspersed amongst undeveloped coastal land zoned environmental protection and public open space. Beyond the environmental protection land is rural land to the Pacific Motorway located approximately 4.5km to the west of the site.

The Tweed Shire is identified as the LGA within the North Coast Region of NSW comprising the largest and second fastest growing population sitting just behind Port Macquarie-Hastings (source: DPHI population projections).

The Tweed has enjoyed sustained and strong population growth over a number of decades, fuelled by its immediate access to employment centres, picturesque scenic landscapes and quality open spaces, including a 37km coastline.

Tweed Shire Council declared a housing emergency in 2021 due to severe pressures on housing affordability and accessibility, necessitating urgent action. In this context the Housing Needs Assessment (May 2023) prepared by PSA Consulting as part of Council's draft Growth Management and Housing Strategy Options Paper, identified there is an increasing need for specialised housing for the ageing population through to 2041. A shortfall has been identified for retirement living and aged care facilities across the Tweed.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for seniors housing entailing:

- Construction of 4 multi storey buildings comprising of a total 69 independent living units (ILUs):
 - Building D: 18 ILUs
 - Building E: 24 ILUs
 - Building F: 18 ILUs; and
 - Building G: 9 ILUs.
- Construction of communal facilities, including:
 - Bowling Greens and Pavilion equipped with a bowls store, amenities, kitchen and a covered seating area;
 - Indoor swimming pool and spa, with amenities and a viewing area;
 - Permitter walking trail
- Additionally, the Applicant seeks consent for landscaped garden areas.



Figure 3 Site wide plan (Landscaping plan prepared by Arcadia)

Building D



Figure 4 Proposed Southern Elevation of Building D



Figure 5 Proposed Northern Elevation of Building D



Figure 6 Proposed Eastern and Western Elevations of Building D

Building E



Figure 7 Proposed Southern Elevation of Building E



Figure 8 Proposed Northern Elevation of Building E

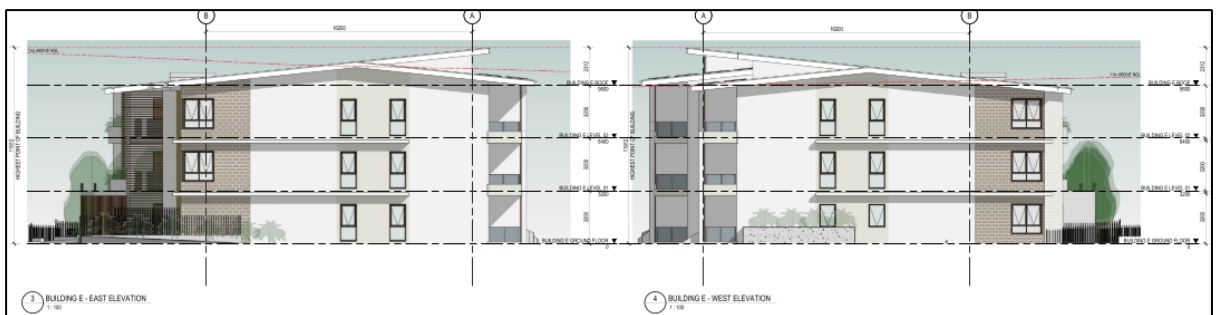


Figure 9 Proposed Eastern and Western Elevations of Building E

Building F



Figure 10 Proposed Northern Elevation of Building F



Figure 11 Proposed Southern Elevation of Building F

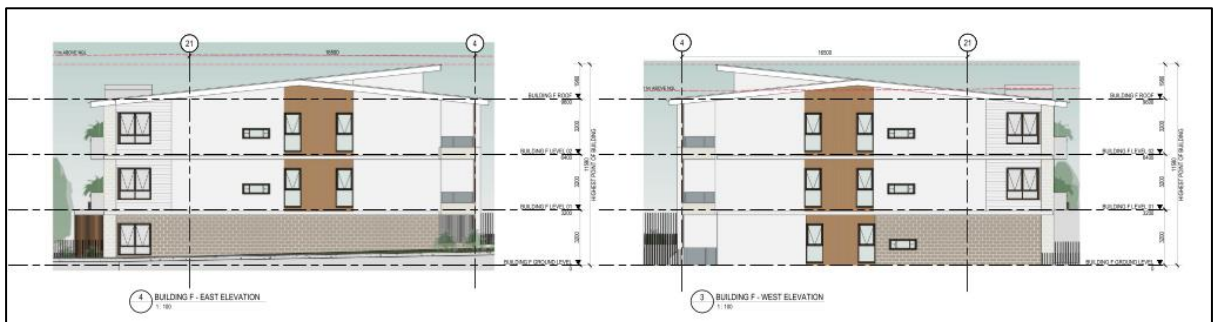


Figure 12 Proposed Eastern and Western Elevation of Building F

Building G



Figure 13 Proposed Southern Elevation of Building G



Figure 14 Proposed Northern Elevation of Building G

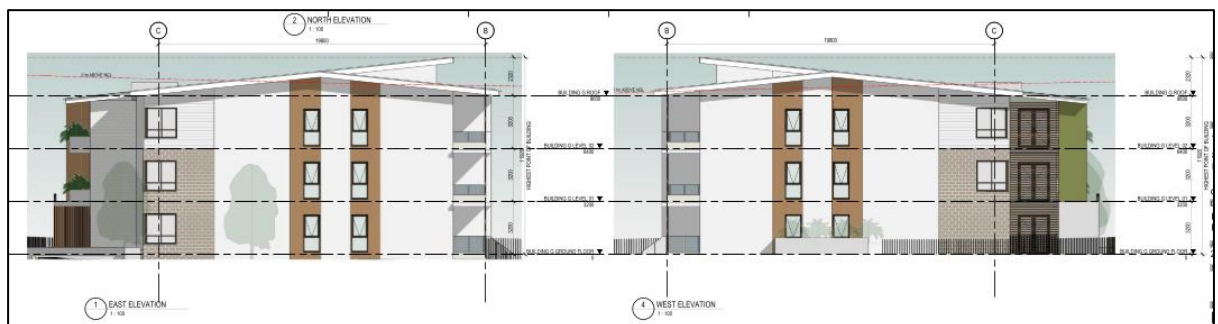


Figure 15 Proposed Eastern and Western Elevation of Building G

Pool Pavilion



Figure 16 Proposed Southwest Elevation of Pool Pavilion

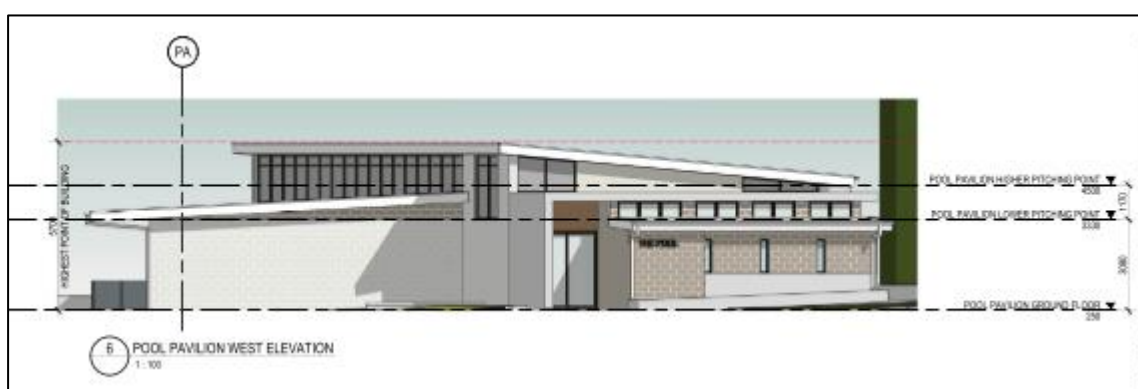


Figure 17 Proposed Western Elevation of Pool Pavilion



Figure 18 Proposed Northwestern Elevation of Pool Pavilion

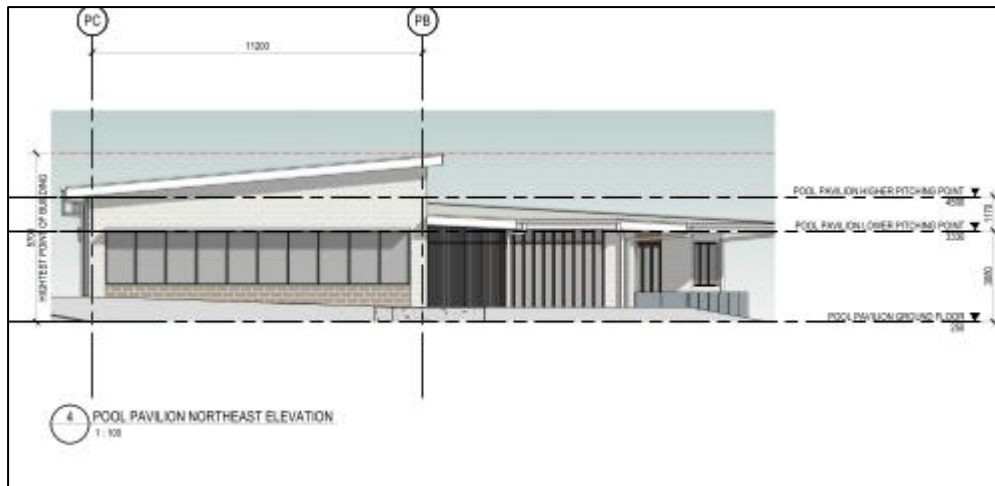


Figure 19 Proposed Northeastern Elevation of Pool Pavilion

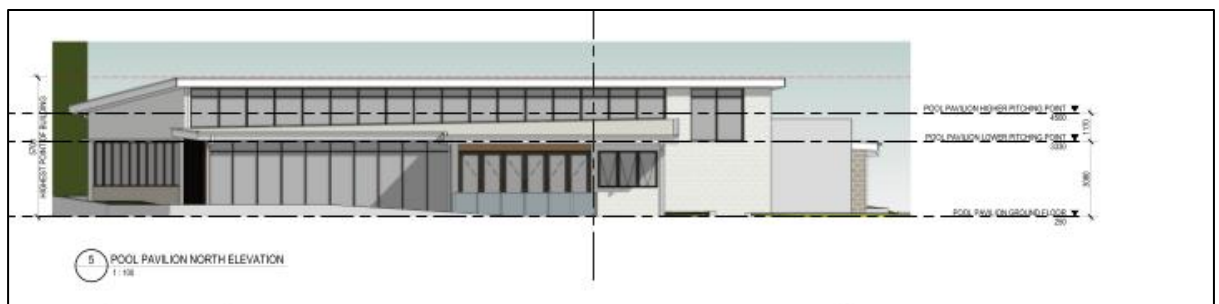


Figure 20 Proposed Northern Elevation of Pool Pavilion

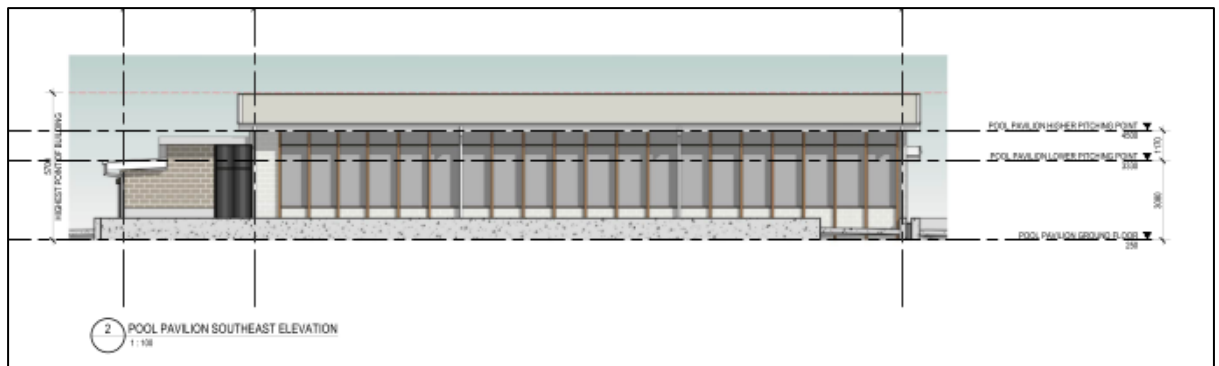


Figure 21 Proposed Southeastern Elevation of Pool Pavilion

Bowls Pavilion



Figure 22 Proposed Northern Elevation of Bowls Pavilion

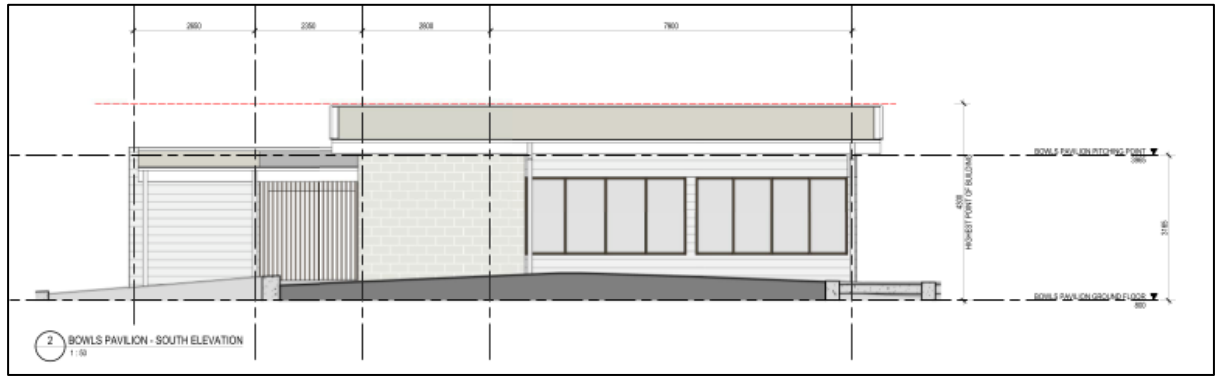


Figure 23 Proposed Southern Elevation of Bowls Pavilion

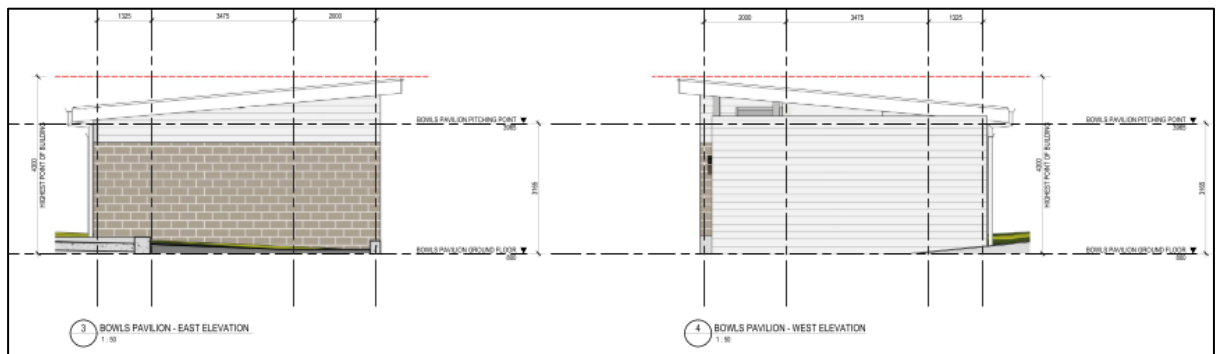


Figure 24 Proposed Eastern and Western Elevation of Bowls Pavilion

As expressed above, the Development Application seeks construction for 4 buildings, each containing independent living units. The Applicant sought approval for four (4) differing unit typologies that will be built within the proposed buildings. The unit typologies have been depicted in Figures 24 -27.

The provision of each unit typology sought for construction in the 4 buildings is depicted in **Table 1**.

Table 1 Proposed Unit Typology Breakdown

	Typical Unit 1 2 bedroom unit	Typical Unit 2 3 bedroom unit	Typical Unit 3 2 bedroom + MPR	Typical Unit 4 3 bedroom	Total
Building D	12	3	-	3	18
Building E	12	6	6	-	24
Building F	12	6	-	-	18
Building G	3	6	-	-	9
Total	39	21	6	3	69

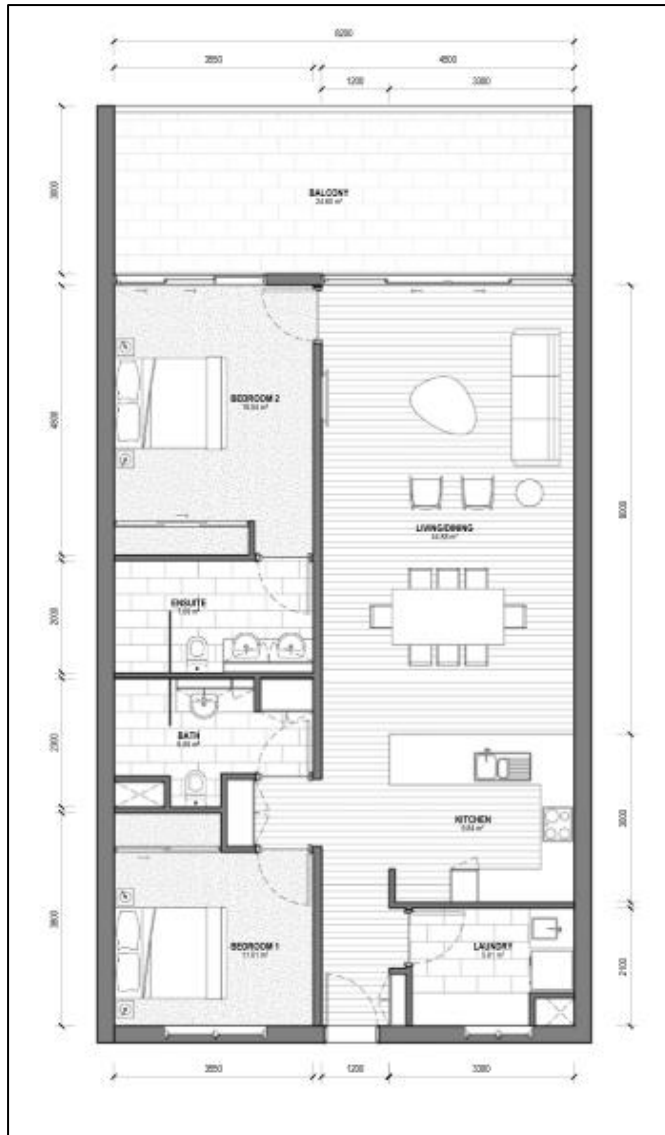


Figure 25 Typical Unit 1

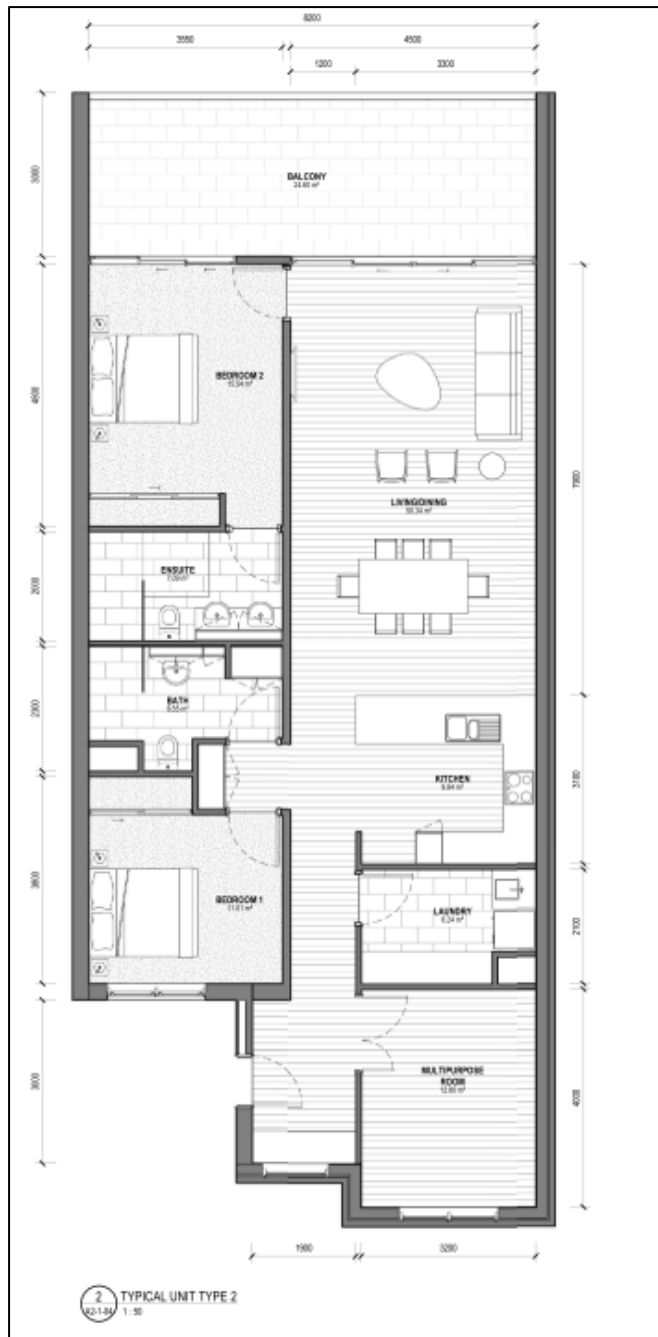


Figure 26 Typical Unit 2

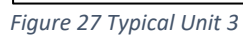




Figure 28 Typical Unit 4

The Applicant seeks consent for a staged consent to allow construction to occur in the following sequence:

- Staging One: Construction of proposed three-storey Building E including Basement carpark, building shell, fit outs, internal roadways, and landscaping;
- Stage Two: Construction of proposed three-storey Buildings F and G including basement carpark, building shells, fit outs, internal roadways, and landscaping;
- Stage Three: Construction of proposed communal pool pavilion, bowling pavilion and bowling green, including building shells, fit outs and landscaping; and
- Stage Four: Construction of proposed three-storey Building D including basement carpark, building shell, fit outs, internal roadways, and landscaping.

Additionally, the following ancillary works are proposed:

- Dewatering
- Vegetation removal; and

- Bulk earthworks including the removal of material excavated

The Key development data is provided in **Table 2** below.

Table 2: Development Data

Control	Proposal										
Site area	37,970m ² (Deposited Plan)										
GFA	24,680m ² (including existing development)										
FSR (residential and communal spaces)	The Applicant has put forward that a FSR of 0.65:1. Further information is required to be submitted to clarify areas included.										
Max Height	11.92m										
Clause 4.6 Requests	Variation to building height against: • Clause 4.3 under the <i>Tweed Environmental Plan 2014</i> which nominates a maximum height of 8m • Section 108 under the <i>State Environmental Planning Policy (Housing) 2021</i> which states 9.5m										
No of independent living units	69 proposed 91 existing										
Landscaped area	19700.48m ²										
Car Parking spaces	The Applicant has stated 132 carparking spaces are proposed. • 112 resident parking spaces • 20 visitor parking spaces										
Setbacks	Minimum setbacks are demonstrated in Table 2. <i>Table 3 Minimum site setbacks</i> <table><tr><td></td><td>North</td><td>South</td><td>East</td><td>West</td></tr><tr><td>Ground Floor</td><td>29m</td><td>15m</td><td>39.9m</td><td>30.9m</td></tr></table>		North	South	East	West	Ground Floor	29m	15m	39.9m	30.9m
	North	South	East	West							
Ground Floor	29m	15m	39.9m	30.9m							
Bulk Earthworks	The proposed development will involve bulk earthworks to create suitable building platforms, basement levels, and overland flow paths. The earthworks will include cut and fill operations, with approximately: • 12,000m³ of material to be excavated during the basement construction; and • 8,000m³ of this will need to be exported off-site, as it cannot be fully reused within the development.										
Vegetation removal	Northern Sands Tuckeroo-Banksia: 700m ² (0.07ha) Far North Paperbark Fern Swamp Forest: 300m ² (0.03ha)										

2.2 Background

Pre-lodgement

A pre-lodgement meeting was held on 10 April 2024. The pre-lodgement meeting sought Council Officers comments at the subject site to construct an additional 69 independent seniors living units across four buildings with basement car parking and communal facilities including swimming pool, bowling green, amenities, kitchenette, and multi-purpose and viewing spaces and walking trails.

Various issues including the following matters were discussed within the pre-lodgement meeting:

- *A Development would need to comply with the Building Code of Australia.*
- *Compliance with the Disability Discrimination Act 1992 (Cth) would be required.*
- *Access for disabled would need to comply with AS1428.1 – 2009*
- *Disabled toilet facilities would be required in accordance with the provisions of the National Construction Code Volume 1 2022*
- *The subject site has been identified as Class 1 and Class 3 on the acid sulfate soil planning maps. The applicant shall address Clause 7.1 of the Tweed LEP 2014. Any acid sulfate soil investigation and management plan shall be prepared by a suitably qualified environmental consultant and address:*
 - *National Acid Sulfate Soils Guidance: a synthesis (June 2018);*
 - *NSW Acid Sulfate Soil Manual (1998); and*
 - *Waste Classification Guidelines – Part 4: Acid Sulfate Soils (NSW EPA, 2014).*
- *Where groundwater will be or is likely to be intercepted, the investigation shall also consider:*
 - *Council's Dewatering in the Tweed Guideline; and*
 - *Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZG 2018).*
- *A Development Application must include a Construction Environmental Management Plan that addresses, but is not limited to, construction, site activities, vehicle movement, plant and equipment, hours of operation, noise and vibration management, dust/air quality management, and complaint management.*
- *An acoustic report prepared by a suitably qualified acoustic consultant relating to use of the development will be required with the Development Application. The report shall identify and address noise and vibration sources during operation including air conditioning and ventilation systems, other plant and equipment, lifts, car parks, outdoor and common areas, patrons and crowds, bowling greens, swimming pool and spa areas (including plant and equipment), waste chutes, waste storage, and waste collection areas, deliveries and servicing, road traffic noise, and cumulative noise impacts associated with current use. The report shall outline hours of operation and measures to minimise and mitigate potential noise impacts to current and future occupants of the site and surrounding occupiers of land. The report should include an attached plan of management showing a noise complaint management procedure.*
- *With reference to DCP A19 and having regard for the scale of the proposed development, a 30-metre-wide ecological buffer should be shown from any Endangered Ecological*

Community and 50m wide ecological buffer from an important wetland [Coastal Wetland Area under the SEPP (Resilience & Hazards) 2021]) being red-flagged values. The proposed layout appears to substantially depart from the development envelope controls of DCP A19 which is unlikely to be supported in the current form.

- *Only an outer bushfire asset protection zone (30% canopy) may be accepted to extend within the ecological buffer zone – up to 50% of the width of an ecological buffer i.e. 50m ecological buffer – 25 m outer asset protection zone. Inner asset protection zone would be unlikely to be supported within ecological buffer zones.*
- *The proposal includes a series of basements that are likely to involve excavation. Given proximity of the development to a sensitive wetland environment supporting Groundwater Dependent Ecosystems (GDEs), where groundwater is to be intercepted a groundwater investigation and dewatering management plan would be required to demonstrate that the proposed basements will not have a detrimental impact upon the groundwater system and any GDE's.*
- *Where the proposal is likely to affect a Coastal Wetland Area (designated development) an Environmental Impact Statement is required to accompany the application.*

Full pre-lodgement comments and meeting minutes can area attached to this report.

Post Lodgement

During the assessment of the proposal, it was concluded that the subject Application was Designated Development under the *State Environmental Planning Policy (Resilience and Hazards) 2021* (SEPP (R&H)). The proposed dewatering activities will result in a draw-down of water within the mapped Coastal Wetlands at the rear of the site. The drainage of land mapped as Coastal Wetlands is designated development under s2.7(2) of the SEPP (R&H).

An application for designated development is to be accompanied by an environmental impact statement in accordance with s4.12(8) of the EP&A Act. Furthermore, the application had not been publicly notified as designated development in accordance with the Act and Regulations.

As the subject application had not been lodged with an Environmental Impact Assessment, it was considered appropriate to proceed to determine the application with a recommendation of refusal.

The Applicant was advised of this decision and was afforded the opportunity to withdraw the Development Application or otherwise proceed to have the application determined. The Applicant confirmed on the 28 June 2025 that they sought to provide an amended Hydrogeological report to address the designated matter, however, could not provide confirmation of a date but it was expected to be provided by the 15 August 2025.

On the basis of the potential irreversible ecological impacts on existing protected coastal vegetation and insufficient information addressed within this report, it was not considered appropriate the Applicant provide an amended Hydrogeological report. It is noted that the Applicant has not been afforded the opportunity to respond to the outstanding matters nor was the Applicant requested to provide additional information.

The development application was lodged on **20 March 2025** and chronology of the development application since lodgement is outlined in **Table 4** below.

Table 4: Chronology of the DA

Date	Event
20 March 2025	DA25/0123 - Formally lodged with Tweed Shire Council.
24 March 2025	DA referred to external agencies • <u>Rural Fire Services</u> under s100B of the <i>Rural Fires Act 1997</i>. General Terms of Approval issued 5/05/2025 • <u>Department of Planning and Environment – Water</u> under s91 of the <i>Water Management Act 2000</i>. Further information requested 30/05/2025. • <u>Essential Energy</u> under s2.48 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>. General comments provided 25/03/2025. • <u>Transport for New South Wales</u> under s2.122 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>. Rejected on 24/03/2025. • <u>Department of Primary Industries (Fisheries)</u> referral for general comment. Comments received on 4 June 2025.
2 April 2025	Advertisement commenced.
30 April 2025	Advertisement concluded. • Total of 6 submissions received.
3 July 2025	Site visit conducted by Council Officers.
7 July 2025	The Northern regions Planning Panel was advised of Councils position and assessment regarding designated development matter.
7 July 2025	The Applicant was informed of Councils position on the Development Application being Designated Development.
28 July 2025	Applicant informed Council that they did not wish to withdraw the Development application. Council Officers proceeded with determination.
20 August 2025	Panel Determination Meeting.

2.3 Site History

A number of determinations have been issued over the subject site. Notably DA06/0413 (as amended) approved a staged seniors living development under the *State Environmental Planning Policy (Seniors Living) 2004*.

Since its initial determination, the development consent has been modified three (3) times in relation to dwelling yield, layout and access configuration. The current approval, as modified, includes three (3) distinct forms of seniors living:

1. 91 x independent living units – Stage 1;
2. 94 x supported living units (hostel) – Stages 2 and 3; and
3. 67 x beds within a high care facility - Stage 3.

Following the determination of DA06/0413 a third-party appeal (Class 4) was lodged by the Hastings Point Residents Group and Progress Association Incorporated.

The appeal was lodged as it was alleged that Council failed to consider cumulative impact and furthermore that Council's decision to approve the development was manifestly unreasonable. On 6 June 2008 the NSW Land and Environment Court dismissed the appeal and ruled that the decision by Council was not manifestly unreasonable and furthermore the Council assessed the application against all relevant statutory planning instrument.

Following the appeal being upheld Stage 1 under DA06/0413 has been completed, having undergone construction and occupation certificate phases in 2009. Rehabilitation works at the site have also commenced and are ongoing in accordance with an approved Rehabilitation Management Plan.

The lodgement of further applications and modifications have since been lodged with the Councils determination of DA06/0413.14 being appealed. DA06/0413.14 was lodged under a section 4.55(2) however, was not considered to be substantially the same development as approved. The reasons for the decision came from the proposed change of use of supported living units (hostels) to allow for them to be used as either supported living or independent living would deliver the same level of service for residents (in terms of support or access to services) and as such is not considered to be qualitatively the same development.

It is further noted that the current Development Application has been lodged concurrently with the lodgement of a State Significant Development (SSD-41110128) for Seniors living comprising of 10 buildings, 91 independent living units, 74 supported living units and a 44-bed residential care facility. The Applicant is currently preparing an Environmental Impact Statement to respond to the Department to proceed the assessment.

Table 5 Relevant Development History

Application Number	Description	Decision	Appeal Decision
SSD-41110128	Construction 10 buildings, 91 independent living units, 74 supported living units and a 44-bed residential care facility	(not determined)	
DA06/0413.14	Amendments to development consent DA06/0413 for a staged seniors living development	Refused – 7/07/2021	Discontinued at s34
CDC18/0066	Demolition of 11 various buildings	Approved – 23/05/2018	
DA13/0308	Change of use and re-allocation of floor area within Block B of existing aged care facility	Approved 12/09/2013	
DA11/0597	Advertising Sign	Approved – 02/02/2012	

DA06/0413.013	Amendments to development consent DA06/0413 for a staged seniors living development	Approved 23/03/2010	
DA06/0413.08	Amendments to development consent DA06/0413 for a staged seniors living development	Approved – 30/04/2009	
DA08/0948	Provision of temporary access road and removal of vegetation	Approved – 19/09/2009	
DA06/0413.01	Amendments to development consent DA06/0413 for a staged seniors living development	Approved – 18/07/2008	
CDC07/0067	Temporary sales office	Approved – 06/06/2007	
DA06/0413	A staged seniors living development under SEPP (Seniors Living) 2004 comprising 91 independent living units, 94 supported living units and 67 beds within a high care facility	Approved – 14/05/2007	Approved – 13/06/2008

3. STATUTORY CONSIDERATIONS

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

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

These matters are further considered below.

It is noted that the proposal is considered to be:

- Designated Development; and
- Integrated Development.

These matters are considered in detail within this report.

External Referrals

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Essential Energy	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	<i>Essential Energy makes the following general comments:</i> <i>If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment;</i> <i>Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with;</i> <i>Any activities in proximity to electrical infrastructure must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure;</i> <i>Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW); and</i> <i>It is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when</i>	Y

		working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.	
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	Thank you for referring this matter to Transport for NSW (TfNSW) for its comment. The proposed development does not appear to meet the numerical criteria under Schedule 3 of the SEPP (Transport and Infrastructure) to trigger a referral under section 2.122. Should Council require any specific advice from TfNSW	Y
Department of Primary Industries (Fisheries)	No prerequisite to refer. Council sought advice.	Comments received by DPI Fisheries can be read in Attachment E The advice of the DPI has been considered in Attachment F .	N
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i>	Rural Fire Services (RFS) issued General Terms of Approval (GTAs) on 5 May 2025. GTAs can be read in Attachment G .	Y
Department of Planning and Environment – Water	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Department of Planning and Environment-Water requests that Council stop the clock as of the date of this letter. The following additional information is required: - The subject site is adjacent to Cudgera Creek and contains wetland areas which are both considered waterfront land under the Water Management Act (2000). - Please provide an updated site plan that shows the demarcation of waterfront land (ie. the wetland and Cudgera Creek) and the designated 40m vegetated riparian zone (VRZ) and any proposed encroachments and offsets as per the riparian corridor guidelines.	N

		Based on the information provided it appears that there are encroachments into the VRZ that are not in accordance with the guidelines, including the bush fire asset protection zones and some of the buildings. Please provide updated development plans that rectify these encroachments. The Applicant has provided a response however, further communication from the Department of Planning and Environments – Water has not been received.	
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Internal Referral departments

Officer	Comments	Conditions
Flooding and Stormwater	Satisfactory response	Yes
Strategic Planning and Urban Design	Outstanding matters are capable of being conditioned	Yes
Social Planning	Insufficient Information	No
Environmental Health	Insufficient information	No
Water and Wastewater	Can provide conditions of consent	Yes
Sustainability and Environments	Not supportive of the Development Application.	No
Engineering – Roads Unit	Outstanding matters	Refer to section 4.2 of this report

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

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

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

Biodiversity Conservation Act 2016

The NSW Biodiversity Values Map (BV Map - Figure 29) made under the *Biodiversity Conservation Act 2016* (BC Act) identifies high conservation value areas (HCVA) onsite being:

- Coastal Management Act Wetlands – to the west associated with the Coastal Wetland Area gazetted under the *State Environmental Planning Policy (Resilience & Hazards) 2021*.

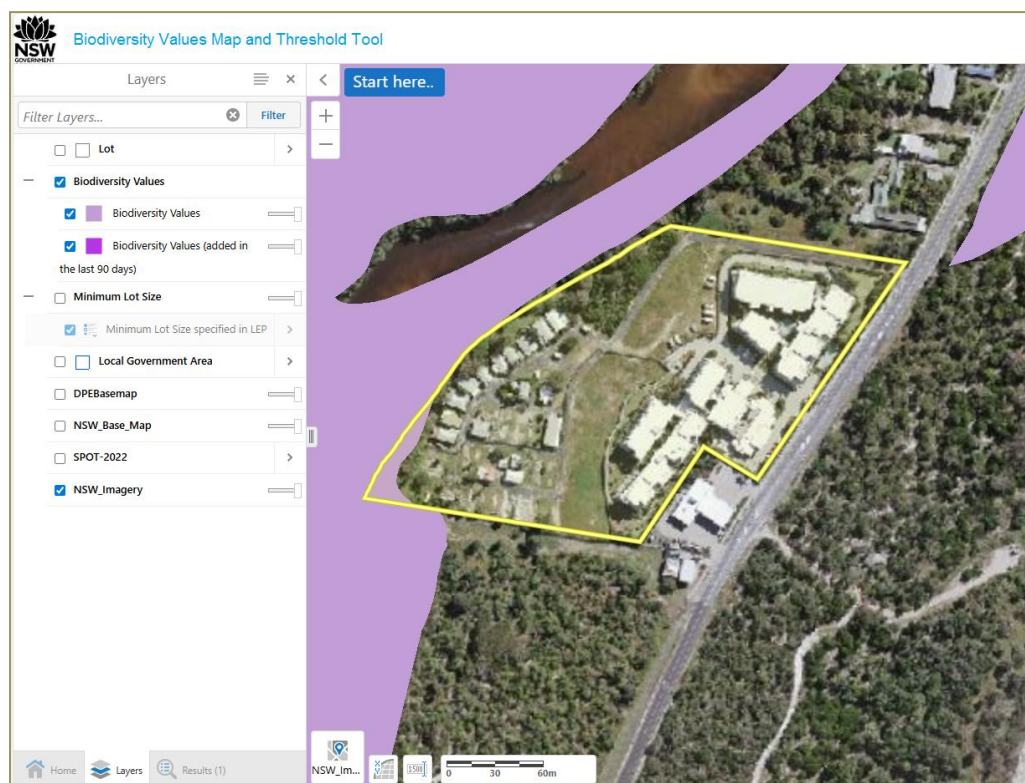


Figure 29 NSW Biodiversity Values Map - high conservation value areas shaded purple

The Biodiversity Offset Scheme threshold has been exceeded as the proposal is likely to involve prescribed impacts (related to waterbodies, water quality and hydrological processes) on high conservation value areas identified on the NSW Biodiversity Values Map as a result of predicted groundwater drawdown. As such the application is accompanied by a Biodiversity Development Assessment Report in accordance with Section 7.7 of the BC Act.

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Tweed Local Environmental Plan 2014*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 6** and considered in more detail below.

Table 6: 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	N
State Environmental Planning Policy (Sustainable Buildings) 2022	Chapter 2: Standards for residential development - BASIX	Y
State Environmental Planning Policy (Housing) 2021	Chapter 3: Diverse Housing Housing for Seniors and people with a disability • Section 84 Development standards – general • Section 85 Development standards for hostels and independent living units • Section 87 Additional floor space ratios • Section 93 Location and access to facilities and services – independent living units • Section 95 Water and sewer • Section 97 Design of in-fill self-care housing • Section 98 Design of seniors housing • Section 108 non-discretionary development standards for independent living units – the Act, s4.15	N
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the development as regionally significant development pursuant Schedule 6 as it comprises a capital investment value of more than \$30 million.	Y
State Environmental Planning Policy (Resilience & Hazards)	Chapter 2: Coastal Management • Section 2.7 – Development on certain development in coastal wetlands or littoral rainforest • Section 2.8(1) - Development on land in proximity to coastal wetlands or littoral rainforest • 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. Chapter 4: Remediation of Land	N

	Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure - Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. - Section 2.118(2) - Development with frontage to classified road - Section 2.122 – Traffic generating development	Y
Tweed Local Environmental Plan 2014	- Clause 1.2 – Aims of the Plan - Clause 2.3 – Permissibility and zone objectives - Clause 4.3 – Height of buildings - Clause 4.4 – Floor space ratio - Clause 4.6 – Exceptions to development standards - Clause 5.21 – Flood planning - Clause 5.22 – Special flood considerations - Clause 7.1 – Acid sulfate soils - Clause 7.2 – Earthworks - Clause 7.6 – Stormwater management - Clause 7.10 – Essential services	N N N - N Y Y N N Y Y
Development Control Plan 2008	- Section A1 – Residential flat buildings & shop top housing - Section A2 – Site Access and Parking Code - Section A3 – Development of flood liable land - Section A15 – Waste Minimisation and Management - Section A19 – Biodiversity and habitat management - Section B9 – Tweed Coast Road Strategy - Section B23 – Hastings Point	Y N Y Y N Y

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 Koala habitat protection 2021

The site occurs within the Tweed Coast Koala Management Area (Southern Tweed Coast KMA) identified in the Tweed Coast Comprehensive Koala Plan of Management 2020 (TCKPoM). The TCKPoM is an approved plan of management for the purposes of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 4.

A Koala Habitat Assessment Report, prepared by Cumerland ecology and dated 12 December 2024 comprising results of a Koala Activity Assessment accompanied the application.

Whilst no Koala activity was reported as part of the Koala Activity Assessment involving SAT surveys, Preferred Koala Habitat (PKH) was identified onsite and within the proposed development envelope. An estimated 360m² of PKH is proposed to be impacted to establish asset protection zones.

The report indicates that an onsite offset to re-establish PKH of 432m² (1:12 ratio) will be required to meet the offset provision of Appendix C of the TCCCKPoM. Rather than provide offsetting as an additional measure to compensate for the loss of PKH established under the original conditions of consent the applicant seeks to utilise those proposed ecological buffer zones required to mitigate impacts of the development in order to reconcile offsetting commitments. The reliance on ecological buffer zones that are already required, determined by law or planning regulations or agreed to under other schemes or programs is unacceptable and inconsistent with key offset principles detailed in the TCCCKPoM.

Adequate compensation for the direct loss of Preferred Koala Habitat in accordance with the Tweed Coast Comprehensive Koala Plan of Management is required to be offered as part of the proposed habitat restoration program.

State Environmental Planning Policy (Sustainable Buildings) 2022

The aims of this Policy are as follows-

- (a) *To encourage the design and delivery of sustainable buildings,*
- (b) *To ensure consistent assessment of the sustainability of buildings,*
- (c) *To record accurate data about the sustainability of buildings, to enable improvements to be monitored,*
- (d) *To monitor that embodied emissions of materials used in construction of buildings,*
- (e) *To minimise the consumption of energy*
- (f) *To reduce greenhouse gas emissions,*
- (g) *To minimise the consumption of mains-supplied potable water,*
- (h) *To ensure good thermal performance of buildings,*

The lodgement of DA25/0123 has been supported with a BASIX Certificate (No.1772823M_02) prepared by ADP Consulting and dated 14 March 2025. The certificate satisfies the relevant water, thermal and energy commitments are met as required by the BASX SEPP that each proposed building can perform against the standards in Schedule 1 of this policy.

It is considered that compliance with the BASIX Certificate could be managed via way of condition.

State Environmental Planning Policy (Housing) 2021

Chapter 3 Diverse housing - Part 5 Housing for seniors and people with a disability

Section 84 Development standards – general

Section 84(2) states development consent must not be granted for development that involves the erection of a building for Seniors Housing unless it satisfies the minimum site area (1,000m²), the minimum frontage of the site (20m) and, for development on land in a residential zone where residential flat buildings are not permitted, pursuant to s84(2)(c) the following-

- (i) *the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and*
- (ii) *if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and*

- (iii) *if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.*

The subject site satisfies the minimum site area and lot frontage, and it is located on residential zoned land (R1 – General Residential) that permits residential flat buildings. As such s84(2)(c) is not applicable to the subject site and proposal. Notwithstanding this, as discussed later in this report, there are non-discretionary development standards that apply to the development in relation to building height.

Section 85 Development standards for hostels and independent living units

S85(1) states that consent must not be granted for a hostel or independent living units without consideration to Schedule 4 - *Standards concerning accessibility and usability for hostels and independent living units*.

The proposal seeks approval for independent living units as defined by the Tweed LEP 2014 as:

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

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

Note—

*Independent living units are a type of **seniors housing***

The Applicant has provided an *Access Assessment Report*, prepared by Credwell and dated 28 February 2025 which addresses Schedule 4. On review, various non-compliances have been identified. It is advised that these matters are too numerous to condition as part of the DA or to include in the construction certificate (CC) documents. Therefore, without the issue of a request for further information, the matters will form a recommended reason of refusal.

Refer to the table below, for Council Officers assessment of the proposal against Schedule 4.

Colour Key	
	Complies / Suitable Condition could be applied
	Insufficient information
	Non-compliance not accepted

Table 7 Schedule 4 Standards concerning accessibility and usability for hostels and independent living units

Standard	Requirement	Assessment
(2) Siting standards	(1) Wheelchair access If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road. (2) If the whole of the site does not have a gradient of less than 1:10— (a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of	The <i>Access Assessment Report</i> identifies that further information was required to be provided to determine compliance with AS1428.1.

	less than 1:10, or 50%, whichever is the greater, and (b) the wheelchair access provided must be by a continuous accessible path of travel to an adjoining public road or an internal road or a driveway that is accessible to all residents. (3) Common areas Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.	
(3) Letterboxes	(1) Letterboxes— (a) must be located on a hard standing area, and (b) must have wheelchair access by a continuous accessible path of travel from the letterbox to the relevant dwelling, and (c) must be lockable by a lock that faces a wheelchair accessible path. (2) If a structure contains multiple letterboxes, the structure must be in a prominent location. (3) At least 20% of the letterboxes on the site must be more than 600mm and less than 1,200mm above ground level (finished).	The ground floor plan does not indicate letterboxes for the proposed ILUs. It is considered appropriate that the location of letter boxes is identified prior to any consent is issued. However, it is considered appropriate that clearances can be provided at the construction stage.
(4) Car Parking	(1) If parking spaces attached to or integrated with a class 1 building under the <i>Building Code of Australia</i> are provided for use by occupants who are seniors or people with a disability, at least 1 parking space must— (a) be at least 3.2m wide, and (b) be at least 2.5m high, and (c) have a level surface with a maximum gradient of 1:40 in any direction, and (d) be capable of being widened to 3.8m without requiring structural modifications to a building. (2) If parking spaces associated with a class 1, 2 or 3 building under the <i>Building Code of Australia</i> are provided in a common area for use by occupants who are seniors or people with a disability, the following applies— (a) for a parking space not in a group—the parking space must comply with AS/NZS 2890.6, (b) for a group of 2–7 parking spaces— (i) at least 1 of the parking spaces must comply with AS/NZS 2890.6, and (ii) 50% of the parking spaces must— (A) comply with AS/NZS 2890.6, or (B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction,	The <i>Access Assessment Report</i> identifies the applicable criteria is subsection 2(c). The report has provided an assessment for each proposed buildings and identifies non-compliances for Buildings D, E and F. A review of the supporting documentation submitted with the development application has identified s2.5 of Australian Standard AS2890.6-2022, <i>Off street parking for people with disabilities</i> is not satisfied. The Applicant has not demonstrated compliance with these requirements for Building D, E and G.

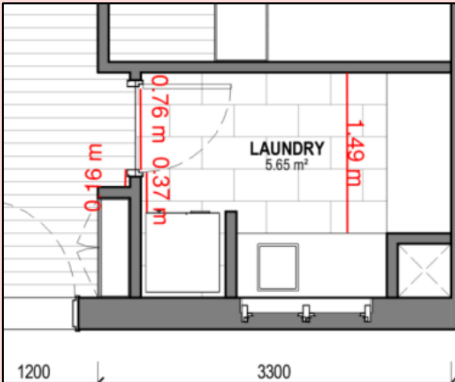
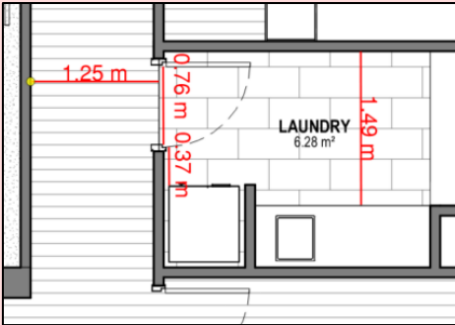
	(c) for a group of 8 or more parking spaces— (i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and (ii) at least 50% of the parking spaces must— (A) comply with AS/NZS 2890.6, or (B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction. (3) To avoid doubt, a parking space that complies with AS/NZS 2890.6 is only counted toward 1 of the requirements in subsection (2)(b)(i) or (ii) or (c)(i) or (ii). (4) At least 5% of any visitor parking spaces must comply with AS/NZS 2890.6. (5) A parking space required by this section to comply with AS/NZS 2890.6, other than a visitor parking space, is not required to include the international symbol of access. (6) If multiple parking spaces are accessible by a common access point, the access point must be secured by a power-operated garage door, vehicle gate, vehicle barrier or similar device. (7) A parking space, other than a parking space under subsection (6), must be— (a) secured by a power-operated door, or (b) capable of accommodating the installation of a power-operated door, including by having— (i) access to a power point, and (ii) an area for motor or control rods for a power-operated door. (8) A requirement in this section for a parking space to comply with AS/NZS 2890.6 extends to the associated shared area within the meaning of AS/NZS 2890.6. (9) In this section, a parking space is in a common area if it is not attached to or integrated with a hostel or independent living unit.	
(5) Accessible entry	(1) The main entrance to a dwelling must have— (a) a clear opening that complies with AS 1428.1, and (b) a circulation space in front of the door and behind the door that complies with AS 1428.1. (2) This section does not apply to an entry for employees.	The proposed plans do not demonstrate that main unit entrances provide 850mm minimum clearance. Measurements have been taken from the internal of the door opening and not the outer doorway width. Typical Unit 1 → 842mm Typical Unit 2 → 843mm Typical Unit 3 → 830mm Typical Unit 4 → 838mm Internal circulation space per AS1428.1 has not been adequately demonstrated. It is considered

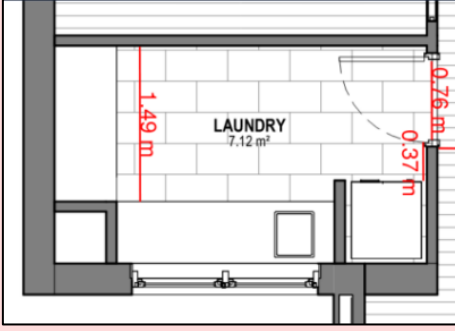
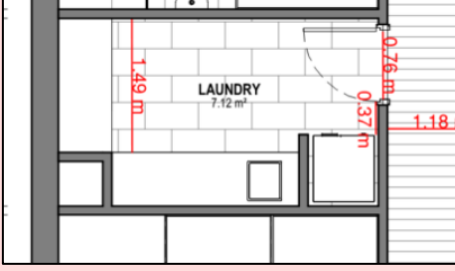
		appropriate this is demonstrated prior to the issue of a consent as any required amendments to the floor plan will require a modification application be determined.
(6) Interiors	(1) An internal doorway must have an unobstructed opening that complies with AS 1428.1. (2) An internal corridor must have an unobstructed width of at least 1,000mm. (3) The circulation spaces in front of and behind an internal doorway in the following areas must comply with AS 1428.1— (a) a kitchen, (b) a laundry, (c) a bathroom, (d) a toilet, (e) a bedroom, (f) a living area, (g) the main area of private open space. (4) To avoid doubt, subsection (3)(b) does not apply to laundry facilities in a cupboard.	Further information is requirement to demonstrate Typical Unit 1 complies subsection 2. Due to the location of the internal storage cupboard an unobstructed width of 1m within the entry corridor is not provided. Further information is required to demonstrate compliance with subsection 3. Council Officers have identified that widening of doorways to laundry facilities, bedrooms and bathrooms will be required along with the relocation of WC pans and potential modification to circulation spaces which may include structural changes prior to conditioning compliance with NCC / BCA.
(7) Bedroom	At least one bedroom in a dwelling must have the following— (a) a clear area, not including a circulation space, sufficient to accommodate— (i) for a hostel—a wardrobe and a single-size bed, or (ii) for an independent living unit—a wardrobe and a queen-size bed, (b) a clear area around the area for the bed of at least— (i) 1,200mm at the foot of the bed, and (ii) 1,000mm on each side of the bed, (c) at least 2 double general power outlets on the wall where the head of the bed is likely to be, (d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be.	It is considered that at least one bedroom in can provide compliance with the requirements. It would be required that further detail in regard to the provision of outlets be demonstrated post development consent (i.e. condition of consent prior to the issue of a construction certificate to demonstrate compliance).
(8) Bathroom	(1) At least one bathroom in a dwelling must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling. (2) The bathroom must have the following— (a) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013, (b) a washbasin with tap ware capable of complying with AS 1428.1, including by future adaptation if the washbasin and tap ware continue to use existing hydraulic lines,	All individual units are single floor and therefore consideration of subsection 1(a)&(b) is not required. Council Officers concur with the <i>Access Assessment Report</i> whereby the detail of compliance with AS3661.1, details/schedules of appliances can be provided post development consent. However, compliant circulation spaces are not provided to the shower within the ensuite. Council Officers are not satisfied this can be afforded without amendments to the

	(c) a shower that— (i) is accessible without a shower-hob or step, and (ii) complies with the requirements of AS 1428.1 for the entry, circulation space, floor gradient to the wastewater outlet and location of the mixer tap, and (iii) is in the corner of a room, and (iv) has a wall capable of accommodating the installation of a grab rail, portable shower head with supporting grab rail and shower seat, in accordance with AS 1428.1, (d) a wall cabinet with shelving illuminated by an illumination level of at least 300 lux, (e) a double general power outlet in an accessible location, in accordance with AS 1428.1. (3) Subsection (2)(c) does not prevent the installation of a shower screen that can easily be removed to enable compliance with that paragraph.	layout of the proposed ensuite. Therefore, a condition cannot be recommended that this be demonstrated post development consent.
(9) Toilet	(1) At least one toilet in a dwelling must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling. (2) The toilet must have the following— (a) a water closet pan— (i) in the corner of the room, and (ii) with a centreline set-out in accordance with AS 1428.1, (b) a circulation space in front of the water closet pan that is— (i) at least 1,200mm long and at least 900mm wide, and (ii) clear of door swings and fixtures, other than a toilet paper dispenser or grab rails, (c) a circulation space around the water closet pan that complies with AS 1428.1, (d) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013, (e) a wall capable of accommodating the installation of a back rest and grab rail that will comply with AS 1428.1. (3) A removable shower screen may be located in the circulation space specified in subsection (2)(c).	Each unit contains its own toilet on the same floor as the entry to the unit. The pan within the ensuite is not located within the corner of the room. Additionally, the pan is not provided with circulation space in accordance with AS1428.1 It is considered to comply with the above-mentioned that amendments to the floor plan is required and therefore, it is not considered appropriate the matter be resolved via a condition.
(10) Surfaces of balconies and external paved areas	Balconies and external paved areas must have surfaces that are slip resistant and comply with— (a) the <i>Building Code of Australia</i>, or (b) the Standards Australia Handbook SA HB 198:2014, <i>Guide to the specification and testing of slip resistance of pedestrian surfaces</i>, published on 16 June 2014.	Capable of compliance and conditions can be recommended, consistent with BCA to ensure this outcome.

(11) Door hardware	(1) Door handles and hardware for all doors, including entry doors and external doors, must comply with AS 1428.1. (2) To avoid doubt, subsection (1) does not apply to cabinetry.	Capable of compliance and conditions can be recommended to ensure compliance with AS1428.1.
(12) Switches and power points	(1) Switches and power points must— (a) comply with AS 1428.1, or (b) be capable of complying with AS 1428.1 through future adaptation. (2) Subsection (1) does not apply to— (a) remote controls, or (b) power points likely to serve appliances that are not regularly moved or turned off.	Capable of compliance via imposition of condition.
(13) Private passenger lifts	(1) This section applies to a private passenger lift that is required by this schedule to be accessible only from inside a particular dwelling. (2) The private passenger lift must— (a) be at least 1,100mm wide and at least 1,400mm long, measured from the lift car floor, and (b) have a clear indoor landing on all floors serviced by the lift, other than the floor on which the main area of private open space is located, at least 1,540mm long and at least 2,070mm wide, and (c) have controls that comply with— (i) AS 1735.12:2020, <i>Lifts, escalators and moving walks, Part 12: Facilities for persons with disabilities</i>, published on 26 June 2020, or (ii) AS 1735.15:2021, <i>Lifts, escalators and moving walks, Part 15: Safety rules for the construction and installation of lifts — Special lifts for the transport of persons and goods — Vertical lifting platforms intended for use by persons with impaired mobility</i>, published on 23 July 2021. (3) The width of the door opening of the private passenger lift must be at least 900mm. (4) The private passenger lift must not be a stairway platform lift.	Not applicable - no private passenger lifts are provided nor required.
(15) Bedroom	At least one bedroom in an independent living unit that complies with this schedule, section 7 must be located on— (a) the same floor as the entry to the unit, or (b) a floor serviced by a private passenger lift accessible only from inside the unit.	All proposed bedrooms and multipurpose rooms are on the same floor as the entry, noting each unit is single level.
(16) Living room	(1) A living room in an independent living unit must be located on— (a) the same floor as the entry to the dwelling, or	It is considered compliance can be demonstrated prior to the issue of a construction certificate.

	(b) a floor serviced by a private passenger lift accessible only from inside the dwelling. (2) The living room must have— (a) a circulation space that— (i) is clear of all fixtures, and (ii) has a diameter of at least 2,250mm, and (b) a telecommunications or data outlet adjacent to a general power outlet.	
(17) Main area of private open space	The main area of private open space for an independent living unit must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.	Main area of private open space is located on the same floor as the entry to the dwelling.
(18) Kitchen	(1) A kitchen in an independent living unit must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling. (2) The kitchen must have a circulation space with a diameter of at least 1,200mm between each bench top, cupboard or large appliance and each other bench top, cupboard or large appliance. (3) Each circulation space specified in subsection (2) must be capable of being increased to a diameter of 1,550mm without— (a) relocating the sink, or (b) moving a load-bearing wall, or (c) breaching another circulation requirement. (4) The kitchen must have the following fittings— (a) a bench that includes at least one work surface that is— (i) at least 800mm long, and (ii) clear of obstructions, and (iii) not in the corner of the room, (b) a lever tap set with the lever and water source that is within 300mm of the front of the bench, (c) a cooktop next to the work surface, (d) an isolating switch for the cooktop, (e) an oven that— (i) has operative elements between 450mm and 1,250mm above the finished floor level, and (ii) is next to the work surface, (f) at least one double general power outlet located within 300mm of the front of a work surface. (5) The cupboards must— (a) not be entirely located in the corner of the bench or the corner of the room, and	Typical Unit 1 has a kitchen with circulation space of 1500mm in lieu of 1550mm in accordance with section 18(3). Additionally, the tap set for each Typical Unit layout is located in the corner and must be provided in accordance with section 18(8)(a).

	(b) face where the user of the fixture is likely to be. (6) An overhead cupboard in the kitchen must be capable of being fitted with “D” pull cupboard handles towards the bottom of the cupboard. (7) A below-bench cupboard in the kitchen must be capable of being fitted with “D” pull cupboard handles towards the top of the cupboard. (8) The lever tap set, cooktop, isolating switch, oven and double general power outlet must— (a) not be in the corner of the bench or the corner of the room, and (b) face where the user of the fixture is likely to be. (9) Cabinetry below a work surface must be able to be easily removed to allow wheelchair access to the work surface.	
(19) Laundry	(1) A laundry in an independent living unit must be located on— (a) the same floor as the entry to the dwelling, or (b) a floor serviced by a private passenger lift accessible only from inside the dwelling. (2) The laundry must have the following— (a) a circulation space that complies with AS 1428.1 at the approach to any external doors, (b) an appropriate space for an automatic washing machine and a clothes dryer, (c) a clear space in front of each appliance of at least 1,550mm, (d) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013, (e) a continuous accessible path of travel to the main area of private open space or any clothesline provided for the dwelling. (3) The space specified in subsection (2)(c) may overlap with a door swing or the circulation space for a door. (4) For laundry facilities in a cupboard, the cupboard must be capable of being fitted with “D” pull cupboard handles in the following locations— (a) for below-bench cupboards—towards the top, (b) for overhead cupboards—towards the bottom, (c) for floor-to-ceiling doors—between 900mm and 1,100mm above the finished floor level. (5) In this section— laundry includes laundry facilities in a cupboard.	The laundry is not provided with adequate door width, door circulation space and circulation spaces to allow 180-degree turn (section 19(2)(a)).  Figure 30 Typical Unit 1  Figure 31 Typical Unit 2

		 Figure 32 Typical Unit 3  Figure 33 Typical Unit 4 Further, clear space of 15500mm in front of the proposed location of appliances within the proposed laundries have not been demonstrated.
(20) Linen Storage	An independent living unit must have a floor-to-ceiling linen storage cupboard that— (a) is at least 600mm wide, and (b) has adjustable shelving.	Each typical unit has the provision of a storage cupboard that can be utilised for linen. Storage cupboards on the proposed plans demonstrate a width greater than 600mm. It is considered that adjustable shelving can be demonstrated on post development consent plans.
(21) Lift access in multi-storey buildings	An independent living unit on a storey above the ground storey must be accessible by a lift that complies with the <i>Building Code of Australia</i> , Volume 1, Part E3.	The provision of lifts have been afforded in each building.
(22) Garbage and recycling	A garbage storage area and a recycling storage area provided for an independent living unit must be accessible by a continuous accessible path of travel from the dwelling entrance.	Manoeuvrability in the garbage chute rooms must be addressed. Currently the garage chute is not accessible via wheelchair.

Section 86 Development standards for seniors housing – Zones RE2, SP1, SP2 and RU5

The subject Site is zoned R1 General Residential under the Tweed LEP 2014. This section is not applicable.

Section 87 Additional floor space ratios

The Tweed LEP 2014 has a prescribed maximum floor space ratio for this subject site of 1:1. The proposed development does not seek to approval beyond this and therefore, additional floor space under this section does not apply.

Division 4 Site-related requirements

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

The subject site is located within 400m of an accessible bus stop. Whereby a service cannot be provided within the means of section 93(2)(c) the site that provides private shuttle service to and from Pottsville or Kingscliff.

However, it is noted that a public bus within stops at the site at least once during daylight hours each weekday.

Section 94 Location and access to facilities and services – residential care facilities

Not applicable to the proposed land use sought for approval. Suitable access to facilities and services has been assessed under section 93 (above).

Section 95 Water and sewer

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

Section 96 Bush fire prone land

The Subject site is mapped as Bushfire Prone Land.

The Proposal was referred to Rural Fire Services (RFS) under section 100B of the *Rural Fires Act 1997* and general terms of approval (GTAs) were issued on 5 May 2025. Prior to granting GTAs RFS are required to consider the development and land use proposed. It is therefore considered that the matters under s95(2)(b) would have been considered.

It is considered that the building design has been afforded safe access and egress in accordance with the National Construction Code and Building Code of Australia.

Within this assessment the road capacity has been taken into consideration and is considered adequate to support the application. It is considered that safe access to nearby schools, townships and urban settlements can be afforded by residents utilising Tweed Coast Road.

In part of the General Terms of Approval is requirement to prepare an evacuation plan which will be required to address the safe and efficient evacuation of people. The evacuation plan will be required to address the relocation of occupations.

Whilst GTAs have been provided, Council Officers are not supportive of the extent of the required asset protection zones (APZ) within the ecological buffer zone. This is discussed in further detail in a later section in this report. The extent of the required APZ within the ecological buffer zone is illustrated in the figure 34 below.

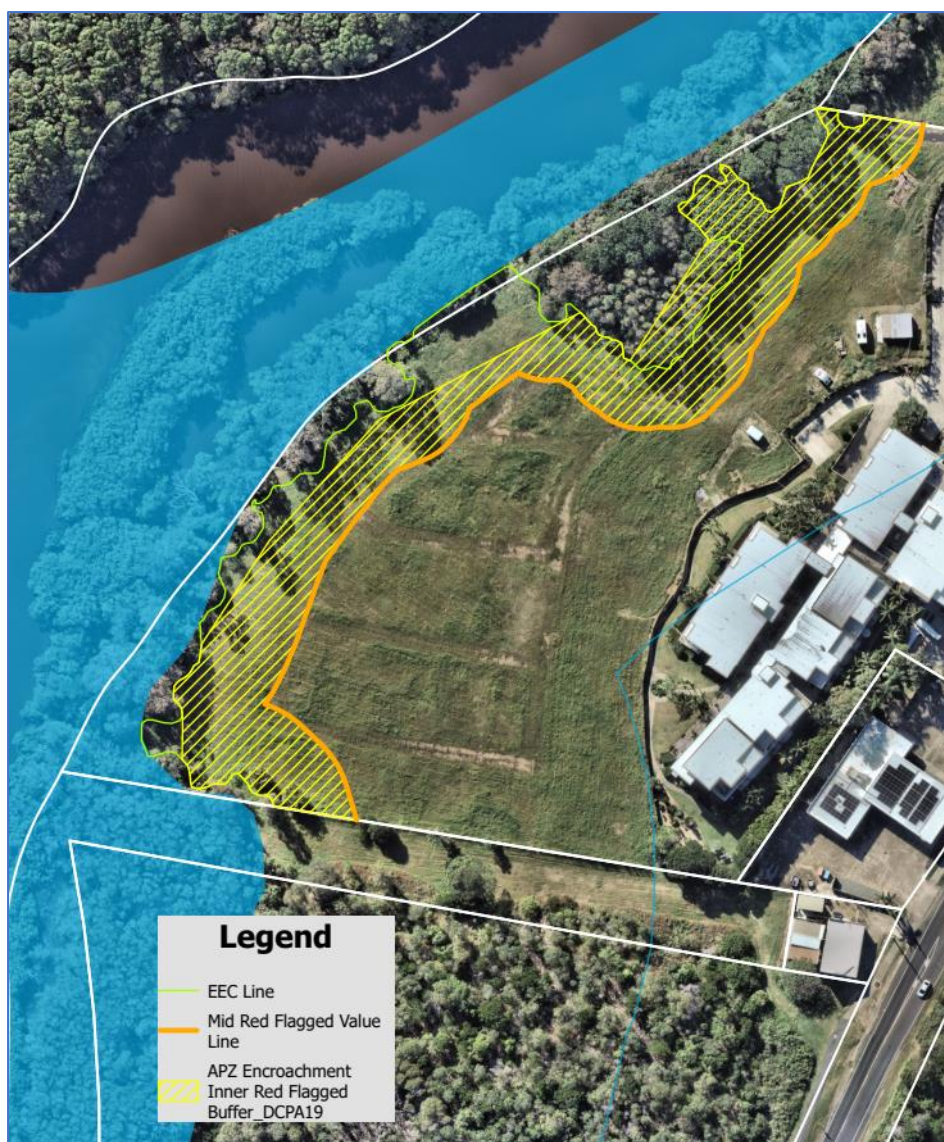


Figure 34 Proposed APZ encroachment within the inner red-flagged value ecological buffer zone

Division 5 Design Requirements

Section 97 Design of seniors housing

Section 97 states the following:

- (1) *In determining a development application for development for the purposes of seniors housing, a consent authority must consider the Seniors Housing Design Guide, published by the Department in December 2023.*
- (2) *Development consent must not be granted to development for the purposes of seniors housing unless the consent authority is satisfied the design of the seniors housing demonstrates that adequate consideration has been given to the design principles for seniors housing set out in Schedule 8.*

Section 97(1) has been addressed in **Table 8** and is followed with **Table 9** which assesses Schedule 8 (section 97(2)).

Table 8 Seniors Housing Design Principles Applicable to Proposal

Seniors Housing Design principles for independent living		
Design Principles	Requirements	Assessment
13.0 Building communities	13.1 To provide housing to accommodate for a mix of older people who may be active and independent and others who may be frail and in need of 'at home' care.	The proposal provides the following typologies: • Typical Unit Type 1 → 2 bedrooms • Typical Unit Type 2 → 2 bedrooms plus multipurpose room • Typical Unit Type 3 → 2 bedrooms plus multipurpose room • Typical Unit Type 4 → 2 bedrooms plus multipurpose room Whilst there is not necessarily diversity in of housing, bedrooms and multipurpose rooms are considered to be adaptable to the owners living requirements.
	13.2 To create environments where owner/occupants of the units can get together for activities, socialising, events and celebrations.	The proposal also includes a variety of communal facilities including: • A bowling green and pavilion equipped with a bowls store, amenities, kitchen, and a covered seating area. • An indoor swimming pool and spa, with amenities and a viewing area. • A perimeter walking trail for exercise and recreation; and • Landscaped gardens designed to enhance the visual amenity while providing a space for passive recreation. The applicant's response to these primarily reference open space not any indoor communal space. Reviewing the architectural plans, it is unclear what <i>indoor</i> communal

		spaces will be provided for the increased resident numbers to enable social connection and mitigate risks of loneliness and isolation. The architectural plans indicate a community building in the existing development but there is no reference to this in the social impact assessment, including what communal spaces may be available or capacity to support future growth.
	13.3 To provide a place of safety, wellbeing and connection.	The proposal provides character in the proposed built form with utilisation of differing materials and building forms. The proposal does not include great diversity in the unit densities or adaptability in the units to meet the needs of seniors as they age. The Application has not been supported with documentation to demonstrate adequate communal facilities to facilitate social cohesion have been afforded. The proposal includes various external community facilities however, demonstration of internal community facilities existing on the site have not demonstrated their capability to cater for additional residents. Additionally, the Applicant has not adequately addressed planning for dementia and the ability to age in place in accordance with the guidelines. It is considered that these factors can have an impact on residents' ability to form strong connections where they live.
	13.4 Provide a wide variance of character and densities of developments for senior's communities to find a suitable place to choose to belong to.	
	13.5 Places where 'like-minded people' can live together will help build social cohesion and strong connections.	
15.0 Design principles for independent living for medium density		
15.1 Neighbourhood amenity and streetscape	15.1.1 To provide two or three storey housing clusters where the scale and massing is articulated and separated to respect the character and pattern of the suburban surroundings. 15.1.2 To positively enhance the streetscape and uplift the quality of built form in the neighbourhood and provide a landscape buffer to soften the development.	The proposed development has been carefully designed to integrate with the existing Hasting Point retirement community while enhancing the overall built environment. It respects the site's current development by ensuring appropriate separation between buildings. The building separation

	15.1.3 Where practicable, preserve existing mature trees to maintain the landscape character of the streetscape. 15.1.4 Consider opportunities for meaningful landscape, usable outdoor spaces, and vegetation to soften the built form and provide privacy. 15.1.5 To provide clearly identifiable and accessible shared pedestrian and vehicular entries, driveways and paths. 5.1.6 Provide a safe, well-lit accessible path to an easily identifiable entrance lobby	helps minimise issues like overlooking and overshadowing, while also preserving important view corridors. The design features contemporary architecture that complements the existing retirement community, using materials inspired by the local landscape to connect the buildings with their surroundings and create a welcoming, natural atmosphere.
15.2 Solar access and design for climate	15.2.1 To design buildings that suit the climate zone of the development. 15.2.2 To design for: • thermal comfort • humidity • air-movement • shading • daylight • solar access 15.2.3 To optimise the building envelope's thermal protective qualities to maximise efficient use of energy for heating and cooling. 15.2.4 To maximise access to natural daylight to reduce dependence on electric lighting. 15.2.5 Undertake a detailed site analysis to determine the direction of cross breezes, types of weather patterns and path of the winter and summer sun. Orientate the building to capture breezes and to optimise solar access. 15.2.6 Provide ceiling fans and design for natural cross ventilation. Provide window shading for protection from summer sun and allow winter sun to penetrate the building. 15.2.7 Insulate roofs and avoid dark roof colours that absorb excessive heat. 15.2.8 Make opportunities to enable natural cross ventilation through apartments. Where possible, include single loaded open walkways to facilitate this. 15.2.9 Provide a range of outdoor and semi-outdoor settings that provide appropriate seasonal responses e.g. shaded outdoor space in summer, and sunny outdoor space in winter. gardening and walking to promote health and activity.	The development prioritises passive environmental design, incorporating elements such as solar access, natural light and ventilation, cross ventilation, water harvesting, and solar farming. The buildings are made with durable, low-maintenance materials like face blockwork, pre-finished metal, and Colourbond roofing to ensure longevity. The apartments are designed to meet high standards for accessibility and aging in place, with universal design features in line with Liveable Housing Guidelines. Living areas and private open space to all units is orientated north or north-west, achieving a minimum of 3 hours direct sunlight between 9am and 3pm mid-winter. Additionally, all apartments provide for cross ventilation.
15.3 Stormwater	15.3.1 To minimise erosion and the potentially damaging effects from	The proposal has adequately addressed stormwater measures.

	stormwater run-off on landscape and stability of pathways. 15.3.2 To maintain safe access through the site. 15.3.3 Provide opportunities to increase the catchment and/or absorption of stormwater with systems such as vegetated swales, sediment basins, detention pits and porous landscape paving. 15.3.4 Maximise areas for deep soil landscape so that plants can mature into dense stormwater catchment areas and absorb ground water.	The measures proposed to be implemented are considered appropriate to minimise environmental impact
15.4 Crime prevention	15.4.1 To encourage crime awareness and passive community surveillance to deter crime. 15.4.2 Front entries to shared lobbies can be glazed to give transparency and visual links through. 15.4.3 Design to facilitate/allow surveillance from dwellings to the street. 15.4.4 Provide access control to shared communal lobbies. 15.4.4 Provide lighting to common areas and walkways and ensure any basement parking is well lit 24 hours a day.	To promote safety and community engagement, the design follows principles of Crime Prevention Through Environmental Design (CPTED), with passive surveillance from the apartments overlooking communal spaces. The front proposed entries include full length glazing with buildings including an active frontage through pedestrian pathways and visitor car parking provisions out the front. The proposed units allow for a passive surveillance from private balconies to the west of the site, whereby walking trails have been included in the landscape plan. It is considered that crime prevention can be accommodated onsite. Lighting and controlled access whereby it is deemed appropriate application be approved can be conditioned.
15.5 Accessibility	15.5.1 To provide clearly identifiable and accessible shared pedestrian entry for small clusters of dwellings. 15.5.2 To provide accessible and adaptive housing to meet the needs of physical ageing and mobility issues. 15.5.3 The design of shared entries, letterboxes and lift lobbies should be accessible, and provide adequate circulation for small groups of people. 15.5.4 Design apartments with adequate circulation, clearances and overall room dimensions, so that they can be adapted to the individual needs as mobility levels decrease. 15.5.5 Provide level access to private or communal outdoor spaces and gardens and consider incorporating	The architectural plans submitted do not identify the location of letterboxes for the proposed ILUs. Internal circulation spaces per AS1428.1 have not been adequately demonstrated. It is considered appropriate this is demonstrated prior to the issue of a consent as any required amendments to the floor plan will require a modification application be determined. Noting the noncompliance's, it is considered that the ILUs as submitted have limited adaptive potential to meet the needs of physical aging and mobility issues.

	places to sit, rest or meet with other residents.	
15.6 Waste Management	15.6.1 To provide waste management systems that manage health, safety and environmental issues. 15.6.2 To provide easy to access waste disposal points for independent residents to use. 15.6.3 To facilitate recycling of waste. 15.6.4 Provide appropriately sized disposal points that can accommodate bins for the various waste types including recyclables. 15.6.5 Ensure that waste collection points are safely located away from resident areas, are covered and easily accessible.	It is considered that the management and collection service can be managed via conditions. However, insufficient information has been provided to demonstrate easy access waste disposal points for independent residents. Manoeuvrability in the garbage chute rooms must be addressed. Currently the garage chute is not accessible via wheelchair.

Table 9 Schedule 8 Design principles for seniors housing

1 Neighbourhood amenity and streetscape	Seniors housing should be designed as follows— (a) to recognise the operational, functional and economic requirements of residential care facilities, which typically require a different building shape from other residential accommodation, (b) to recognise the desirable elements of— (i) the location's current character, or (ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area, (c) to complement heritage conservation areas and heritage items in the area, (d) to maintain reasonable neighbourhood amenity and appropriate residential character by— (i) providing building setbacks to reduce bulk and overshadowing, and (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and (iv) considering, where buildings are located on the	It respects the site's current development by ensuring appropriate separation between buildings. The building separation helps minimise issues like overlooking and overshadowing, while also preserving important view corridors. The design features contemporary architecture that complements the existing retirement community, using materials inspired by the local landscape to connect the buildings with their surroundings and create a welcoming, natural atmosphere. However, the proposal results in adverse impact on environmental systems. The proposal seeks to significantly vary relevant environmental and ecological controls applicable to the subject site considered necessary to avoid and minimise cumulative direct and indirect impacts upon the adjacent Cudgera Creek riverine corridor and associated riparian habitat.
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	boundary, the impact of the boundary walls on neighbours, (e) to set back the front building on the site generally in line with the existing building line, (f) to include plants reasonably similar to other plants in the street, (g) to retain, wherever reasonable, significant trees, (h) to prevent the construction of a building in a riparian zone.	
2 Visual and acoustic privacy	Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and all residents of the seniors housing by— (a) using appropriate site planning, including considering the location and design of windows and balconies, the use of screening devices and landscaping, and (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The Development Application has been supported by an <i>Acoustic Report – Noise Impact Assessment and Construction Noise & Vibration Management Plan</i>, prepared by ADP Consulting Engineering, revision 2 and dated 9 August 2024. The consultant has considered the following: a) Traffic noise from internal roads. b) Bowling greens. c) Walking trail. d) Pool Pavilion. e) Waste collections Whilst it would appear bedrooms are not located directly above basement access, they are susceptible to noise from internal access ways. It is considered the acoustic report be amended to take into consideration glazing specifications to ensure worst case scenario against sensitive receivers. It is considered that appropriate screening to protect visual amenity has been afforded in the design.
3 Solar access and design for climate	The design of seniors housing should— (a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of	The development incorporates elements such as solar access, natural light and ventilation and cross ventilation. The buildings have been positioned as to not impact on the existing built forms access to solar

	daylight in neighbouring buildings, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	onsite and offsite via the provision of adequate building setbacks. Living areas and private open space to all units are orientated north or north-west, achieving a minimum of 3 hours direct sunlight between 9am and 3pm mid-winter.
4 Stormwater	The design of seniors housing should aim to— (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	The proposal has adequately addressed stormwater measures. The measures proposed to be implemented are considered appropriate to minimise environmental impact.
5 Crime prevention	Senior's housing should— (a) be designed in accordance with environmental design principles relating to crime prevention, and (b) provide personal property security for residents and visitors, and (c) encourage crime prevention by— (i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and (ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and (iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	Considered above.
6 Accessibility	Senior's housing should— (a) have obvious and safe pedestrian links from the site that	The proposal demonstrates pedestrian links in the submitted Architectural Plans

	provide access to transport services or local facilities, and (b) provide safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	and Concept Landscape Plan. However, detailed plans demonstrating the relationship between the internal roads and pedestrian pathways has not been provided to Council to assess. A 'Pedestrian Access and Movement Plan' for the site is to be prepared in accordance with 'DCP A2 SITE ACCESS AND PARKING CODE Section A2.2.1 Access and Parking Design' to ensure safe movement of pedestrian and vehicles onsite is afforded.
7 Waste management	Senior's housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	Service of waste can be adequately achieved. However, manoeuvrability in the garbage chute rooms must be addressed. Currently the garage chute is not accessible via wheelchair.

Division 7 Non-discretionary development standards

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

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

The non-discretionary development standards are addressed in **Table 10**.

Table 10 section 108 non-discretionary development standards for independent living units

108 Non-discretionary development standards for independent living units—the Act, s 4.15		
	Comment	Complies Y/N
(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,	Proposed maximum building height of 11.92m including servicing equipment. The proposal does not comply, and the applicant has submitted a request to vary the control under cs4.6 of the Tweed LEP 2014.	N

	This has been addressed under the s4.6 assessment of the <i>Tweed LEP 2014</i> .	
(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m— (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and (ii) is limited to an area of no more than 20% of the surface area of the roof, and (iii) does not result in the building having a height of more than 11.5m,	The articulation of the roof is the result of the exceedance of 11.5m in height and not servicing. Solar panels located on the roof do not exceed 11.5m. Therefore, this section does not apply.	N/A
(d) a minimum landscaped area that is the lesser of— (i) 35m ² per dwelling, or (ii) 30% of the site area,	In accordance with the provision, the proposal requires at least 11,391m ² of landscaped area. it is considered that this can be provided.	Y
(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,	In accordance with this control, 5695.5m ² of deep soil zone is required. The proposal has the ability to comply however, the proposed landscape intent submitted has not been considered in the Bushfire Assessment Report. Further information is required to determine whether proposed tree planting requires further assessment to the required asset protection zone.	N
(g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,	The Architectural Plans prepared by Arqus Design demonstrate that all units receive the minimum required 2 hours of direct solar access between 9am – 3pm.	Y
(h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building— (i) at least 15m ² of private open space per dwelling, and (ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,	All units located on the ground floor are allocated private balconies with an area in exceedance of 24m ² . Dimensions however fall short of 3m, being 2.8m. It is considered the minor variation is acceptable.	N
(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony	All units located on the ground floor are allocated private balconies with an in exceedance of 24m ² .	Y

accessible from a living area with minimum dimensions of 2m and— (i) an area of at least 10m ² , or (ii) for each dwelling containing 1 bedroom—an area of at least 6m ² ,	The minimum dimension of balconies is 2.8m.	
(j) for a development application made by, or made by a person jointly with, a social housing provider or Landcom—at least 1 parking space for every 5 dwellings,	Not applicable	
(k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.	The proposal is required to provide a total of 80 parking spaces (159 bedrooms x 0.5 parking spaces). The Applicant has proposed a total of 132 parking spaces in relation to the current development application.	Y

Chapter 4 Design of residential apartment development

This chapter applies to the subject site where the following is proposed:

- (a) development for the purposes of residential flat buildings,*
- (b) development for the purposes of shop top housing,*
- (c) mixed use development with a residential accommodation component that does not include boarding houses or co-living housing, unless a local environmental plan provides that mixed use development including boarding houses or co-living housing is residential apartment development for this chapter.*

It is noted that whilst the Proposal seeks use for a seniors living, the Proposal seeks consent for development per s144(3)(b) being:

- (3) This chapter applies to development only if—*
 - (a) the development consists of—*
 - (i) the erection of a new building, or*
 - (ii) the substantial redevelopment or substantial refurbishment of an existing building,*
 - or*
 - (iii) the conversion of an existing building, and*
 - (b) the building is at least 3 storeys, not including underground car parking storeys, and***
 - (c) the building contains at least 4 dwellings.*

Section 147(1) requires the consent authority to have considered the following prior to granting consent for residential apartment development:

- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- (b) the Apartment Design Guide,*
- (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

Development Application is not state significant development and therefore an assessment under s147(1)(c) is not required.

It is noted that a full assessment against the Apartment Design Guidelines (ADG) is attached in **Attachment D**. It is however, noted that the proposal as provided insufficient information for Council to support the Development Application against the following sections:

- Pedestrian Access and Entries 3G-2 & 3G-3
- Solar Access and Daylight (4A)
- Natural Ventilation (4B)
- Apartment Layout 4D- 1: The Layout of rooms within an apartment is functional, well organised and provides a high standard of amenity
- Private Open Space and Balconies 4E-1: Apartments provide appropriately sized private open space and balconies to enhance residential amenity
- Acoustic Privacy (4H)
- Ground Floor Apartments 4L-2: Design of ground floor apartments delivers amenity and safety for residents.
- Planting on Structures (4P); and
- 4W-2: Domestic waste is minimised by providing safe and convenient source separation and recycling.

Table 11 Schedule 9 - Residential Flat Buildings

Schedule 9 Design Principles for residential apartment development		
		Comment/Assessment
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. (2) Responding to context involves identifying the desirable elements of an area's existing or future character. (3) Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. (4) Consideration of local context is important for all sites, including sites in the following areas— (a) established areas, (b) areas undergoing change, (c) areas identified for change.	The proposed development has been carefully designed to integrate with the existing TriCare (previously known as Hasting Point retirement community) which fronts the streetscape. Undeveloped Crown land adjoins the site to the north and south (Lot 7015 DP1068895). A service station is located adjacent to the southeast portion of the site. To the west of the site are mapped Coastal Wetlands with undeveloped bushland beyond Cudgera Creek and the mapped Coastal Wetlands. To the north of the site is a narrow strip of low-density residential development fronting Tweed Coast Road. The undeveloped Cudgera Beach coastal reserve is located to the east being a mix of Crown and Tweed Shire Council owned land. The area is not identified for substantial change under the local plan (DCP Section B23) and it is considered the predominant

		built form is per Figure 35. When establishing the local context plan DA06/0413 had been approved and therefore considered in the future built form. It is not considered the density or scale of the built has drastically changed and therefore remain generally consistent with the intended built form in the area. However, the proposal does encroach further into the riparian zone which is a key concern of this Development Application and is discussed in detail elsewhere in this report. As the proposal has not taken into consideration the contemporary framework, which has come into force post approval DA06/0413, the proposal result in a direct impact on the Cudgera Creek riverine corridor. Cudgera Creek is identified as a key characteristic of the area, which has not been considered appropriately within this Development Application.  <i>Figure 35 South Hastings Point Precinct Illustrative Plan</i>
2 Built form and scale	(1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. (2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—	The proposed built form sites behind the existing residential flat buildings onsite. The proposed therefore, has no frontage to an existing streetscape. The built form is respective of views from the public realm and continues to offer internal views and vistas to residents of the development. The proposed density of the development is consistent with the maximum prescribed floor space ratio allowable on the subject site

	(a) building alignments and proportions, (b) building type, (c) building articulation, (d) the manipulation of building elements. (3) Appropriate built form— (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.	however, the positioning of the development is not consistent with the desired future character that affords protection of Cudgera Creek. The design has been carefully considered to achieve a refined, articulated building envelope with varied and stepped forms, modulated skyline, application of fine grain elements (including screens and sunshade elements) and incorporation of semi open corridors and glazing. The proposed built form on site provides for differing materials, colour and articulation to allow for identification. However, Council Officers are not supportive of the proposed maximum building height of 11.920m. Insufficient information has been provided to allow Council Officers to support the proposed section 4.6 variation against building height.
3 Density	(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. (2) Appropriate densities are consistent with the area's existing or projected population. (3) Appropriate densities are sustained by the following— (a) existing or proposed infrastructure, (b) public transport, (c) access to jobs, (d) community facilities, (e) the environment.	The Social Impact Assessment as not provided a detailed assessment to determine whether the subject site and the existing public community services can provide for adequate support for the projected seniors community. It is considered the further investigation into the capabilities of services to cater for an aging population that would be required to access additional care as needs advance with age is required. The existing approval on site would have afforded varying needs of care, however, with the removal of assisted living and high care onsite the level care available onsite increases the need for services within the community to be available for residents to access. Additionally, the proposal has not demonstrated that the provision of communal facilities provided is sufficient to provide for a diverse community within the seniors living facility.
4 Sustainability	(1) Good design combines positive environmental, social and economic outcomes.	The proposal is considered to incorporate good sustainable design; however, further information is required in regard to cross ventilation and sunlight access to the

	(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.	proposed multi-purpose rooms within the units. The proposed multipurpose rooms currently do not include any provision of a window, whereby the room is a habitable room and therefore requiring access to natural light and ventilation. Council Officers otherwise satisfied that the design is responsive to the environment and climatic conditions of the area.
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 character of the streetscape and neighbourhood. (3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following— (a) the local context, (b) co-ordinating water and soil management, (c) solar access, (d) micro-climate, (e) tree canopy, (f) habitat values, (g) preserving green networks. (4) Good landscape design optimises the following— (a) usability, (b) privacy and opportunities for social interaction, (c) equitable access, (d) respect for neighbours' amenity. (5) Good landscape design provides for practical establishment and long-term management.	The Proposal has been supported with a <i>Concept Landscape Plan</i>, prepared by Arcadia, revision E and dated 24 October 2024. The submitted plan as not been considered within the supporting <i>Bushfire Assessment Report</i>. It is considered that further consideration as how the proposed landscape concept interacts with the asset protection requirements as imposed by Rural Fire Services is required.

6 Amenity	(1) Good design positively influences internal and external amenity for residents and neighbours. (2) Good amenity contributes to positive living environments and resident well-being. (3) Good amenity combines the following— (a) appropriate room dimensions and shapes, (b) access to sunlight, (c) natural ventilation, (d) outlook, (e) visual and acoustic privacy, (f) storage, (g) indoor and outdoor space, (h) efficient layouts and service areas, (i) ease of access for all age groups and degrees of mobility.	The development prioritises passive environmental design, incorporating elements such as solar access, natural light and ventilation, cross ventilation and provision water tanks, and solar panels. However, the following is required to be demonstrated to ensure amenity and privacy of future residents: • Building G - It is recommended that the lower-level garden units are fixed with solid balustrade (or mostly solid and part open) to ensure privacy to the occupants, glass balustrades (on the elevated ground floor designs) may reduce privacy. • Operational and movable screens should be applied to all northern facing balconies. Additionally, concerns raised regarding accessibility earlier within this report are required to demonstrate 'ease of access for all age groups' can be afforded.
7 Safety	(1) Good design optimises safety and security within the development and the public domain. (2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose. (3) Opportunities to maximise passive surveillance of public and communal areas promote safety. (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.	Safety and crime prevention has been considered within Chapter 3 of the <i>SEPP (Housing) 2021</i>. In summary it is considered that overall provisions within the design have been afforded to ensure safety of residents, and the public can be achieved.
8 Housing diversity and social interaction	(1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. (2) Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix. (3) Good design involves practical and flexible features, including—	The proposal provides the following unit typologies: • Typical Unit Type 1 → 2 bedrooms • Typical Unit Type 2 → 2 bedrooms plus multipurpose room • Typical Unit Type 3 → 2 bedrooms plus multipurpose room

	(a) different types of communal spaces for a broad range of people, and (b) opportunities for social interaction among residents.	• Typical Unit Type 4 → 2 bedrooms plus multipurpose room Whilst there is not necessarily diversity in the unit typologies proposed it is considered that the included multipurpose rooms are adaptable to the owners living requirements. However, as mentioned in the assessment of Chapter 3 of the <i>SEPP (Housing) 2021</i> there is limited capability for the units to adapt to demographic group of the land use (i.e. seniors). The proposal also includes a variety of communal facilities including: • A bowling green and pavilion equipped with a bowls store, amenities, kitchen, and a covered seating area. • An indoor swimming pool and spa, with amenities and a viewing area. • A perimeter walking trail for exercise and recreation; and • Landscaped gardens designed to enhance the visual amenity while providing a space for passive recreation. The applicant's response to these primarily reference open space not any indoor communal space. Reviewing the architectural plans, it is unclear what amenity the indoor communal spaces within the pavilions will be provide for those not able to necessarily socialise in more active realms. It is noted that indoor communal spaces (i.e. theatre room) where included in the development of Stage 1 under DA06/0413 however, the Applicant has not addressed whether these spaces are adequate to meet the needs of the increased resident numbers to enable social connection and mitigate risks of loneliness and isolation. The architectural plans indicate a community building in the existing development but there is no reference to this in the social impact assessment, including what
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		communal spaces may be available or capacity to support future growth.
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.	The proposed development has been carefully designed to integrate with the existing Hasting Point retirement community while enhancing the overall built environment. It respects the site's current development by ensuring appropriate separation between buildings. The building separation helps minimise issues like overlooking and overshadowing, while also preserving important view corridors. The design features contemporary architecture that complements the existing retirement community, using materials inspired by the local landscape to connect the buildings with their surroundings and create a welcoming, natural atmosphere. The front and rear façade appear to be finished in differing materials, it may be due to the perspectives, applicant encouraged to ensure organic palette and external finishes relate to all elevations. Should be imposed via condition of consent. Front façade details are uncertain, Council is aware that a materials palette has been provided however, it should be re-considered. It is considered that where an RFI is issued this could be addressed alternatively where an approval was to be issued without the issue of a RFI a condition could be imposed that an itemised schedule of materials and finishes is provided to Council.

Section 148 identifies non-discretionary development standards that are required to be considered by the consent authority. Whereby, the non-discretionary standards are complied with, this prevents the consent authority requiring more onerous standards for the matters.

The following are non-discretionary development standard:

- (a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

These non-discretionary development standards have been addressed in **Table 12** below.

Table 12 Section 148 non-discretionary development standards for residential flat buildings

148 Non-discretionary development standards for residential flat buildings – the Act, s 4.15

	Guide Requirement	Complies Y/N																										
(a) Car Parking - Part 3J of the Apartment Design Guide	For development in the following locations: - on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or - on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.	The subject site is not located within a nominated regional centre per Table 3 within the Apartment Design Guide. Car parking has been assessed under Chapter 3 Part 5 Housing for Seniors of the <i>State Environmental Planning Policy (Housing) 2021</i>.																										
(b) Internal area – Part 4D of the Apartment Design Guide	1. Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment Type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedrooms</td><td>70m²</td></tr><tr><td>3 bedrooms</td><td>90m²</td></tr></table> 2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	Apartment Type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedrooms	70m ²	3 bedrooms	90m ²	As discussed within this report the Applicant seeks approval for 4 differing unit typologies being: - Typical Unit Type 1 - Typical Unit Type 2 - Typical Unit Type 3; and - Typical Unit Type 4 <table><tr><th>Building</th><th>Bedroom</th><th>Internal Area</th></tr><tr><td rowspan="2">Building D</td><td>2 bedrooms</td><td>108m²</td></tr><tr><td>3 bedrooms</td><td>130m²</td></tr><tr><td rowspan="2">Building E</td><td>2 Bedrooms</td><td>108m²</td></tr><tr><td>3 bedrooms</td><td>128m²</td></tr><tr><td>Building F</td><td>2 bedrooms</td><td>108m²</td></tr></table>	Building	Bedroom	Internal Area	Building D	2 bedrooms	108m ²	3 bedrooms	130m ²	Building E	2 Bedrooms	108m ²	3 bedrooms	128m ²	Building F	2 bedrooms	108m ²
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	3 bedrooms	128m ²								
Building G	2 bedrooms	108m ²								
	3 bedrooms	128m ²								
		Proposed multi-purpose rooms within Typical Unit Layout 3 within Building E do not demonstrate access to a window. The room is considered a habitable room and therefore, the Applicant is to further address this requirement.								
	1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Note - multi-purpose rooms that propose an area equal or greater than 3m x 3m are assessed as a potential bedroom. The Proposal provides open layouts whereby the minimum depth is 11m. It is however noted, whilst compliant with this section further information is required to determine whether the accessible circulation in accordance with Chapter 3 can be afforded noting the proposed variation.								
	1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space) 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space) 3. Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1-bedroom apartments • 4m for 2- and 3-bedroom apartments 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Master bedrooms have a minimum area of 12.5m² (excluding wardrobe) with a minimum 3m dimension. Living rooms for all units have a width greater than 4m.								

(c) Ceiling heights – Part 4C of the Apartment Design Guide	1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	The applicant has demonstrated compliance against the applicable design guidance.	
	Minimum ceiling height for apartment and mixed-use buildings		
	Habitable rooms		2.7m
	Non-habitable		2.4m
	For 2 Storey apartments		2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
	Attic spaces		1.8m at edge of room with a 30-degree minimum ceiling slope
	If located in mixed used areas		3.3m for ground and first floor to promote future flexibility of use
These minimums do not preclude higher ceilings if desired.			

Section 149 states:

A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—

- (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.*

As these matters are not non-discretionary development standards they have not been pulled out of the ADG assessment and into this report. The abovementioned matters have been assessed within **Attachment D**. Non-compliances with the ADG have been nominated earlier within this report.

Chapter 6 Low and mid rise housing

Section 164(1) outlines that this chapter applies to all land within the State, unless otherwise specified. The following exclusions under s164(1) are applicable to the subject site:

- (a) bush fire prone land,
- (g) land in a flood planning area in the following local government areas—
(xxi) Tweed.

Chapter 6 is therefore not applicable to the subject application.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

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

The proposed seniors housing development, as originally proposed, has a proposed capital investment value of \$85,029,219.00 (excluding GST) which exceeds the \$30 million threshold for general development.

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

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 - Coastal Management

The subject site is mapped within a Coastal Wetland area.

Division 1 Coastal wetlands and littoral rainforests area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

(1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent—*

- (a) *the clearing of native vegetation within the meaning of Part 5A of the [Local Land Services Act 2013](#),*
- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the [Fisheries Management Act 1994](#),*
- (c) *the carrying out of any of the following—*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
- (d) *any other development.*

In reviewing the submitted *Hydrogeological Impact Assessment*, prepared by Martens & Associates and dated 9/10/2024, dewatering activities are required to undertake development works. The following is stated on pg. 22 of the mentioned report:

“Based on observed groundwater levels at the site, temporary groundwater dewatering will be required during excavation and construction of the proposed basements for buildings D – G.”

Martens & Associates have prepared temporary dewatering model results, which indicates drawdown within mapped Coastal Wetlands onsite will occur.

“This assessment found that expected groundwater drawdown caused by the proposed development will be no greater than 0.15 m in nearby coastal wetland areas to the west of the Site.”

The modelling further indicates that drawdown in the mapped Coastal Wetland adjacent to the subject site will also be an indirect impact from the dewatering on site.

“Modelling indicates that drawdown impacts arising from temporary dewatering will largely be limited to the site, with drawdown of no greater than 0.1 m predicted outside site boundaries.”

It is therefore established that development consent for ‘draining the land’ in accordance with s2.7(1)(c) is required.

Further consideration of s2.7(2)&(3) is therefore considered by the consent authority.

(2) Development for which consent is required by subsection (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.

(3) Despite subsection (1), development for the purpose of environmental protection works on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map may be carried out by or on behalf of a public authority without development consent if the development is identified in—

- (a) the relevant certified coastal management program, or*
- (b) a plan of management prepared and adopted under Division 2 of Part 2 of Chapter 6 of the [Local Government Act 1993](#), or*
- (c) a plan of management under Division 3.6 of the [Crown Land Management Act 2016](#).*

The proposed works are not considered to be ‘environmental protection works’ and therefore, per s2.7(2) the works result in the Development Application being designated development.

The Applicant has not addressed how the ‘draining of land’ as a direct result of undertaking works for the Development Application do not constitute designated development. The Applicant has expressed that the impact would be minimal however, s2.7 is explicit that any works as defined in s2.7(1) is designated development.

It is noted that s2.7(4) requires the consent authority be satisfied that sufficient measures can be afforded where works referred to in s2.7(1) are proposed:

(4) A consent authority must not grant consent for development referred to in subsection (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.

In considering the wording of s2.7(4), does not rescind that specified under s2.7(2).

It is therefore Councils position that the Development Application is designated development under s2.7(1) per s2.7(2) and s2.7(4) only be considered in the scenario whereby an Environmental Impact Statement (EIS) has been submitted with the Development Application.

Therefore, given the above assessment the Development Application is considered to be designated development for the purposes of the Act. The proposal is not accompanied by an EIS and fails to fulfil designated development requirements and therefore, this will form a recommended reason for refusal.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—

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

(2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

The proposed development results in direct impact upon of approximately 100m² of existing protected coastal vegetation within Proximity to Coastal Wetlands to achieve the proposed asset protection zones (APZs). The vegetation is representative of two endangered ecological communities, on an over-cleared Mitchell Landscape offering habitat for threatened species including Mangrove Honeyeater (*Lichenostomus fasciocularis*) being a Serious and Irreversible Impact Species (SAIL).

The removal of vegetation is likely to result in unacceptable and significant adverse environmental impact by restricting the width of the western Cudgera Creek (Coastal Wetland) fauna corridor and exacerbating the influence of edge effects post development particularly for those species reliant on riparian vegetation.

Additionally, the groundwater drawdown has the potential to alter the health, integrity and assemblage of riparian habitat (plant community type (PCT) 3989) comprising the coastal wetland area. In particular, the threatened species Wallum Froglet (*Crinia tinnula*) has been identified occupying wetland habitat immediately adjacent and to the south-west of the site within the predicted zone of influence of groundwater draw-down. The drying of currently occupied habitat may result in sub-optimal conditions for the species.

Noting the abovementioned, insufficient information has been provided to demonstrate the proposal will not have a significant impact upon the biophysical, hydrological or ecological integrity of the adjacent coastal wetland area.

Division 3 Coastal environment area

1.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

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

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

As discussed in detail above, Council Officers are not satisfied the Development avoids adverse impact, with development resulting in the following impact within the coastal use area:

- The proposal would result in compromised ecological outcomes
- The proposal is considered to represent designated development as a result of predicted groundwater drawdown from the Coastal Wetland Area extending onsite. The proposal is not accompanied by an Environmental Impact Statement and fails to fulfil designated development requirements
- The proposal has not clearly demonstrated that significant impact upon the biophysical or ecological integrity of the adjacent coastal wetland area, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland area can be avoided.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*

- (b) *is satisfied that—*
- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The proposed development is not considered to be positioned to avoid impact on the coastal use area. The proposed location results in the clearing of existing protected coastal vegetation to allow for the establishment of APZs per the general terms of approval issued by RFS.

Further, the Proposal is not considered conducive of the built form in the immediate area, whereby adequate buffers to the Cudgera Creek have not been afforded per Council controls. The loss of buffers per Council controls results in a development footprint that is not consistent with the temporary legislation and the existing built form resulting in undesirable impacts on the coastal use area.

Section 2.8 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* will form a recommended reason of refusal.

Division 5 General

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

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is not on the coastal foreshore and is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the Plan.

Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)

As the subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), this Plan is not considered relevant to the proposed development.

Coastal Zone Management Plan Tweed Coast Estuaries 2013

The proposed development adjoins, Cudgera Creek which forms part of the Mooball Creek sub-catchment. As discussed in detail (above) the proposal is considered to result in adverse impact on the Creeks ecological and hydrologic integrity.

Kingscliff – Dreamtime Coastal Zone Management Plan

This plan is not applicable to the subject site.

Tweed River Estuary Coastal Management Program

This plan is not applicable to the subject site.

Chapter 4: Remediation of Land

4.6 Contamination and remediation to be considered in determining development application

- (1) *A consent authority must not consent to the carrying out of any development on land unless—*
- (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is—*
- (a) land that is within an investigation area,*
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital—land—*
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The subject site was subject to historical Heavy Mineral Sand Mining activities. This activity is considered potentially contaminating (Radiation). The Development Application has been supported by a *Detailed Site Investigation* (DSI), prepared by Martens & Associates Pty Ltd and dated 21 October 2024.

The DSI does not sufficiently review the radiation assessments to support their statement that the radiation risk is low. The DSI report states the following:

“Potential radiation risk associated with former mining activities has been assess for the IA (and surrounding land) in a number of different reports including a Site Audit Statement (SAS) prepared in 2010 by Cavvanba Consulting Pty Ltd (Cavvanba, 2010) and a more recent investigation by ENV Solutions (2020). Previous

assessment and reporting generally determined that radiation risk at the site from former mining activities is considered to be low.

It is noted that a detailed review of previous radiation assessments completed for the IA was beyond the scope of works for this DSI.”

The existing (and active) consent DA06/0413 for the site specifies that the NSW EPA Site Auditor must have oversight in relation to the radiation (Condition No. 103). There has been no evidence forthcoming with the Development Application that would mean Councils position changes on this requirement. The *SEPP (Resilience and Hazards) 2021* requires the delineation of the extent of contamination (i.e. radiation) be determined prior to consent to ensure remediation is possible.

Reviewing Councils records a Site Audit Statement (SAS) was issued by the NSW EPA Site Auditor for Stage 1 under DA06/0413, per the identified area in Figure 36.



Figure 36 Assessed land in the SAS under DA06/0413

This excludes the majority of the subject area associated with the subject application. The SAS is also subject to a long-term environmental management plan (LTEMP). The SAS is for residential use with limited access to soils (it is considered this appropriate in considering the National Measures and no further assessment under National measures is required). The SAS relates to radiological issues associated with the heavy mineral sands for the above area only.

The DSI does not mention that the subject site has a SAS, subject to a LTEMP nor has a Section 88B been placed on title, as required under the LTEMP.

The submitted DSI is insufficient and cannot be supported. Chapter 4 of the *State Environmental Planning Policy (Hazards and Resilience) 2021* will form a recommended reason of refusal.

State Environmental Planning Policy (Transport and Infrastructure) 2021 Chapter 2 Infrastructure

Section 2.48: Determination of development applications – other developments

The subject application was referred to Essential Energy under section 2.48 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021*. Essential Energy provided a response on 25 March 2025, raising no objection to the Proposal.

Section 2.119 Development with frontage to classified road

This section applies to land which has a frontage to a classified road. The adjoining road to the site, being Tweed Coast Road is a Classified Road. Vehicular and pedestrian access to the site is currently provided directly off Tweed Coast Road, and this is considered to be retained. Council Officers have reviewed the proposal and the capability of Tweed Coast Road to continue to provide safe, efficient and ongoing operation of the road. It is considered with minor upgrade works, that the safe, efficient and ongoing operations of the road service will not be impacted. Minor upgrade works include upgrades to line marking and signage.

A Traffic Management Plan is required to be prepared in accordance with Council Officers requirements however, the works within the road reserve would be subject to a s138 approval under the *Road Act 1993*.

Section 2.122 Traffic generating development

The proposal seeks approval for 69 independent living units however; an existing 91 independent living units are existing onsite. Therefore, noting the care model previously assessed and the care model for the site under the current development application it was considered by Council Officers notifying Transport for New South Wales (TfNSW) of the DA under this section.

TfNSW refused the referral on the 25 March 2025 noting the following:

Thank you for referring this matter to Transport for NSW (TfNSW) for its comment. The proposed development does not appear to meet the numerical criteria under Schedule 3 of the SEPP (Transport and Infrastructure) to trigger a referral under section 2.122.

Tweed Local Environmental Plan 2014

The relevant local environmental plan applying to the site is the *Tweed Local Environmental Plan 2014* ('the LEP'). The aims of the LEP include:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) to encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*

- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) to conserve or enhance areas of defined high ecological value,*
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposal is not considered consistent with the following 'Aims of this Plan':

- *(c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- *(g) to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- *(i) to conserve or enhance areas of defined high ecological value,*
- *(j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

Clause 1.2 of this plan will form a recommended reason of refusal.

Clause 2.3 Zone objectives and Land Use Table

The site is located within the R1 - General Residential Zone pursuant to cl.2.2 of the *Tweed LEP 2014*.

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

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.*
- *To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.*

It is considered that the Proposal is generally consistent with the zone objectives. This is discussed in detail within Council Officers assessment of the Tweed DCP Section A13 Socio-economic impact assessment within this report.

Clause 4.3 – Height of buildings

The proposed development seeks approval to vary the maximum 8m height limit prescribed under cl.4.3(2) of the TLEP 2014.

A cl.4.6 variation request has been submitted with the application which is addressed in detail in a later section of this report.

The maximum height of the proposal is 11.92m which is 3.92m above the height control and represents a 49% variation to the development standard.

Further, section 108 non-discretionary development standards for independent living units and section 179 non-discretionary development standards – residential flat buildings and shop top housing in Zone R1 or R2 under the *State Environmental Planning Policy (Housing) 2021* are sought to be varied. The non-discretionary standards permit for a maximum building height for independent living units of 9.5m, which prevails over the development standard prescribed under the *Tweed Local Environmental Plan 2014*.

The proposal does not comply with the objectives of cl.4.3 being:

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

The site is zoned R1 which allows a range of residential development, including seniors housing and residential flat building. However, the height development control of 8m has been applied to limit inappropriate development on the site. After extensive consultation with the community during the development of the Hastings Point Locality Development Control Plan (section B23 of the DCP), the maximum height control was amended to reflect the unique characteristics of the height.

The site is largely surrounded by development coastal bushland and environmental protection land under Tweed Local Environmental Plan 2000. Although zoned R1, the site is not located in a highly urbanised area and the closest urban centre is approximately 13km distant being Kingscliff. Hence, the maximum 8m height control ensures that any development on the site is appropriate to the peri-urban character of the site and discourages high density development on a site disconnected from higher density urban areas.

Notwithstanding the submitted s4.6 request addressed below, the proposal is not consistent with the objectives of the LEP development standards for heights of buildings.

Clause 4.4 Floor space ratio

The subject site has a mapped maximum floor space ratio (FSR) of 1:1 in accordance with s4.4(2) of this Section.

The Applicant has expressed that a FSR of 0.65:1 is proposed over the entirety of the site.

Council Officers seek further clarification as to how this was derived.

Under s4.5(2) FSR is calculated as follows:

- (1) Definition of “floor space ratio”** *The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

Gross floor area is defined under this Plan as the following:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) **car parking to meet any requirements of the consent authority** (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

The proposed car parking is in excess of the requirements specified under the *State Environmental Planning Policy (Housing) 2021*. Therefore, the area required for the provision of additional car parking within each basement is required to be accounted for in the gross floor area (GFA) calculation. Based on the Applicants calculations it would appear that no GFA within the basement has been considered.

Clause 4.4 is currently not satisfied and further information is required to by the Applicant adequately address the provisions.

Clause 4.6 Exceptions to development standards

A request to vary the maximum height development control under cl.4.3 of TELP 2000 and s108(2)(a) non-discretionary development standards under the SEPP (Housing) 2021 has been submitted with the application (**Attachment C**).

The maximum prescribed building height, excluding servicing equipment on the roof, is 9.5m under s108(2)(a) of the SEPP (Housing) 2021. The proposal seeks approval for a maximum building height of 11.92m being a 2.420m (25.5%) variation.

Section 108(2)(b)(iii) also prescribes a maximum building height of 11.5m of any servicing equipment on the roof of a building which results in the building having a height of 9.5m. The applicant has not addressed s108(2)(b) noting that it is not the servicing equipment that is resulting in the exceedance of the 9.5m development standard. Rather, it is the building per se that exceeds the 9.5m development standard.

Table 15 outlines the extent of each variation to cl.4.3 of the Tweed Local Environmental Plan 2014 and s108 of the SEPP (Housing) 2021.

Table 13 Proposed Variation to cl.4.3 of TLEP2014 and s108 SEPP(Housing) 2021

Building	Maximum height from existing ground level (m)	Maximum permitted under clause 4.3 building height (m)	Variation (m) / extent of variation (%)	Maximum permitted under section 108	Maximum height from existing ground level (m)
D	11.888m	8m	3.888m (48.6%)	9.5m	2.388m (25.1%)
E	11.912m	8m	3.912m (48.9%)	9.5m	2.412m (25.4%)
F	11.580m	8m	3.580m (44.7%)	9.5m	2.080m (21.9%)
G	11.920m	8m	3.920m (49.0%)	9.5m	2.420m (25.5%)

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

The preconditions are set out in cl.4.6(3) as follows:

- (3) *The development application must be accompanied by a document that sets out the grounds on which the applicant seeks to demonstrate that—*
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The submitted *Request to Vary A Development Standard – Seniors Housing, TriCare Hastings Point* has been submitted in accordance with section 35B(2) of the EP&A Regulation. In addressing whether compliance is unreasonable or necessary under cl.4.6(3)(a), the variation request has consideration for the ‘5-part-test’ established from the *Wehbe v Pittwater Council [2007] NSWLEC 827*. The 5-part-test includes consideration to the following:

- 1. objectives of the development standard are achieved notwithstanding the non-compliance*
- 2. underlying objective or purpose is not relevant to the development*
- 3. underlying objective or purpose would be defeated or thwarted if compliance was required*
- 4. development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
- 5. zoning of the land on which the development is proposed was unreasonable or inappropriate*

The written request applies the 5-part-test to the consideration of the variation of development standards under cl.4.3 of the LEP and s108 of the SEPP (Housing) 2021. It is noted that the written request only needs to satisfy one part of the 5-part-test and not all parts are required to be satisfied.

The submitted written request proposes to justify that the objectives of the development standard under cl.4.3 of the LEP are achieved notwithstanding the non-compliance. Council is not satisfied that written request has sufficiently demonstrated that the objectives are achieved. As noted in a previous section of the report, the 8m maximum building height was applied to limit inappropriate development on this peri-urban site and ensure that any development has regard for the site's location with respect to the natural and built environment. Specifically, the written request has not satisfactorily demonstrated that the following objectives of cl.4.3 of the LEP.

- (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,*

The written request does not rely on points 2-5 of the 5-part test to demonstrate compliance is unreasonable or unnecessary

The written request does not undertake a detailed 5-part-test assessment with respect to the variation to s108 of the SEPP (Housing) 2021. Rather, there is a reliance on the variation assessment undertaken for the variation to the LEP development standard.

With regard to addressing cl.4.6(3)(b), whether there are sufficient environmental planning grounds to justify the contravention of the development standards, the applicant has provided the following:

- *A Seniors Housing development was approved on the subject land in June 2008 (DA06/0413 as modified), under the Tweed LEP 2000 where clause 16 permitted a 3-storey height limit;*
- *Stage 1 of the development, was constructed in 2009, incorporating the 91 independent living units across three buildings with basement car parks. These buildings establish the 3-storey residential flat building typology at the front of the site, and contribute to the streetscape character of the southern entry to Hastings Point;*
- *The remaining stages, which comprise 4 additional 3- storey buildings, have not been built. Nevertheless, consent to do so remains valid under DA06413 (as modified);*
- *Notwithstanding the technical numerical variation, the proposed development remains consistent in terms of the existing 3- storey built form approved and established on the site and is not considered to contravene the objectives of the standard, or the R1 zone;*
- *Environmental studies have been undertaken to inform the design, scale and proposed heights can be accommodated by the subject site without resulting in unacceptable adverse environmental, economic or social impacts;*
- *In the context these environmental investigations, it is identified that the maximum height of buildings imposed under the Tweed LEP 2014 gives rise to the underutilisation of the land for its capability and current context; and*
- *The proposal will make a notable positive contribution towards the LGAs housing needs and services*

It is not considered that an existing development consent, approved under previous planning legislation, is adequate to justify that there are sufficient environmental planning grounds for the variation. Planning controls evolve for various reasons and reliance on a previous planning control to justify a variation to a current planning control for a new development is flawed reasoning. As previously mentioned, the LEP was specifically amended to impose the 8m height control after development of the Hastings Locality Hastings Point Locality Development Control Plan and community consultation.

Furthermore, justification provided has not considered the specific variation, being 3.920m (49.0%) height exceedance under the LEP or 2.42m (25.5%) under the SEPP (Housing) 2021. This approach is confirmed in the *Guide to Varying Development Standards*, published by the Department of Planning and Environment and dated November 2023.

In summary, the cl.4.6 variation request does not meet all the requirements as per the *Guide to Varying Development Standards* and also does not provide acceptable justification to vary either development standard.

Clause 5.10 Heritage conservation

The objectives of this section are as follows:

- (a) to conserve the environmental heritage of Tweed,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The site is not located in the vicinity of any heritage items or heritage conservation areas. The site is not identified on Council's Aboriginal Cultural Heritage database as being either a location of Cultural Significance which contains a registered site or a location with a high probability of containing site(s) of Cultural Significance.

The subject site is not mapped as being a known or predictive site for Cultural Aboriginal Heritage.

The Applicant has submitted an *Aboriginal Cultural Heritage Assessment*, prepared by Tim Hill and dated 23 August 2024. The assessment determines the subject site has been subject to significant ground disturbance.

The Report does not object to the proposal and seeks recommendations on pg. 47 of the report be conditioned whereby an approval is issued.

Clause 5.21 Flood Planning

Under cl.5.21(2) of this section, the consent authority must not grant development on land within the flood planning area unless it is satisfied of the following:

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

The property is located on the fringe of the 1% AEP flood. The property is affected by low flow flooding along the boundary, with high flow conveyance in Cudgera Creek during a major flood event.

Additionally, the consent authority is to consider matters listed under cl.5.21(3). These include the following matters:

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

The footprint of the proposal is outside of the flood planning level. Council Officers are satisfied that on the basis of current data available that the safe occupation will not be impacted as a result of changed flood behaviour as a direct result of climate change. The Proposal and increased future residential development is considered appropriate given its location and ability to safely occupy the independent living units in flood events. Additionally, Tweed Coast Road is above the flood planning level.

Clause 5.22 Special flood considerations

Clause 5.22 applies to sensitive and hazardous development (land between the FPA and the probable maximum flood (PMF) and land the consent authority considers to be land that that, in the event of a flood may:

- (a) cause a particular risk to life, and*
- (b) require the evacuation of people or other safety considerations.*

Under cl.5.22(5)(n) the proposal is identified as a sensitive and hazardous development for purposes under this section.

Therefore, prior to granting consent the consent authority must be satisfied the following as been considered:

- (a) will affect the safe occupation and efficient evacuation of people in the event of a flood, and*
- (b) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (c) will adversely affect the environment in the event of a flood.*

The proposal is mapped within the PMF and therefore consideration in regard to efficient evacuation of people in the event of a flood is required.

Reviewing the proposal, the proposed habitable ground level is above 3.1m AHD (flood planning level) and therefore, is considered safe occupation can be afforded.

Additionally, Tweed Coast Road is located above the PMF, allowing evacuation of people in the event of a flood.

The Applicant has not submitted an evacuation plan to reflect the amended/proposed operation is capable of safely evacuating. It is considered an updated evacuation plan can be conditioned noting the above assessment.

Clause 7.1 Acid Sulfate Soils

The objective of this section is as follows:

“... to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.”

The subject site is identified as having Class 3 Acid Sulfate Soils (ASS). Therefore, in accordance with s7.1(2) development consent is required for the following works:

Works more than 1 metre below the natural ground surface.

Works by which the water table is likely to be lowered more than 1 metre below the natural

Depths of excavations works required for the proposed basement will be approximately 3.5 below natural ground level (BGL).

The lodgement of the Development Application has been supported by an *Acid Sulfate Soil Management Plan and Radioactive Sands Assessment*, prepared by ENV Solutions, version 3 and dated 29/08/2024.

The assessment included a suitable number of boreholes across the site, with the report concluding that liming would be required for soils at or below 2.5mBGL.

The acid sulfate soils management plan (ASSMP) indicates that the total amount of soils was not disclosed to the consultant, however, the supporting *statement of environmental effects*, prepared by Planit Consulting, revision B and dated 14/02/2025 indicates 12,000m³ will be excavated, with the bulk being removed off-site. It is considered important that this information be considered within an amended ASSMP.

The treatment of ASS treatment area will be bunded, however rainwater protection has not been proposed, the capacity of the soils/leachate/rainwater have not been outlined and therefore it is difficult to determine if the sizing is appropriate.

Furthermore, the ASSMP recommends no dewatering or that a Dewatering Management Plan be prepared by a suitably qualified person. A crucial component of an ASSMP is to identify any works likely to disturb the water table and consider the likely impacts of changes in groundwater on the generation and export of acid leachate, as well as the impact on groundwater quality.

A *Hydrogeological Impact Assessment*, prepared by Martens & Associates and dated 9/10/2024 submitted as supporting document with the Development Application determined that average groundwater depths over the monitoring period were observed in the order of 1.5 – 2.5mAHD. The findings in the prepared *Hydrogeological Impact Assessment* recommended the preparation of a dewatering management plan, this has not been submitted. It is considered that the ASSMP must outline and assess the effectiveness of the proposed mitigation measures in regard to dewatering. The ASSMP fails to address these concerns.

There are no contingency plans included within the ASSMP as required by the Acid Sulfate Soils Management Advisory Committee (ASSMAC) guidelines.

A review of the Construction Management Plan indicates that for Stage 3 works, ASS will need to be treated off-site. More detail must be included in the ASSMP which must comply with relevant requirements.

In addition to the subject clause (7.1 Tweed LEP 2014) Council Officers are not satisfied that warranted consideration has been afforded to s2.8 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*, for development in proximity to Coastal Wetlands and Littoral Rainforests. This has been discussed in greater detail in this assessment report.

Clause 7.2 Earthworks

The objective of this section is as follows:

“...to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.”

Further, the consent authority must consider the s7.2(3), which requires consideration to the following:

- (3) *Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*
- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
 - (b) the effect of the development on the likely future use or redevelopment of the land,*
 - (c) the quality of the fill or the soil to be excavated, or both,*
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,*
 - (e) the source of any fill material and the destination of any excavated material,*
 - (f) the likelihood of disturbing relics,*
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
 - (i) the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

The proposed development will involve bulk earthworks to create suitable building platforms, basement levels, and overland flow paths. The earthworks will include cut and fill operations, with approximately:

- A total of 12,000m³ of material to be excavated from the site during the basement construction; and
- 8,000m³ of this will need to be exported off-site, as it cannot be fully reused within the development.

Excess material will be transported by heavy vehicle to an approved landfill facility or other approved site for use as engineering fill.

The Development Application has been supported by a *Detailed Site Investigation* (DSI), prepared by Martens & Associates Pty Ltd and dated 21 October 2024.

The subject site was subject to historical Heavy Mineral Sand Mining activities. This activity is considered potentially contaminating (Radiation). To this end the DSI does not sufficiently review the radiation assessments to support their statement that the radiation risk is low.

Further, the supporting *Hydrogeological Impact Assessment* confirms temporary dewatering will be necessary during the construction phase, specifically for basement excavation, with an expected extraction volume of approximately 2.74 to 4.54 megalitres (ML) over a period of 3–6 months.

In addition, it was determined under the assessment of cl.7.1 of this Plan that insufficient information has been provided in regard to ASS. Therefore, Council Officer cannot currently be satisfied the quality of soil to be excavated will not have an impact on the environment.

Clause 7.2 - Earthworks of the Tweed Standard Instrument requires the approval authority to consider potential impacts on the environment due to earthworks, prior to consent.

In addition to the subject clause (7.2 Tweed LEP 2014) Council Officers are not satisfied that warranted consideration has been afforded to s2.8 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*, for development in proximity to Coastal Wetlands and Littoral Rainforests. This has been discussed in greater detail in this assessment report.

Clause 7.6 Stormwater management

The objective of this section is to minimise the impacts of urban stormwater on land to which this csection applies and on adjoining properties, native bushland and receiving waters.

Prior to granting development consent, the development authority must consider the following under cl.7.6(3):

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The propoerty falls towards Cudgera Creek, which is considered the legal point of discharge.

The existing development onsite has a drainage system that already discharges via a pipe system to Cudgera Creek. Currently the undeveloped portion of the site drains the Cudgera Creek by sheet flow.

The Applicant has submitted a supporting *Stormwater Management Plan*, prepared by Cozens Regan Group, revision D and dated 30 September 2024.

Council Officers have reviewed the submitted report, and the following stormwater management and mitigation strategies are proposed:

- Infrastructure and Quantity
 - The development will create new drainage infrastructure (i.e.) private stormwater pipes and pits)
- On Site Detention (OSD)
 - The proposed development site (including existing Stage 1) has approximately 47% more impervious area than predevelopment, resulting in an increase in the peak discharge stormwater flow for all stormwater events (AEP 10% (10 year) to 1% (100 year)). OSD is required to reduce the peak discharge of local storm events to predevelopment rates.
- Infiltration
 - The proposed infiltration areas to satisfy D7 requirements
- Quality
 - Proprietary stormwater treatment devices (Humeceptor STC2) are provided prior to each infiltration / detention pit.
- Erosion and Sediment Control
 - Erosion and sediment control has been provided and is satisfactory for the purpose of the DA
- Coastal wetland:

- Stormwater management for the development addresses the coastal wetland criteria by providing:
 - On site detention stormwater system to reducing flow rates to below predevelopment flow levels.
 - Stormwater quality addressed with infiltration and proprietary stormwater treatment device/s prior to discharge.
 - Outlet overflow from the infiltration pits will be required to provide measures at the pipe outlets to ensure stormwater flows are dissipated. The SWMP does not show this, although this requirement has been included as a condition of consent.

Noting the above, it is considered that appropriate measures and mitigation to manage stormwater without impacting upon the natural and built environment have been provided.

Clause 7.10 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

The subject site is currently connected to reticulated water, and it is considered that the Proposal can connect to the existing water service.

Electricity is available within the area and connected to the existing development onsite. It will be the proponent's responsibility to arrange further connection with Essential Energy where required.

The existing sewer connection is not sufficient to service the proposed development. A new second private pump station has been proposed and is to be installed to service the proposed development. The additional pump shall connect to internal sewerage servicing for the lot.

As discussed within s7.6 under this Plan, adequate stormwater measures can be afforded.

Suitable vehicular access can be afforded. It is considered minor upgrade works are required to ensure safe access and egress from the site is afforded.

It is considered that all essential services can be afforded to the development whereby the Panel was to issue an approval.

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

There are no draft instruments that apply to the proposal.

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

The following Development Control Plan is relevant to this application:

- *Tweed Shire Development Control Plan 2008*

Tweed DCP Section A1 Part C – Shop Top and Residential Flat Buildings

This Section applies whereby the *State Environmental Planning Policy (Housing) 2021* and DCP Section B23 Hasting Point are silent.

The Applicant has submitted an assessment against the relevant controls. Council Officers have not undertaken a thorough assessment but on review it is considered the proposal generally complies with the controls, with the exception of the following that have been addressed elsewhere in this report:

- Design Control 5 – Building Footprint and Attics, Orientation and Separation
 - Building footprints – *For buildings that only have daylight access to two and opposite sides of the building the back wall of a room cannot be greater than 10 metres from a window*
- Design Control 6 – Height
 - Building Height – *12.2m is the maximum overall is the maximum overall building height for residential flat buildings*
- Design Control 7 – Building Amenity
 - Natural Ventilation – *All dwellings are to have operable windows to habitable rooms*

Design Control 5 and 7 have been considered under the Seniors Housing Guide and s149 of the *SEPP (Housing) 2021*. It is considered that Control 6, in relation to height has been satisfactorily addressed under Council Officers assessment of section 4.6 under the *Tweed LEP 2014* assessment within this report.

Noting the substantial concerns held by Council Officers in regard to the provision of adequate buffers and ecological setbacks it considered for the Application to be supported a substantial redesign is required. The redesign would also require addressing inadequate information provided against Chapter 3 and Chapter 4 of the *SEPP (Housing) 2021*.

Tweed DCP Section A2 – Site Access and Parking Access

Access is afforded via the existing centralised crossover off Tweed Coast Road. It is considered suitable that existing crossover off Tweed Coast Road can adequately allow safe access of vehicular movements onto the site.

It is however considered that further information to address the pedestrian access and movement internally be submitted to ensure the safety of occupants. It is currently unclear as to how the Applicant has demonstrated section A2.2.1 in regard to internal pedestrian pathway network and therefore a Pedestrian Access and Movement Plan is required to be submitted.

Parking

The numerical provisions for car parking have been assessed under Chapter 3 of the *State Environmental Planning Policy (Housing) 2021*. No further consideration for parking is required under Tweed DCP Section A2.

Tweed DCP Section A3 – Development of flood liable land

The land is affected by the 1% Annual Exceedance Probability (AEP) flood and the Probable Maximum Flood (PMF) along the western boundary with Cudgera Creek. The following flood levels are applicable to the property:

- Design Flood Level (DFL) = 2.6m AHD
- Flood Planning Level (FPL) = 3.1m AHD
- PMF = 4.2m AHD
- Existing building floor level = 6.6m AHD
- Proposed building floor levels:
 - Building D basement - 2.32m, ground floor - 5.52m, level 1 - 8.72m, level 2 - 11.92m AHD
 - Building E basement - 1.0m, ground floor - 4.2m, level 1 - 7.4m, level 2 - 10.6m AHD
 - Building F basement - 1.5m, ground floor - 4.7m, level 1 - 7.9m, level 2 - 11.1m AHD
 - Building G basement - 0.85m, ground floor - 4.05m, level 1 - 7.25m, level 2 - 10.4m AHD

The proposed built form is not located within the 1% AEP flood, however, is mapped within the PMF. Therefore, consideration under Tweed DCP Section A3 is required.

Reviewing the proposal, the proposed habitable ground level is above 3.1m AHD (flood planning level) and therefore, is considered safe occupation can be afforded and where the land was to be affected by a PMF refuge in place is available, noting the proposed habitable finished floor level is at minimum 4.05m AHD.

Additionally, Tweed Coast Road is located above the PMF, allowing evacuation of people in the event of a flood.

Tweed DCP Section A13 – Socio-economic impact assessment

The aims of this Section are as follows:

- *Ensure that Development Applications for certain developments that are likely to have a significant social and/or economic impact are properly considered in accordance with Section 79C of the Environmental Planning & Assessment Act 1979, the Tweed Shire 2000+ Strategic Plan (policies 46 and 125) and the Tweed Local Environmental Plan 2000.*
- *Set out Council's requirements for Socio-Economic Impact Assessments as identified in Clause 17 of the Tweed Local Environmental Plan 2000.*
- *Achieve maximum benefit for the community from development activity, and mitigate negative impacts.*
- *Achieve economic growth through employment generating activities that adopts the concepts of Ecologically Sustainable Development.*

It is noted that *Tweed Local Environmental Plan 2000* has been replaced with the *Tweed Local Environmental Plan 2014*.

The *Environmental Planning and Assessment Act 1979* identifies the need to give consideration to social and economic issues under s4.15(1)(b) of the Act. Tweed Shire Council is under increasing imperative to respond to fundamental changes to its social and economic structure and therefore environmental factors need to be weighed up against human impacts on the environment and their implications for economic and therefore social wellbeing.

In accordance with DCP Section A13 the Applicant has submitted a supporting *Social Impact Assessment* (SIA), prepared by HillPDA and dated 12 December 2024. Council Officers have assessed the Development Application, along with supporting documentation against Tweed DCP Section A13.

Council's assessment has identified key aspects that have not been adequately addressed within the submitted SIA. The SIA has not satisfactorily addressed the following:

- Housing: Senior's housing options
- Human Services: capacity to support future demand
- Community networks: delivery of appropriate amenity for social connection

Additionally, the Applicant is required under section A13.6 of the DCP to undertake community consultation to determine the acceptable limits of impacts associated with the development. The supporting Statement of Environmental Effects (SEE) identifies social impact raised during consultation however, these have not been recognised in the submitted SIA, as required under DCP Section A13.

For the reasons nominated herein, DCP Section A13 will form a recommended reason for refusal of the subject Application.

DCP Section A13 Social Impact Category: Housing

The SIA notes that the development would increase the supply of seniors housing in the Tweed Region, enabling more residents to 'age in place' within their local area the SIA does not clearly explain the rationale for the provision of ILUs only.

With the Tweed having a higher older population than the rest of New South Wales (NSW) it is important to ensure diverse seniors housing options are made available. Community feedback documented in the SEE (pg. 12) reflected a desire go aged (high) care to be part of the one housing development to reduce the need for people having to move away from their community as their care needs increase. Additionally, community identified a preference for a dementia ward.

It is considered appropriate that the SIA should support the provide a rationale, data and evidence to change the original approval of a mixed seniors housing living options. It is considered the following has been insufficiently addressed in the supporting SIA:

- Dementia Australia estimates a 78% increase in prevalence of Dementia in the Tweed by 2054 ([Dementia-Prevalence-Data-Estimates-LGA-2025.pdf](#))
- 55.3% of people using permanent residential care in North Coast on 30 June 2022 had a diagnosis of dementia. ([My aged care region - AIHW Gen](#))
- As of June 2023, Tweed LGA had a population aged 70 years and over 18,882 persons with 1,346 Residential aged care places. This equates to 71.3 residential aged care places per 1,000 population.
- p.14 of SIA notes that "there are no existing aged care facilities in Hastings Point. The nearest is BUPA Pottsville Beach, a 151-bed aged care facility approximately 3 kilometres from the site." The SIA does not provide data on the current vacancy rate of that facility or if the capacity of aged care services/facilities can manage the population increase in Hastings Point for future aged care needs.
- The SEE p.12 notes Aboriginal community consultation is detailed in the Aboriginal Cultural Heritage Assessment (ACHA), however the ACHA does not reflect any consultation on culturally appropriate accommodation.

DCP Section A13 Social Impact Category: Human Services

The SIA identifies an impact "*potential increase demand for health services in the local area*". With a mitigation "*The OPAM should provide detailed information around healthcare services including visiting health care professionals*". There is no evidence in the SIA to indicate that these services have been engaged as part of the social impact assessment to understand their capacity to support future increase in demand.

SIA continues to state "...multiple benefits including retaining connections to the local community, staying embedded within their social support networks, and taking advantage of available on-site services and support. Residents would also be able to have access to improved transport options and increased access to health care services". It is unclear what the on-site services and support are and whether these services and the off-site health care services have the capacity to support the increased resident population.

Community feedback documented in the SEE (pg. 12) stated concerns that there was not enough support facilities provided onsite and proposed a need for an onsite medical facility and nursing stations to support the resident population across the current and future stages of the development.

The Applicant response to community feedback was that *"this increase in the number of residents will help support the provision of more services and create opportunities for expanded support options, both on-site and through local partnerships"*. The response is not considered to satisfactorily address the concern held by residents as it talks to opportunities and does not provide information/supporting data that the service needs of the increase resident community will be met.

To understand that the service and support needs for the seniors housing residents have been appropriately considered and there is capacity to support the additional demand generated by this development, the following information is requested:

- What services have been engaged as part of the social impact assessment?
- Provide information and data to confirm that there is capacity for on-site and local services to manage the increase in resident population.
- Advise what on-site services and support are referred to on page 29 of the SIA.

DCP Section A13 Social Impact Category: Community Networks

In the Arqus Seniors Design Verification Statement (SDVS) there are a number of objectives listed as aligned to the NSW Seniors Housing Design Guide. The applicant's response to these primarily reference open space not any indoor communal space.

Objective 6.2.2 (SDVS p.6) "To provide opportunities and places for residents to be socially connected, to reduce loneliness and isolation." Response: "Proposed development has been designed to include communal open space activities".

Objective 6.3.1 (SDVS p.6) "To encourage mobility of residents outside of their immediate private space." The response notes "Proposed development has been designed to ensure accessible access across the site between buildings and communal open spaces."

Objective 12.5.2 (SDVS p.8) "To provide an attractive place for residents to sit, wait or socialise." Response "Communal spaces are provided centrally within the proposed development."

Based on these responses, and looking at the architectural plans, it is unclear what indoor communal spaces will be provided for the increased resident numbers to enable social connection and mitigate risks of loneliness and isolation.

Architectural plans show a community building in the existing development but there is no reference to this in the SIA, including what communal spaces may be available or capacity to support future growth.

Tweed DCP Section A15 – Waste Minimisation and Management

The Applicant has submitted a supporting *Waste Management Plan*, prepared by HMC Environmental Consulting Pty Ltd and dated 31 October 2024.

The management plan reviews waste requirements for construction and occupation per the requirements within the DCP.

It is considered that waste management during construction can be suitably conditioned whereby an approval was to be issued.

When reviewing the management of waste during occupation the following was noted by Council Officers:

1. The Waste Management Plan refers to use/collection of kerbside 'wheelie' bins. It nominates general waste in 360 L bins. The largest general waste bin under Council's current contract is 240 L.
2. The Waste Management Plan nominates collection on the subject property. Collection at kerbside is always the default and preferred option.
3. There is a long section of relatively level, straight road frontage adjacent to the subject property considered appropriate for collection in accordance with this section.

Council Officers are satisfied that suitable conditions could be imposed if the Development Application was to be supported.

Tweed DCP Section A19 - Biodiversity and Habitat Management

Section 3 of this DCP outlines land to which applies to this DCP. The subject site is a private landholding with an area greater than 2500m² and therefore consideration is required.

The aim of this section is to ensure that, subject to any relevant overarching state or commonwealth legislation, the planning and design of new development maintains or improves *ecological values* within Tweed Shire. The objectives are as follows:

- *Retain and restore native vegetation and habitats for native species in patches of a size and configuration that will enable existing plant and animal communities to survive in the long term.*
- *Provide development controls to prevent the degradation of ecological values.*
- *Provide guidance on information required to enable informed decision-making.*
- *Ensure that construction and operational impacts of development are avoided and/or mitigated using current best practice standards.*
- *Provide guidance on acceptable measures to avoid or minimise the impact of proposed development on biodiversity including for proposals affected by Part 7 of the Biodiversity Conservation Act 2016.*
- *Compensate for unavoidable habitat losses in accordance with applicable legislation, or in the absence of such legislation, contemporary best practice.*

Part B - Defining the Development Envelope

The study area supports the following, red-flagged values as prescribed in the Development Envelope Control C1 of the DCP A19, which includes:

- Listed Ecological Communities.
- Important wetlands

- Over-cleared Mitchell Landscape
- Old growth – PCT 3989
- Areas within a species polygon for threatened fauna known or predicted to occur at the site
Mangrove Honeyeater, Bush Stone- Curlew, Wallum Froglet, Common Planigale and Southern Myotis
- Pre-existing protected habitat
- Land within a wildlife corridor
- Fifth order stream
- Estuarine habitat

Under DCP Section A19 ecological buffers have been introduced to afford adequate setbacks to ecological values to afford protection and retain the habitat features. Detailed in **Table 14** is the required ecological setback for the identified, red-flagged values and compliance with the requirement.

Table 14 Tweed DCP Section A19 Red Flag Assessment

Red Flags	Ecological Setback	Applicable	Compliance
Listed ecological communities	30m	☒	Does not comply
Over-cleared vegetation types	20m	☐	
Over-cleared landscapes	20m	☒	Does not comply
Old growth	30m	☒	Does not comply
Important wetlands	50m	☒	Does not comply
Other wetlands	20m	☐	
Other bushland on slope greater than 18 degrees	20m	☐	
Pre-existing protected habitat	20m	☒	Does not comply
Land within a defined wildlife corridor	20m	☒	Does not comply
Areas within a species polygon for threatened fauna that are known or predicted to occur at the site	20m	☐	Does not comply
Areas within a species polygon for threatened flora or other significant flora that are known to occur at the site	10m	☐	
Core koala habitat	20m	☐	
Primary or Secondary (Class A) koala habitat	20m	☐	
Isolated or scattered primary koala food trees or evidence of koala activity	20m	☐	
Any other areas where koalas are present	20m	☐	
Waterways and riparian areas	10 - 50m	☒	Does not comply

Flying fox camps	120m	☐	
Very large trees, stags or hollow-bearing trees	10m	☐	
Raptor nests	50m	☐	

Sufficient justification for significant departure from development envelope controls relating to buffers has not been provided within the supporting documentation.

Failure to provide adequate setbacks to the sites red-flagged ecological values (refer to Figure 36) is likely to result in unacceptable and significant adverse environmental impact by restricting the width of the western Cudgera Creek fauna corridor and exacerbating the influence of edge effects post development particularly for those species reliant on riparian vegetation including ecosystem credit species such as Southern Myotis and the Mangrove Honeyeater.

Elements of non-compliance with buffers zones are detailed in Table 15 above and Table 16 below. Features such as the proposed emergency perimeter access road (Figure 38) and asset protection zones (Figure 39) result in direct loss of habitat (latter only), limit the scope and quality of habitat restoration outcomes and result in fragmentation of habitat restoration zones.

Table 15 Relevant Environmental Planning Policy Guidelines

Legislation/Policy	Values/Feature	Buffer/Setback	Non-compliant elements
Tweed DCP A19 Biodiversity & Habitat Management – Red Flagged Values	Bushland <u>Important Wetland</u> Mapped SEPP (R&H) – Coastal Wetland Area.	50 metres	- Perimeter access road - Building D, E and G - Pump station - Asset protection zone
	<u>Old growth</u> PCT 3989 – Far North Paperbark Fern Swamp Forest	30 metres	- Perimeter access road - Building E and G - Asset protection zone
	<u>Over-cleared Mitchell Landscapes</u> - Byron- Tweed Alluvial Plains - Byron – Tweed Coastal Barriers	20 metres	- Perimeter access road - Building D - Asset protection zone results in direct impact
	<u>Listed Ecological Communities</u> - Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions – PCT 3989 Far North Paperbark Fern Swamp Forest - Littoral Rainforest in the NSW North Coast, Sydney	30 metres	- Perimeter access road - Building D, E and G - Asset protection zone result in direct impact.

Legislation/Policy	Values/Feature	Buffer/Setback	Non-compliant elements
	Basin and South-East Corner - PCT 3132 Northern Sands Tuckeroo- Banksia Forest (Restoration – excludes exotic Fig trees)*		
	<u>Pre-existing protected habitat</u> PCT 3132 Northern Sands Tuckeroo-Banksia Forest (0.066 ha)	20 metres	- Perimeter access road - Building D - Asset protection zone results in direct impact
	Waterways and Riparian Areas <u>Estuarine and Fifth Order Stream</u> Cudgera Creek	50 metres (40 metres)	- Perimeter access road - Building E - Asset protection zone
	Threatened & Significant Species Threatened fauna species polygon – Koala Mangrove Honeyeater, Bush Stone-Curlew, Wallum Froglet, Common Planigale and Southern Myotis	20 metres	- Perimeter access road - Building E - Asset protection zone results in direct impact
	Land within a wildlife corridor	20 metres	- Perimeter access road - Building D, E and G - Asset protection zone results in direct impact
Tweed DCP B23 – Hastings point Locality Based Development Code	South Hastings Point Precinct - refers to the Tweed Coast Estuary Management Plan 2004-2008 identifying setbacks from Cudgera Creek.	Minimum 50 metres	- Perimeter access road - Pump station - Access pathways to Cudgera Creek - Building D, Building E and Building G - Asset protection zone
Coastal Zone Management Plan for Tweed Coast Estuaries June 2013 (s2.2.4)	In areas where development is proposed anywhere adjacent to estuary foreshores i.e. Cudgera Creek	Minimum 50 metres	
NSW DPI Policy and guidelines for fish habitat conservation and management (s3.2.3.2)	<u>Type 1 Highly sensitive key fish habitats</u> SEPP 14 Coastal Wetland (equivalent to Coastal Wetland Area under the SEPP (Coastal Management) 2018)	Buffer zones of 50-100m width	
Far North Coast Regional Conservation Plan 2010 (s3.3.7)	<u>Riparian, wetlands, estuaries and ICOL's</u> Cudgera Creek	50 metres	

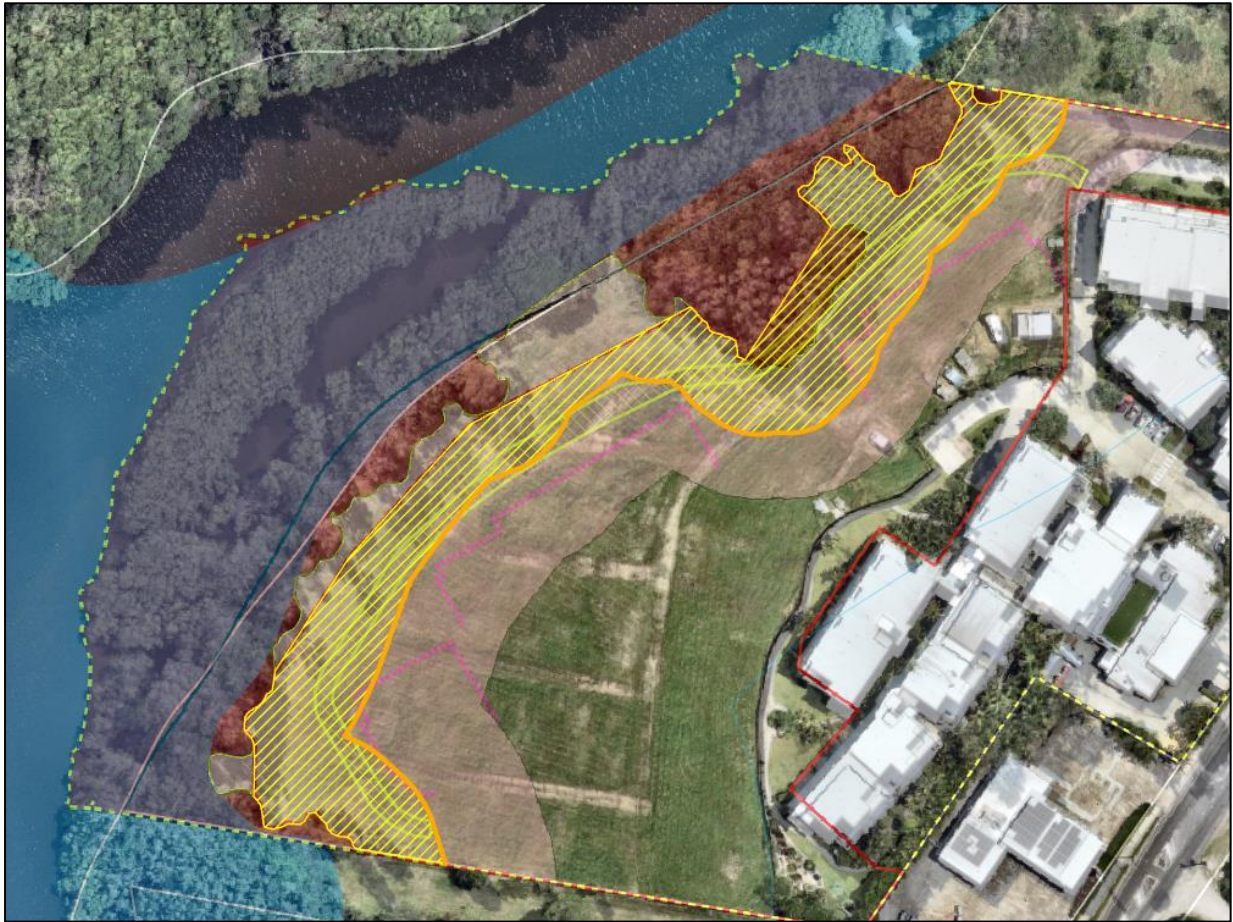


Figure 37 Red flagged values shaded dark red and DCP A19 Buffer Zones (shaded light red) as take from the BDAR 2025 and overlaid with proposed development features [Buildings D, E and G, asset protection zones (into inner buffer) and emergency access]

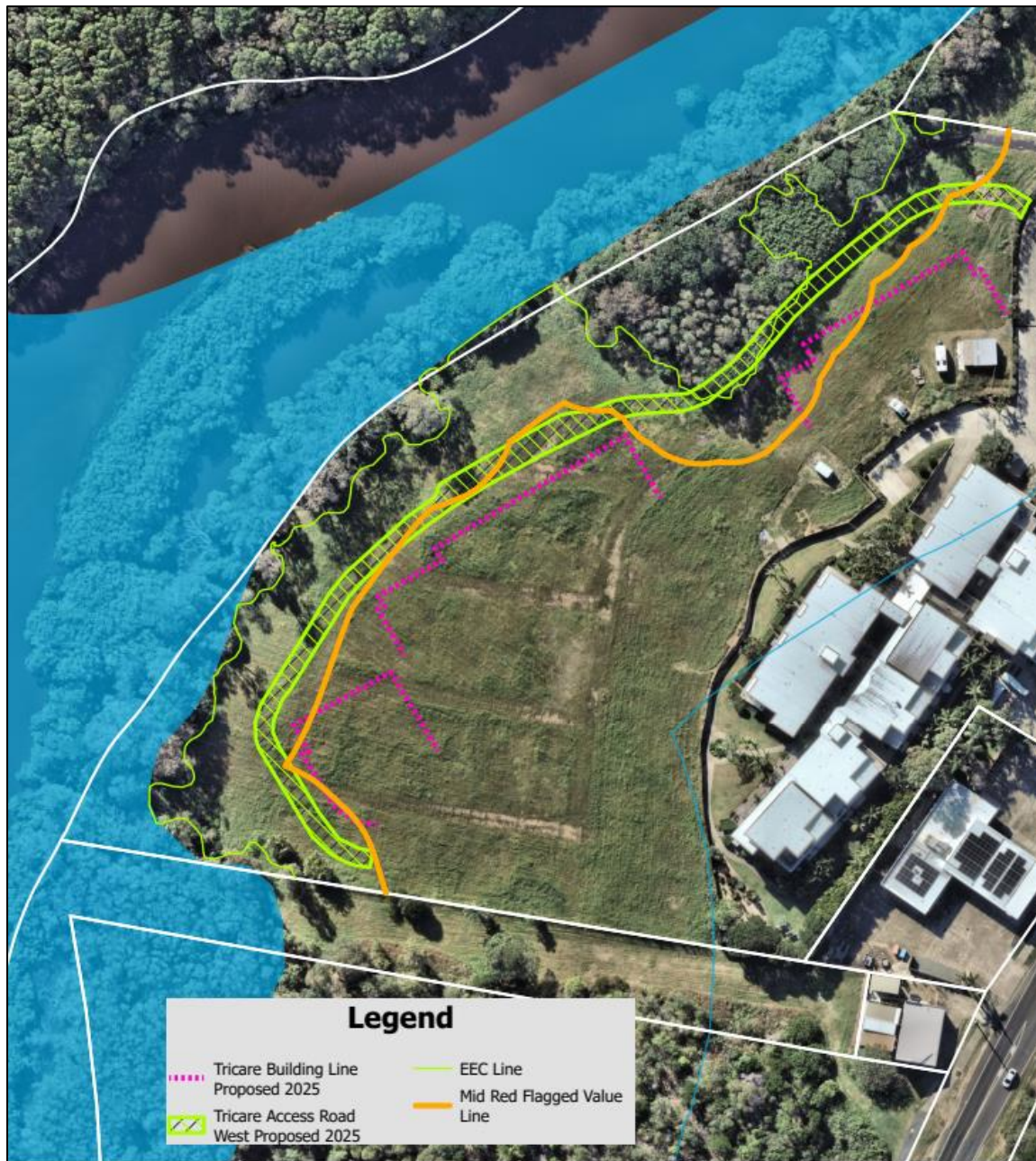


Figure 38 Proposed built form elements extending within the inner red-flagged value ecological buffer zone

Provisions of *DCP A19 – Development Envelope Control C21* makes an allowance for a bushfire asset protection zone managed as an outer protection area (30% canopy cover and fuel reduced understory) to extend within the outer half of ecological buffer zones. The submitted Bushfire Assessment Report (BAR) proposes to extend an inner protection area (maximum 15% canopy and fuel reduced understory) substantially beyond the outer half of ecological buffer zones applying to the site based on red-flagged values. The extent of asset protection zone encroachment beyond the acceptable limits is depicted in Figure 39 below.

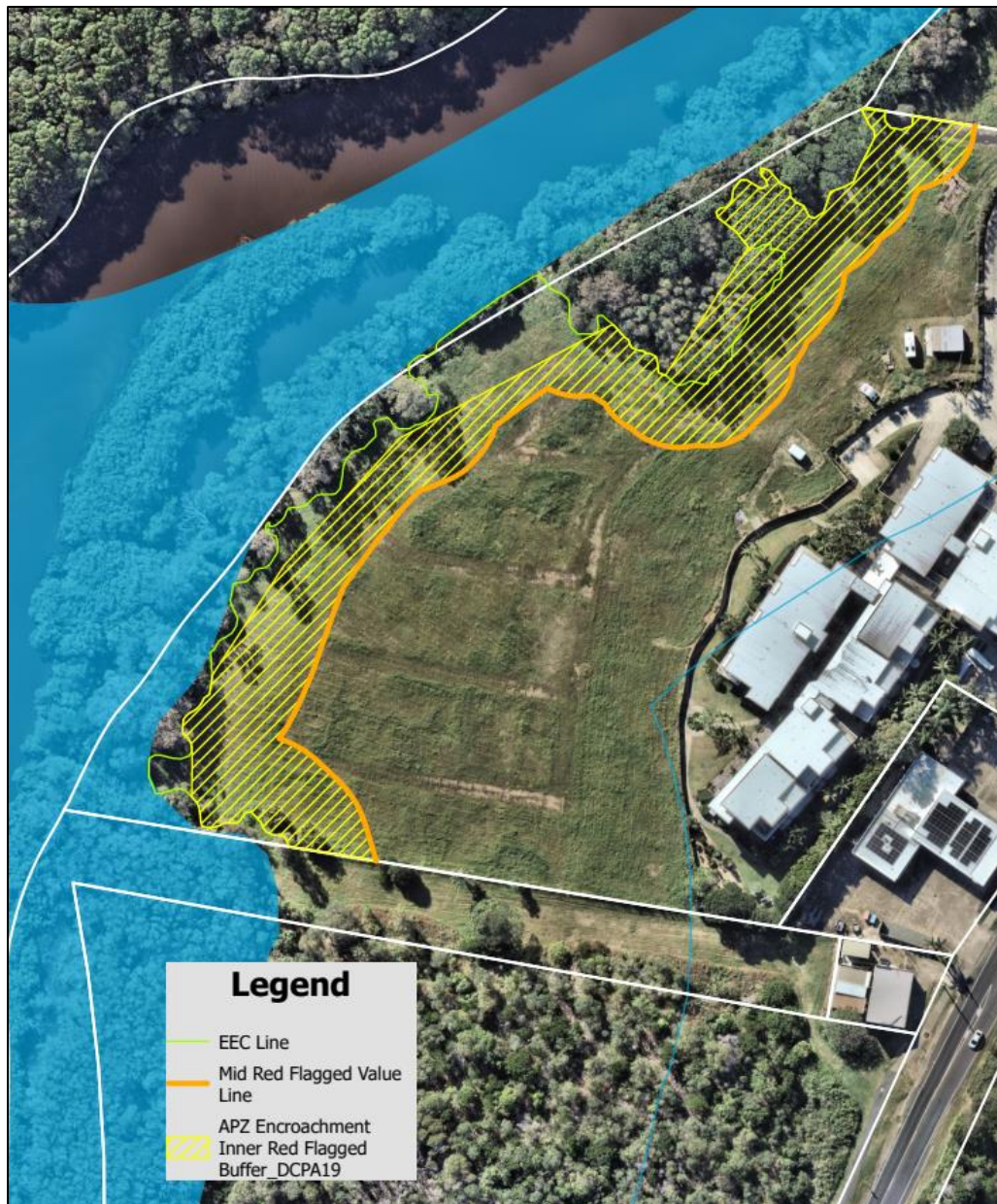


Figure 39 Proposed APZ encroachment within the inner red-flagged value ecological buffer zone

It is noted that BAR includes a copy of the Landscape Plan for the site showing trees to be planted within the APZ however the report fails to verify that the plantings shown on the Landscape Plan are acceptable to achieving asset protection zone standards in accordance with Planning for Bushfire Protection 2019.

Proposed habitat restoration as specified in the submitted Restoration Management Plan fails to adequately address the extent of rehabilitation considered necessary to suitably mitigate impacts of the development through the establishment and improvement of requisite buffer zones (as per DCP A19 DEC C9). The proposed 5-year establishment and maintenance period is considered to be insufficient to successfully achieve site capture and is a significant variation to the DCP A19 development envelope control C10 for larger scale development not involving subdivision requiring in-perpetuity management.

It is noted that submitted Landscape Plan shows access paths and lawn zones extending into the proposed habitat restoration areas detailed in the Restoration Management Plan prepared by Cumberland Ecology.

Red-flagged values and associated ecological buffer zones should be afforded long term protection and managed for conservation purposes in accordance with policy provisions of DCP A19 – Development Envelope Control C9 for larger scale development not involving subdivision capturing:

- All relevant red flagged value areas across the entire site within 200m of the development envelope; and
- Associated ecological setbacks within 200m of the development envelope.

No details of a long-term statutory protection mechanism or management arrangements for the proposed ecological buffer zones has been provided in the application material

For the reasons abovementioned, Tweed DCP Section A19 will form a recommended reason of refusal.

DCP Section B23 – Hastings Point

Part 4 – Precinct Specific Strategies

The subject site is identified within the South Hastings Point Precinct.

Figure 40 illustrates the precincts boundary, whereby the subject site is identified as ‘The Point’ in the figure.

As stated within the existing character, majority of the sites within this precinct back onto the Cudgera Creek.

The Cudgera Creek foreshore is important for estuary and ecological health. The Creek is one of the main natural features in the settlement and is valued for its natural qualities.

As discussed within DCP Section A19 of this report, the Proposal has not afforded adequate protection of the riparian zone (Cudgera Creek). Further, this section requires that a minimum 50m setback be afforded to Cudgera Creek in accordance with the Tweed Coast Estuary Management Plan 2004-2008.

The Proposal is positioned behind the existing built form along Tweed Coast Road and therefore limited visual impact from the public interface is expected to be caused by the development.

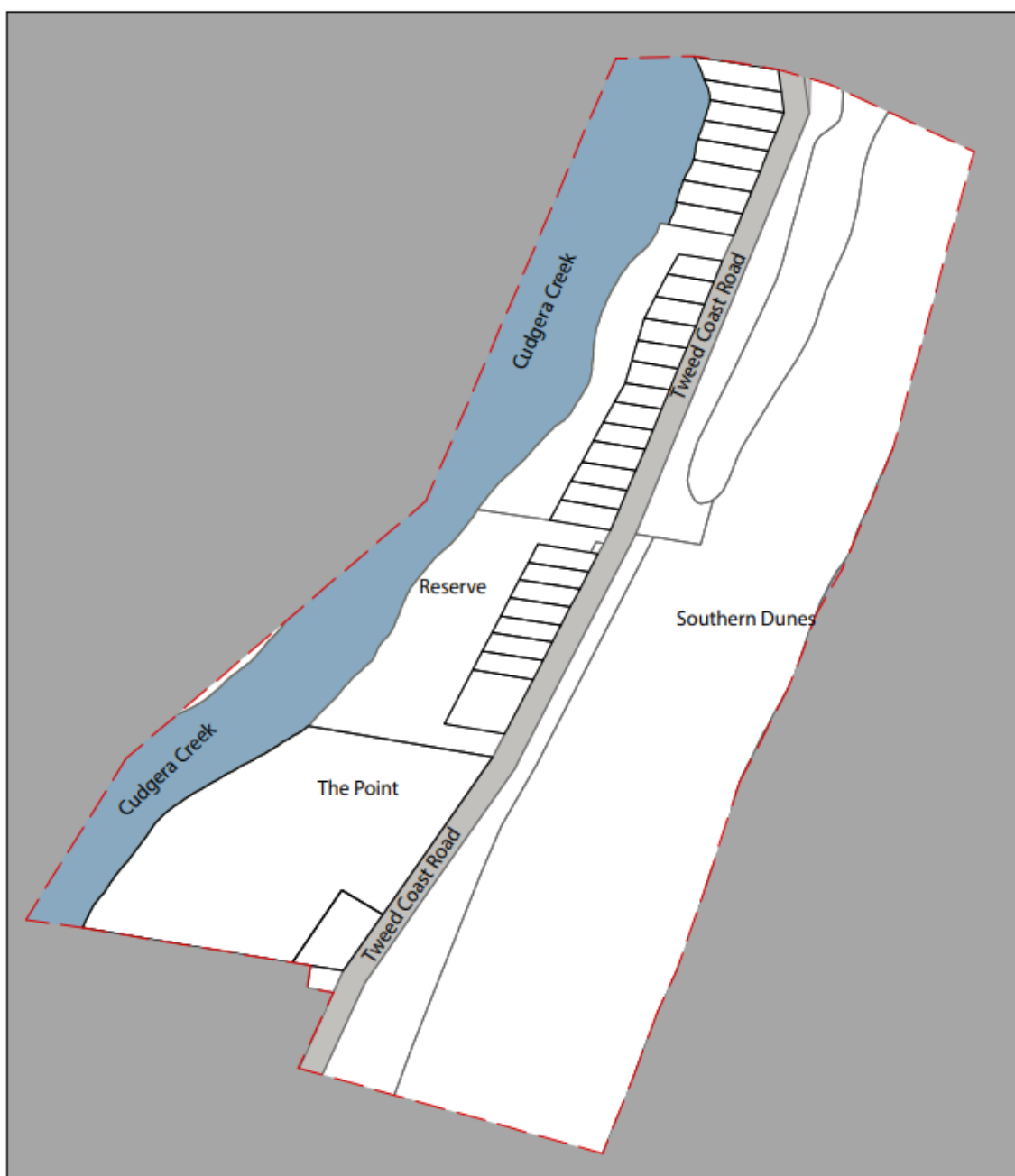


Figure 40 Extent of the South Hastings Point Precinct

Part 5 – Visual Settings

The Applicant has submitted two supporting documents in regard to visual amenity

- *Visual Impact Assessment*, prepared by Envisage, revision 03 and dated 12 December 2024; and
- *Visual Analysis – Appendix A*, prepared by Envisage, version 06 and dated 8 July 2024.

The visual impact assessment has taken into consideration the viewfields referred to within this section. Taking into consideration the built form location existing onsite and that immediately surrounding built form it is not considered that the proposed would have visual impact on the immediate viewfields. Whereby the proposal was to be supported further landscaping would provide additional screening of the proposal.



Figure 41 Viewfield - North Tweed Coast Road



Figure 42 Viewfield - South Tweed Coast Road

Part 6 – Building Type Controls

Table 16 Section 6.3.3.2 Shop top Housing and Residential Falt Buildings

	Controls in Addition to Tweed DCP Section A1	Assessment
Residential Flat Buildings	a. Building forms, roofs and elevations must be broken down into a series of smaller elements.	The proposal is considered to enhance the current built form character of the existing retirement community (similar bulk &

	b. Buildings must have a mix of materials and a high level of detailing.	scale & form as previously approved). The design has been carefully considered to achieve a refined, articulated building envelope with varied and stepped forms, modulated skyline, application of fine grain elements (including screens and sunshade elements) and incorporation of semi open corridors and glazing to create buildings that are interesting and create variation across the site.
Deep Soil Zones	a. Additional areas over and above deep soil zones required for conservation purposes may be required refer to Part 4: Precinct Specific Strategies. b. Front deep soil zone areas are to have soft landscaping.	Adequate deep soil zones can be afforded onsite.
Above Ground external living spaces, balconies and terraces.	a. Balconies and terraces cannot be located so as to overlook neighbouring lots to the front or the sides of the balcony/terrace within 5 metres of a boundary. b. Balconies and terraces on the top level of buildings are not to replace a pitched roof where this is required within a precinct i.e.. some sections of the Tweed Coast Road require a pitched or skillion roof to face the road. c. Roof terraces are not permitted.	Operational and movable screens should be applied to all northern facing balconies. The Development Application does not seek approval for any roof terraces.
Side setbacks	Residential flat buildings can have minimum of 1.5 metres setbacks for first and second levels of the building. a. The third level of all buildings must be setback by a minimum of 3 metres from the southern boundary. b. Primary windows of living rooms facing the side boundaries	Side boundaries have been adequately afforded to mitigate impact on adjoining land holdings. As discussed elsewhere in this report, internal screening to protect privacy is required.
Rear Setbacks	a. For the purposes of buffer areas and other conservation areas an area over and above the rear setback may be required, refer to Part 4: Precinct Specific Strategies. b. For shop-top housing and shop-top residential flat buildings the rear setback can be a minimum of zero.	Setbacks are appropriately afforded.

	c. For residential flat buildings existing mature trees within 6 metres of the rear boundary are to be retained where possible. d. Garages and carparking may be located adjacent to the rear setback where deep soil zones and Landscaping has been achieved.	
Carparking	a. Carparking number concessions may be given to small sites to encourage and allow carparking to be fully under the buildings footprint. Concessions may include allowing visitor parking spaces to be located on the street and to allow for not providing car wash bays, carparking numbers may also be reduced. b. On grade carparking cannot occur within 12 metres of the primary street boundary for flat buildings and 6 metres for shop-top	Car parking has been assessed in accordance with prevailing legislation – Chapter 3 <i>State Environmental Planning Policy (Housing) 2021</i> .
Basement Carparking	a. Basement carparking cannot extend above ground where it faces a public street or public space, except for where a change in level requires a wall which can be up to 1 metre. b. 1.5 metres above ground level can be achieved to the side and the rear of the lot where it does not face a public street or public space. c. A ramp entering off a public street must start behind or in line with the buildings elevation, they cannot start within the front setback. d. The walls of basement carparks are to be concealed within the building. Basement carparking is not to extend outside the external line of terraces, balconies and porches.	The proposal complies with the mentioned controls.
Building Footprint and Attics, Orientation and Separation	a. The third level of a residential flat building cannot be greater in area than 50% of the footprint of the internal spaces of the level below b. Balconies and terraces on the third or top level can occupy a maximum of 20% of the internal spaces of the level below	Each proposed residential flat building seeks approval to construct a basement, ground level, first floor and second floor. Each level mirrors the ground floor and therefore the second floor does have area that exceeds 50% of the internal spaces below. The variation is considered appropriate.

		Balconies proposed on the top floor are considered appropriate.
Building Height	a. 10 metres is the maximum overall building height for shop-top residential flat buildings. 9 metres is the maximum wall plate height for shop-top residential flat buildings. b. The south side of buildings within 3 metres of the boundary is to be a maximum of 7 metres. c. Detached garages are to have an eaves height of no more than 2.7 metres and a maximum overall building height of 3.5 metres for a flat roof and 4.5 metres for a pitched roof. d. Carports maximum height 3.5 metres for a flat roof and 4.5 metres for a pitched roof.	Building heights under the <i>State Environmental Planning Policy (Housing) 2021</i> prevail. An assessment on building height has been assessed earlier within this report.
Fences and Walls; front, side and rear	a. Front and return fences are to reflect the design of the building. b. Front and return fences and walls are to be constructed of materials compatible with the building. c. Front and return fences can be up to maximum height of 1 metre high with a maximum solid fence height of 400mm where this is required for a change and level. d. Above the solid wall the fence is to have a minimum openness ratio of 60%. e. Front and return fences may be up to 1.2 metres if located on the Tweed Coast Road. f. Vertical timber, aluminium pickets or the like are preferred. g. No Colorbond or timber paling for front or return fences. h. Driveways are to have gates similar in height and style to the front fence.	No fencing is proposed.
Side and Rear Fences	a. Controls for front fences and walls apply to all fences located along a boundary with a public street, a road, a reserve or other public space.	No fencing is proposed.
Roofs, Dormers and Skylights	a. Provide a series of roof planes and roof forms. Roof forms of less than 9 metres x 9 metres are encouraged. b. Combine a variety of roof forms i.e., pitched, skillion and flat to break up large areas of roof. c. A maximum of 30% of the roof can be a flat roof.	The proposed roof is effectively articulated to suit the character of the buildings and complements existing development on the site. The proposed roof forms do not include trafficable areas.

	d. Taper the roof eaves for skillion roofs to give a feathered edge to the building. e. Relate roof design to the internal layout of the building. f. The main roof is not to be a trafficable area. Terraces, balconies or other trafficable roof spaces are not permitted where they provide a view into or over neighbouring private properties.	
Elevations	a. Coordinate grills/screens, ventilation louvres, carpark entry doors with the elevation. b. Integrate the design of garage entries with the building elevation design.	Council have no objection to comments raised by the Applicant - <i>The design of the proposed development has been carefully integrate the fine grain elements (including screens, sun shade elements and carpark entries ensuring an overall cohesive design.</i>
Materials and detailing	a. Clad a minimum of 50% of each building elevation. Screening to balconies, doors and windows; including operable louvres, drop blinds and fixed battens or louvres, are considered cladding and contribute to the minimum. Glass window, door and balustrades do not contribute to cladding nor do face brick walls or painted concrete. b. Elevations exclusively designed of a concrete frame with floor to ceiling glass doors and windows and glass balustrades are not permissible. c. 50% of the building elevations are to be constructed of lightweight materials. Variations to this may be considered where architectural drawings demonstrate that the building achieve the design ideas as set out in Part 7. d. Masonry and concrete is to be limited to 50% of the buildings elevations visible from a public place including streets, parks and foreshores. e. Choose a palette of at least four complementary building materials.	The design has been carefully considered to achieve a refined, articulated building envelope with varied and stepped forms, modulated skyline, application of fine grain elements (including screens and sunshade elements) and incorporation of semi open corridors and glazing to create buildings that are interesting and create variation across the site. Whilst it is noted that a colour and material schedule has been provided the applicant encouraged to ensure organic palette and external finishes relate to all elevations. A final colour and material schedule can be conditioned where approval is recommended.
Colour	a. Choose a palette of complementary colours. b. Use light neutral colours with small splashes of rich colour.	As noted above.

	c. Use shades of the same colour. d. Use the natural colour of materials wherever possible. e. Choose lighter shades for roofs.	
Form	a. Use a variety of mainly enclosed forms (walls with windows) with some open forms (balconies) as required. An elevation that consists entirely of open balconies with no walls will not be permitted. b. The maximum length for one of those three forms either along the front, rear or side boundaries is 15 metres. The other forms can be a maximum of 12 metres however a variety of lengths is encouraged. c. A break of a minimum of 3 metres width and 2 metres depth is required. Stairwells can occupy this space. The stair well must be open on at least the top level and ideally all levels. d. The maximum overall building length along a side boundary is 30 metres after which a minimum 6metres landscaped area is required or the minimum separation distances. e. The maximum overall building length along a front or rear boundary is 20 metres after which a minimum 6metres landscaped area is required or the minimum separation distances.	The proposed form is considered generally acceptable. The following is noted in regard to the north elevation of Building D - The elevation is mainly finished in glass, minimised modulation or architectural features, for comparison the perspective is included the following materials from the perspective should be maintained: - Timber lined ceiling soffits on the upper balconies; - Shadow lined ceiling along the screening areas on the balconies will help promote balcony - Pop-outs - broken elevation via pre-cast concrete details that extend both vertically and horizontally in compartments along the front façade - Timber screening along the front façade, it is highly recommended that this screening is operational and movable along the elevation to promote
Floor Space Ratio	Residential flat buildings and Shop-top housing have a maximum FSR of 0.8:1.	Floor space ration has been assessed under prevailing provisions – s4.4 of the <i>Tweed LEP 2014</i> .
Lot Consolidations	a. A maximum of one driveway entry and one exit is permitted on consolidated sites. b. Buildings are to be massed in accordance with the Design Control 9	The proposal does not include lot consolidation. The proposal is over one (1) Lot being Lot 1 DP 786570.

	- External Building Elements, and all other Design Controls as set out in the part. c. The maximum length for a building along a street or facing any other public place is 20 metres. Built form longer than this will be required to be broken into two buildings.	
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Contribution Plans

The following contributions plans are relevant pursuant to Section 7.11 of the EP&A Act and can be considered in any conditions where the Panel deem the Proposal worthy of approval:

- *CP04 – Tweed Road Contribution Plan 2016*
- *CP05 – Local Open Space 2022 – Casual Open Space only*
- *CP11 – Tweed Shire Library Facilities 2009*
- *CP12 – Bush Shelters 2009*
- *CP13 – Eviron Cemetery 2009*
- *CP15 – Developer Contributions for Community Facilities 2022*
- *CP18 – Council Administration Offices and Technical Support Facilities 2016*
- *CP22 – Cycleways 2009*
- *CP26 – Shirewide Regional Open Space 2009 – Casual Open Space only*

However, as the Proposal is recommended for refusal charges against the abovementioned plans have not been included in the recommended determination.

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

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

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

Section 61, 62 and 64 are not applicable to the Development Application.

These provisions of the 2021 EP&A Regulation have been considered.

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.

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

Noise

The Development Application has been supported by an *Acoustic Report – Noise Impact Assessment and Construction Noise & Vibration Management Plan*, prepared by ADP Consulting: Engineering, revision 2 and dated 9 August 2024.

Noise Impact Assessment (use)

The supporting report has adequately demonstrated suitable background and attended noise monitoring has been completed. However, it is unclear whether impacted data has been excluded as raw data has been excluded in the findings to verify.

The acoustic consultant has nominated the *State Environmental Planning Policy (Transport and Infrastructure) 2021* internal noise limits for sleeping areas and other habitable areas. Internal limits for common areas such as corridors, reception and other internal spaces have been based on AS2107:2016. Council Officers are satisfied that this has been adequately addressed and raise no concern.

The report has considered the following noise sources from the proposed development onto both off-site and on-site receivers:

- a) Traffic noise from internal roads
- b) Bowling greens
- c) Walk trail
- d) Pool pavilion
- e) Waste collectors (restricted waste collection hours have been recommended with the report).

Although the report concludes that individually these noise sources are not predicted to cause a noise concern, the report has not provided a prediction of cumulative worst-case scenario compared to the Project noise Trigger Levels.

It is recommended that the report be amended to include cumulative worst-case noise modelling for sensitive receivers.

Minimum glazing thickness has been recommended, although further clarity is required to remove any inconsistencies and ambiguities. It is recommended that the report be updated to provide a mark-up of the glazing requirements within each residential building, including the variation for level 2 residences with the western units of Buildings D, E and F.

Whilst the report is generally satisfactory regarding Noise Impact during occupation and ongoing use, further information is required to clarify the following:

1. Weather Affected Data
2. Cumulative worst-case scenario
3. Glazing Specifications

Construction Noise and Vibration Management Plan

The submitted acoustic report includes a construction noise assessment. All external sensitive receivers are compliant with the 75dBA highly affected noise level. There are several predicted exceedances of the management level at the nearby residential receiver when certain pieces of equipment are operating at the boundary (northeastern). The report has justified the use of equipment likely to exceed noise levels due to the use not expected to be for long periods of time and durations can be managed onsite as well as implementing respite periods.

The predicted construction noise levels at the existing development (stage 1 under DA06/0413) exceed both the 75dBA highly affected noise level and the management level when equipment operates at minimal distances. The consultant reports that this is not expected to be for long periods of time and can be managed on site as well as implementing respite periods.

Vibration buffer distances scheduled in section 7.4.1 indicate that the proposed construction activities associated with heavy equipment may exceed the Vibration Criteria in Section 7.1.2. ADP (consultant) recommends that the vibration monitoring equipment be utilised at the Existing Development during construction (particularly during excavation (if required) and piling) activities where separation distances are minimal.

The assessment on construction noise and vibration management has omitted heavy vehicle movements and the Road Noise Policy as an important criterion. A total estimated 8,000m³ of soil to be excavated off-site which according to the SEE could take 3-6 months. This has not been quantified in terms of numbers of truck movements within the acoustic report. However, this has been quantified within the Construction Vehicle Management Planas up to 50 daily trips per day. A review of the internal route for heavy vehicle (HV) movements shows that HV's will pass immediately next to the existing residential receivers north of the subject site. A more detailed commentary is required within an amended acoustic report.

The assessment recommends a temporary physical barrier however; it is unclear as to whether HV movements have been considered when the acoustic consultant recommended the location.



Figure 43 Proposed Acoustic wall in blue to north boundary of the site

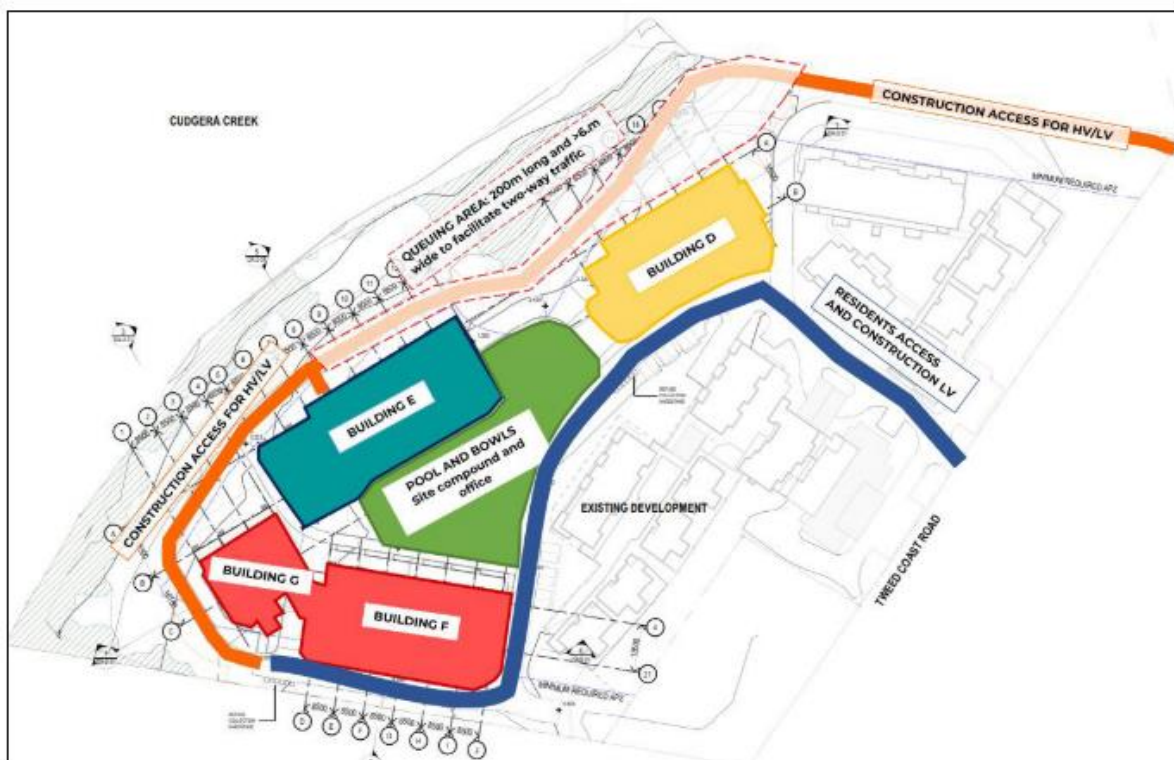


Figure 8 | Access to site.

Figure 44 Proposed heavy vehicle route as provided in the Construction Management Plan

The construction noise and vibration management plan provides a fundamental framework however, given construction is intended to be over 4-years, more specific, actionable measures to minimise impacts on surrounding receivers is required.

Ecological impacts

Contemporary legislation holds the consent authority to a higher standard to be satisfied prior to granting consent to that assessed under DA06/0413 (as amended). In considering the ecological impacts on merit, Council Officers have undertaken a comparative analysis with the current approval.

In undertaking an assessment of the ecological/biodiversity considerations the Applicant has relied on the existing approval (DA06/0413 (as amended)) to justify the buffers and setbacks to ecological values:

As discussed in Section 1.1 of this report, there is a pre-existing DA approval for the site, which pre-dates the Tweed DCP. The proposed development has been designed to achieve similar setbacks to the existing approval to ensure a consistent, or improved outcome.

It is however, expressed that the Development Application lodged is required to be assessed on merit under the *Environmental Planning and Assessment Act 1979* and appropriate legislative framework as applicable from the time of lodgement.

Whilst acknowledged the Proposal presented has not been submitted under section 4.55 of the *Environmental Planning and Assessment Act 1979*, a comparative analysis of the approval and proposal has been undertaken by Council Officers. It is recognised by Council Officers that the approval issued under DA06/0413 is a live consent and therefore, consideration has been afforded as to whether the current Proposal affords an equivalent or superior environmental outcome.

Council Officers have determined the proposed built form results in a further encroachment on the Cudgera riparian zone that supports red-flagged values, required to be considered under

contemporary frameworks. The encroachment subsequently impacts the integrity of the Coastal Wetlands. The proposed building envelope results in substantial canopy clearing to afford asset protection zones that are (refer to Figure 44 and 45). The clearing of 1000m² of existing coastal wetland vegetation comprising elements of:

- Existing protected vegetation under DA06/0413
- Two candidate endangered ecological communities
- Native vegetation on an over-cleared Mitchell Landscape
- Habitat for threatened species including Mangrove Honeyeater (*Lichenostomus fasciularis*) being a Serious and Irreversible Impact Species (SAIL)

Noting the buffer distances to afford APZs it is considered the building footprint is a direct result of the impact and is required to be re-positioned onsite to avoid direct impact on the Coastal Wetland.

This has been demonstrated in **Tables 17 and 18**.

Zones

Table 17 Buffer Analysis

Buffer Zones	Current Approval (m ²)	Proposal (m ²)	Details
Core Buffer	3885	3455	APZ encroachment into approximately 430 m ² of the approved Core Buffer.
Outer Buffer	4450	3840	Emergency Access Road encroachment into approximately 610 m² of the approved Outer Buffer. Such proposed hardstand elements are unacceptable within buffer zones based on contemporary policy and guidelines (Refer to Table 1). Furthermore, the current conditions preclude the establishment of the proposed emergency access road as follows: <i>Built form elements such as a perimeter emergency access road and other impermeable structures that may restrict/compromise revegetation efforts are considered inconsistent with the intended land-use/treatment of the buffer zone as specified in Condition 14 and subsequently reflected in the approved Updated Rehabilitation Strategy Report (RSR) dated January 20088 prepared by Planit Consulting</i>
Total Area	8335	7295	Proposed development encroachment results in a deficit of approximately 1040 m² or 12% of the approved Core/Outer Buffer area

Ecological setbacks, management arrangements and SEPP 14 Agreed Line

Table 18 Ecological setback comparison

Details	Current Approval	Proposed development
Ecological setbacks Ecological setbacks described in current conditions of consent are as follows: <i>In accordance with the Tweed Coast Estuaries Management Plan 2004-2008 a buffer between the development and Cudgera Creek shall be provided as indicated on the approved plans. The buffer will comprise a 20 metre core buffer of dense local native vegetation, rehabilitated or replanted as necessary, and ranging from the surveyed top of bank to a line 20 metres to the east; and a residue (up to 30m) outer buffer of planted native vegetation of lesser density which has limited potential for compatible land uses, such as parkland and other recreational uses, and can include asset protection zone and stormwater capture and infiltration functions</i>	Minimum setback of approximately 20 metres	Minimum setback of approximately 18 metres. Proposed Buildings E and G substantially extend further to the west towards Cudgera Creek (up to approximately 10 metres) to those buildings currently approved.
Management Arrangements The following management arrangements are prescribed in the conditions of consent: <i>Upon the creek front home sites being vacated the current owners and/or any subsequent land owners are to dedicate (at no cost to Council) 30m of Creek front land to Council (or that part of the setback to the Creek not comprising an APZ) to ensure public access to the Creek is available. In addition a formal right of carriageway is to be formed from Tweed Coast Road through the site to enable access to the Creek.</i>	The Core Buffer is to be dedicated to Council for conservation purposes	No formal protection of the ecological buffer zones has been proposed.
SEPP 14 Line Reference to an identified Coastal Wetland boundary line in the conditions of consent is as follows: <i>This consent does not authorise any clearing of native vegetation, filling</i>	No works are to occur within the previously endorsed SEPP 14 Coastal Wetland boundary	Proposed Building G and emergency access road occur beyond the boundary of the previously endorsed SEPP 14 Coastal Wetland boundary (Figure 45 and 46) therefore further encroaching into the riparian zone.

Details	Current Approval	Proposed development
or draining of any land within the revised and accepted SEPP 14 boundary as delineated on Plan No 05170 Sheet Number TP16 Revision B dated 18/10/2006 and prepared by RH Franklin & Associates		

The proposed building envelope results in the direct impact upon red-flagged values onsite, where the impact has not been satisfactorily justified by the Applicant. Council Officers do not support the approved built form under DA06/0413 (as amended) as sufficient justification to avoid consideration to contemporary legislation framework to be considered under s4.15 of the *Environmental Planning and Assessment Act 1979*.

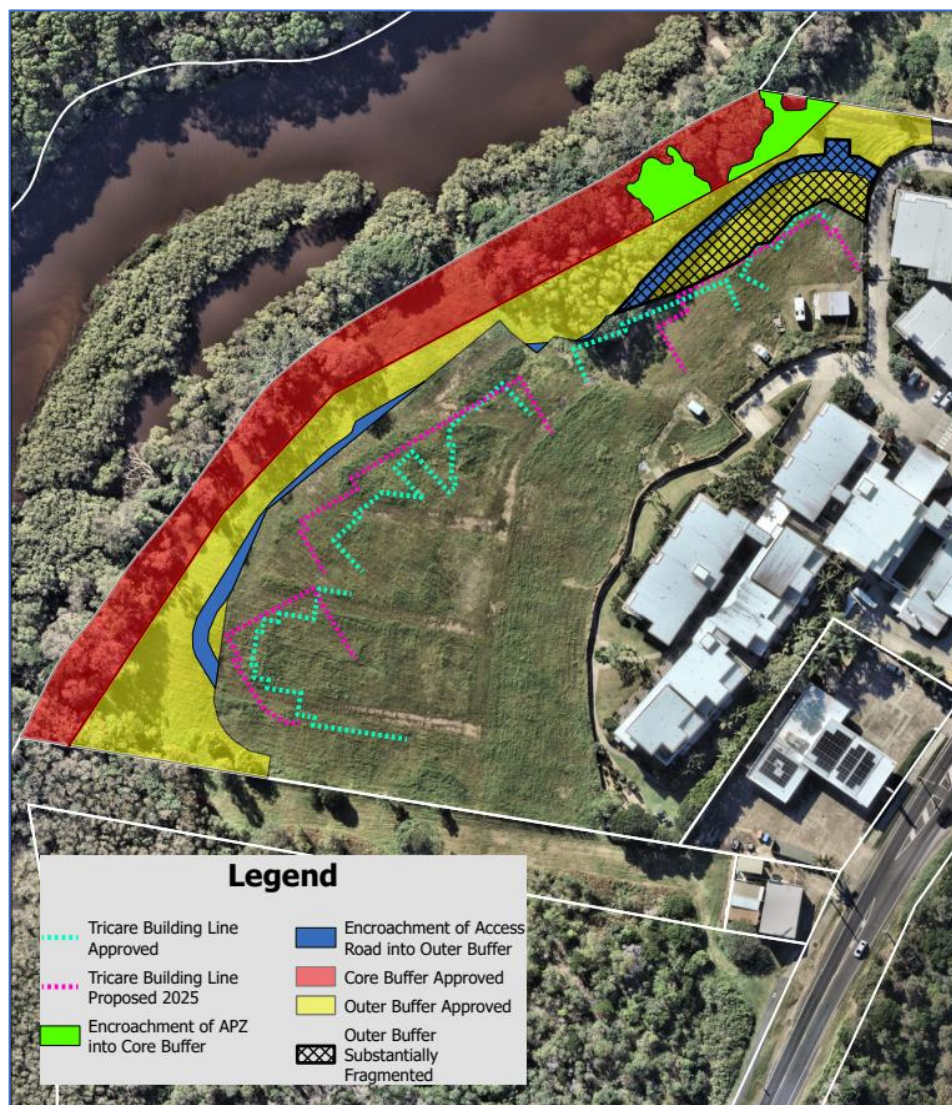


Figure 45 illustrated comparative plan of proposed development layout



Figure 46 Previously endorsed SEPP 14 Coastal Wetland boundary shown in blue

Accordingly, it is considered that the proposal will result in significant adverse impacts in the locality as outlined above and within this report.

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

Noting the Environmental constraints of the subject site, it is not considered the site is appropriate for the proposed development. The reason for this has been discussed at length within this report.

Additionally, the proposal is considered to represent designated development as a result of predicted groundwater drawdown from the Coastal Wetland Area extending onsite. The proposal is not accompanied by an Environmental Impact Statement and fails to fulfil designated development requirements.

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

These submissions are considered in Section 5 of this report.

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

Council officers have considered the matters raised in the submissions having regard to the matters for consideration under Section 4.15 of the Act and given the extent of community concerns as well as areas of non-compliance, the proposed development is not considered to be in the public interest.

It could be argued that initial occupants of Stage 1 understood that they were buying into transitional ageing in place, where they could transition from independent living to supported living to high care. This change in the nature of the development is not considered to be in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 19**.

Table 19: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Essential Energy	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	<i>Essential Energy makes the following general comments:</i> <i>If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment;</i> <i>Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with;</i> <i>Any activities in proximity to electrical infrastructure must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure;</i> <i>Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW); and</i> <i>It is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW</i>	Y

		(www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.	
Transport for NSW	Section 2.121 – State Environmental Planning Policy (Transport and Infrastructure) 2021 Development that is deemed to be traffic generating development in Schedule 3.	Thank you for referring this matter to Transport for NSW (TfNSW) for its comment. The proposed development does not appear to meet the numerical criteria under Schedule 3 of the SEPP (Transport and Infrastructure) to trigger a referral under section 2.122. Should Council require any specific advice from TfNSW	Y
Department of Primary Industries (Fisheries)	No prerequisite to refer. Council sought advice.	Comments received by DPI Fisheries can be read in Attachment E The advice of the DPI has been considered in Attachment F .	N
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - Rural Fires Act 1997	Rural Fire Services (RFS) issued General Terms of Approval (GTAs) on 5 May 2025. GTAs can be read in Attachment G .	Y
Department of Planning and Environment – Water	S89-91 – Water Management Act 2000 water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Department of Planning and Environment-Water requests the following additional: - The subject site is adjacent to Cudgera Creek and contains wetland areas which are both considered waterfront land under the Water Management Act (2000). - Please provide an updated site plan that shows the demarcation of waterfront land (ie. the wetland and Cudgera Creek) and the designated 40m vegetated riparian zone (VRZ) and any proposed encroachments and offsets as per the riparian corridor guidelines. - Based on the information provided it appears that there are encroachments into the VRZ that are not in accordance with the guidelines, including the bush fire asset protection zones and	N

		some of the buildings. Please provide updated development plans that rectify these encroachments. The Applicant has provided a response however, further communication from the Department of Planning and Environments – Water has not been received.	
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4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 20**.

Table 20: Consideration of Council Referrals

Officer	Comments	Conditions
Flooding and Stormwater	A Stormwater Management Plan (SWMP) prepared by Couzens Regan Group dated February 2025 proposes the stormwater management and mitigation measures.	Yes
Strategic Planning and Urban Design	The proposal generally provides a suitable design however, the following amendments are considered appropriate: - The west elevation on Building E illustrates different eave heights for units located on the same building floor, it should be ensured that the internal heights remain at 2.7m and any change in eave height is not due to reduced internal heights. - Council is aware that a materials palette has been provided however, it should be re-considered to impose a condition that an itemised schedules of materials and finishes is provided prior to the issue of a Construction Certificate for all front and rear façade. - Clarification is sought to confirm that the provision of services can be afforded whilst retaining 2.7m roof to ceiling separation for all proposed units. - Operational and movable screens should be applied to all northern facing balconies. - Retention of the ground floor units accessing the gardens from the private balconies. - Further information is required in relation to the proposed garden planters to ensure the depth and size of the planter is compatible with species proposed. - Allocation of individual courtyard dimensions (Building F) are not nominated, it is considered advantageous to the occupants to promote and provide access to private garden areas. In addition,	Yes (items can be conditioned however, could be dealt with via RFI)

	it is considered beneficial that softer fencing (open style) should be applied to delineate the courtyard gardens between each other, to enhance the garden experience and to ensure it does not feel that each courtyard is isolated from the overall feel of the retirement village. It is recommended that the lower-level garden units for Building G are fixed with solid balustrade (or mostly solid and part open) to ensure privacy to the occupants, glass balustrades (on the elevated ground floor designs) may reduce privacy.	
Social Planning	As per the requirements under Development Control Plan (DCP) A13 socio-economic impact assessment (SIA), the applicant submitted a SIA with the development application. Councils assessment of the social impacts from this development has identified some key aspects that require further information. These are documented against the SIA requirement categories in DCP A13. Housing: Senior's housing options Human services: capacity to support future demand Community networks: delivery of appropriate amenity for social connection	No
Environmental Health	Dewatering The application is not supported by a Dewatering Management Plan. s7.2 - Earthworks of the Tweed Standard Instrument requires the approval authority to consider potential impacts on the environment due to earthworks, prior to consent. Therefore, a Dewatering Management Plan must be submitted for review. Contamination The detailed site investigation (DSI) doesn't even mention that the subject site has a SAS, subject to a LTEMP. Nor has a Section 88B been placed on the subject site for the LTEMP, as was required as part of the LTEMP. <u>This will need to be resolved as part of this DA and a s88B Condition will need to be included in any future approval.</u> Acid Sulfate Soils The ASSMP indicates that total amount of soils was not disclosed to the consultant, however the SEE indicates 12,000m³ will be excavated, with the bulk being removed off-site. It is important that this information be considered within an amended ASSMP. The ASS treatment area will be bunded, however rainwater protection has not been	No

	proposed. The capacity of the soils/leachate/rainwater has not been outlined and therefore it is difficult to determine if the sizing is appropriate. The management plan section within the report outlines pH monitoring of leachate, and that soils will be tested by a suitably qualified consultant. However, the location of the bund, the parameters and actionable triggers have not been outlined. The ASSMP does not delineate where the leachate will be discharge to, if it were to be recharged on site. Furthermore, the ASSMP recommends no dewatering or that a Dewatering Management Plan be prepared by a suitably qualified person. A crucial component of an ASSMP is to identify any works likely to disturb the water table and consider the likely impacts of changes in groundwater on the generation and export of acid leachate, as well as the impact on groundwater quality. The plan must outline and assess the effectiveness of proposed mitigation measures. The ASSMP fails to address these concerns. A review of the Construction Management Plan indicates that for Stage 3 works, ASS will need to be treated off-site. More detail must be included in the ASSMP and must comply with relevant requirements. <u>Noise Impact</u> The Development Application has been supported by an <i>Acoustic Report – Noise Impact Assessment and Construction Noise & Vibration Management Plan</i>, prepared by ADP Consulting: Engineering, revision 2 and dated 9 August 2024. Whilst the report is generally satisfactory regarding Noise Impact during occupation and ongoing use, further information is required to clarify the following: 1. Weather Affected Data 2. Cumulative worst-case scenario 3. Glazing Specifications The construction noise and vibration management plan provides a fundamental framework however, given construction is intended to be over 4-years, more specific, actionable measures to minimise impacts on surrounding receivers is required.	
Water and Wastewater	Can provide conditions of consent	Yes
Sustainability and Environments	Not supportive of the Development Application.	No

	• The proposal would result in compromised ecological outcomes to be achieved under the current consent. • The proposal is considered to represent designated development as a result of predicted groundwater drawdown from the Coastal Wetland Area extending onsite. The proposal is not accompanied by an Environmental Impact Statement and fails to fulfil designated development requirements (Section 4.2). • The proposal has not clearly demonstrated that significant impact upon the biophysical, hydrological or ecological integrity of the adjacent coastal wetland area, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland area would be avoided. • Direct impact upon red-flagged ecological values onsite is proposed. Sufficient justification has not been provided to demonstrate that the impact is unavoidable through responsive alternative design. • The proposal seeks to significantly vary relevant environmental and ecological controls applicable to the subject site considered necessary to avoid and minimise cumulative direct and indirect impacts upon the adjacent Cudgera Creek riverine corridor and associated riparian habitat. • Recommended bushfire asset protection zones substantially encroach within inner red-flagged value ecological buffer zones that would be expected to: ○ result in direct loss of habitat; ○ place a restriction upon the scope and quality of habitat restoration outcomes; and ○ fragment habitat restoration zones. • Proposed habitat restoration as specified in the submitted Restoration Management Plan fails to adequately address the extent of rehabilitation considered necessary to suitably mitigate impacts of the development through the establishment and improvement of requisite buffer zones. • The proposal fails to detail the mechanism and arrangements to formally protect ecological buffers and red-flagged values onsite. • Adequate compensation for the direct loss of Preferred Koala Habitat in accordance with the Tweed Coast Comprehensive Koala Plan of Management has not been offered as part of the proposed habitat restoration program.	
Engineering – Roads Unit	The following have not been satisfactorily addressed in the supporting documentation of the lodgement of the Development Application. Further information to address the pedestrian access and movement internally be submitted to ensure the safety of occupants. It is currently unclear as to how the Applicant	No

	has demonstrated section A2.2.1 in regard to internal pedestrian pathway network and therefore a Pedestrian Access and Movement Plan is required to be submitted. Additionally, insufficient information has been provided to support the minor upgrade works to Tweed Coast Road. It is considered that the information required could hold a s138 for works within the road reserve under the <i>Roads Act 1993</i>. The information is required: 1. A Traffic Management Plan for the site access intersection with the Tweed Coast Road is to be prepared in accordance with relevant standards to include - a. Amending line marking and installing No Stopping signs/lines for 20 metres (in the west side parking lane, north of the driveway.) on the Tweed Coast Road b. Amending line marking and installing No Stopping signs/lines for 20 metres (in the west side parking lane, south of the driveway) on the Tweed Coast Road c. Submitting this Plan to TSC for referral to The Local Traffic Committee, and d. if approved by the Local Traffic Committee, the works shown on the Plan are to be implemented by the Applicant prior to occupation of the buildings.	
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The outstanding issues raised by Council Officers have been considered within this report in thorough detail to formulate the reasons of refusal in **Attachment A**.

4.3 Community Consultation

The proposal was notified in accordance with the Community Engagement and Participation Plan 2019 -2024. The notification included the following:

- An advertisement in the Tweed Link local newspaper.
- Sign placed on the site
- Notification letter sent to adjoining and adjacent properties
- Notification on Council's website.

The Council received a total of 6 unique submissions, comprising 6 objections to the Development Application. The issues raised in these submissions are outlined in **Table 21**. The issues have been adequately considered in this assessment.

Table 21: Community Submissions

Issue	No of submissions	Council Comments
Ability to age in place	4	In the submitted objections the following comments were made regarding existing residents understanding to 'age in place' when choosing to live at the complex: <i>"This DA should be refused as it does not meet my expectations nor those of us who moved in after TriCare purchased the Complex."</i> <i>"As a resident of the TriCare Community @ Hastings Point for 13 years my concern has been in the later years that there was no longer going to be to be a 'residential care facility' provided."</i> <i>"It is my view that this DA should be refused, as it would deprive a huge section of the aging community to enable them to 'age in place' as is Government policy, and was the intention of the original consent, that there would be three distinct levels of care."</i> <i>"Whilst I will be severely impacted by this Development, I am not complaining about that as I am now in my eighties and felt that I could well be the beneficiary of this next stage which I always understood would be 'supported/assisted' accommodation."</i> Prior to the lodgement of the Development Application, the Applicant undertook community consultation. Community feedback documented in the SEE (pg. 12) stated concerns that there was not enough support facilities provided onsite and proposed a need for an onsite medical facility and nursing stations to support the resident population across the current and future stages of the development. The Applicant response to community feedback was that <i>"this increase in the number of residents will help support the provision of more services and create opportunities for expanded support options, both on-site and through local partnerships"</i>. The response is not considered to satisfactorily address the concern held by residents as it talks to opportunities and does not provide information/supporting data that the

		service needs of the increase resident community will be met.
Existing Road Network Safety	3	The submitted Traffic Impact Assessment is considered to have addressed the road network and intersection satisfactorily. Councils Officers are satisfied that Tweed Coast Road has adequate capacity to support the proposal, with the implementation of minor upgrades to line marking and signage. The details of the upgrade works have been established in section 4.2 of this report.
Secondary Access Point at Northern Site Boundary	1	It is understood currently by Council Officers that construction traffic will access the site via an existing northern access road, ensuring a separation of construction traffic and residential traffic to minimise any adverse impact on existing residents and services. Once operational, the construction access is proposed to be maintained as an emergency ingress/egress point only. Whereby, a request for additional information is to be provided to the Applicant, clarification on this matter in regard to the concerns raised in the submission will be required. Alternatively, a recommended condition can restrict access to the northern access track per the abovementioned comment.
Internal pedestrian and vehicular interaction	2	It is considered that insufficient information has been submitted to address the submission concern. <i>“How is the interaction between internal pedestrian walkways and internal vehicle movements to be managed?”</i> Whereby, further information was to be requested Council Officers would request the submissions of a ‘Pedestrian Access and Movement Plan’ for the site to be prepared in accordance with ‘DCP Section A2 Site Access and Parking Code Section A2.2.1 Access and Parking Design’.
Car and caravan parking	2	Submissions have raised concern that the proposed development removes the provision of space for residents to park recreational vehicles, as below: <i>“In previous iterations of the development provision was made for residents to park recreational vehicles, boats, and caravans that aspect of the proposal has been removed from the current development proposal.”</i>

		The relevant legislation framework and Tweed DCP Section A2 do not make provision for the Applicant to provide parking for recreational vehicles. It is recommended that residents rise concern for TriCare and attend any future community consultation to have their concerns raised and addressed. <i>Currently there are 20 general visitor parking spaces, 2 disability parking spaces and 2 “drop off” parking spaces on site. These spaces are generally currently insufficient to cater for parking needs: · for trade vehicles (including home care support vehicles) · for visitors to residents, · for clients of the café, hair salon and health centre (which are part of the current development and open to the public) and · for non-residents attending events/meetings in the common rooms of the facility</i>
Existing Commercial Operations	2	A submission submitted makes note of existing commercial activities onsite: <i>“Insufficient Parking is currently provided for the commercial operations of the café, hairdressing salon and function rooms. Regular use of the two large function rooms means that informal overflow parking is often required up and down, both sides of Tweed Coast Rd.”</i> The commercial activities referred to are located within Stage 1, completed under DA06/0413. It is considered that car parking and access would have been assessed under the determination of DA06/0413. Whereby the activities are operating outside of the consent requirements, thereby creating a traffic and car parking impact a formal compliant to Council is required to be made for Councils Compliance Unit determine whether the operations align with the consent (as amended).
Landscaping Plans	1	One submission submitted makes note of clearing of landscaping approved under DA06/0413 (as amended). <i>“Much of the native vegetation approved by Council in the original DA has been lopped, topped, dug up and/or carted away at the whim of previous Tricare site managers.”</i> As the Development Application has not sought approval for works within the completed Stage 1 this

		has not been assessed under the current assessment.
Creek Access	1	Whereby public access remains a requirement on the consent issued under DA06/0413 (as amended) the determination of this application currently has no effect on that. <i>“Access to Cudgera creek for recreation purposes is a high priority for many residents and at least one central access point to the creek should be formalised to minimise impact on native vegetation. This would prevent informal accesses being created at various locations.”</i>
Bushfire Impact and Assessment	1	The submission raises concern in regard to existing non-compliances onsite with bushfire requirements. Whereby, the existing development is not in accordance with the consent, and this is not being dealt with via the proponent (TriCare) it is encouraged that the residents raise compliance issues through Council. The proposed asset protection zones are not supported by Council due to the ecological impact it would have on red-flagged values under Tweed DCP Section A19.
Ground water / water table	1	The following concern was raised to Council: <i>The water table here being close to the creek is very high, as no doubt the recent studies undertaken by the applicant will endorse. During recent rain, but not flooding rain, the basement under the Atlantis building was flooded, despite the fact that I understand pumps are installed there.</i> Council Officers are aware of the high ground water vulnerability in the area and as submitted supporting documentation to adequately address groundwater has not been provided. The proposed basements are proposed above the design flood level (2.6m AHD) and it is considered that the access ramp and emergency fire stair well are positioned above the flood planning level (3.1m AHD). Therefore, it is considered that the basements have been suitably designed to protect inundation from flood waters.

Construction impacts on resident's amenity	2	The construction noise and vibration management plan provides a fundamental framework however, given construction is intended to be over 4-years, more specific, actionable measures to minimise impacts on surrounding receivers is required.
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5. KEY ISSUES

This report has completed an assessment under section 4.15 of the *Environmental Planning and Assessment Act 1979*. Throughout the assessment key issues were identified throughout the assessment of relevant planning provisions. To recap, the following concerns are considered key issues in the determination of DA25/0123:

- **Designated Development** under section 2.7 under the *State Environmental Planning Policy (Resilience and Hazards) 2021*. The drawdown of groundwater within the Coastal Wetland Area is considered to constitute 'draining the land' under Chapter 2 Coastal management resulting in the proposal being designated development by virtue of Section 2.7(2).
- **Land Contamination** – In accordance with Chapter 4 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* the Applicant has not provided sufficient information in the supporting Detailed Site Investigation to allow the consent authority to be satisfied that contamination (i.e. radiation) can be remediated.
- **Coastal zones** – the subject site occurs within the Coastal and is mapped as supporting ecological values and management zones corresponding to Chapter 2, Division 3 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*. The proposal has not demonstrated that significant impact upon the biophysical, hydrological or ecological integrity of the adjacent coastal wetland area, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland area would be avoided.
- **Tweed Coast Comprehensive Koala Plan of Management provisions** - Adequate compensation for the direct loss of Preferred Koala Habitat in accordance with the Tweed Coast Comprehensive Koala Plan of Management has not been offered as part of the proposed habitat restoration program.
- **Ecological setbacks to red-flagged values** have not been afforded in respect to Tweed DCP Section A19. The failure to demonstrate appropriate ecological setbacks results in the clearing of 1000m² clearing of coastal vegetation and compromised ecological outcomes.
- **Request to Vary a Development Standard** – An unsatisfactory request to vary a development standard against clause 4.6 of the Tweed LEP 2014
- **Social Impact & Public interest considerations under the *Environmental Planning and Assessment Act 1979*** - the Development Application has provided insufficient information to support social planning outcomes in the public interest and the supporting social impact assessment as key deficiencies against the provisions of the *Tweed Development Control Plan Section A13 – Socio-Economic Impact Assessment*.
- Bushfire Buffer Zones.
 - Proposed asset protection zones (APZ) require a substantial encroachment within the mapped red-flagged ecological values area.
- **Tweed Local Environmental Plan 2014** – when assessing the following:
 - a) Clause 1.2 Aims of the Plan
 - b) Clause 4.3 Height of buildings
 - c) Clause 4.4 Floor space ratio
 - d) Clause 4.5 Calculation of floor space ratio and site area
 - e) Clause 4.6 Exceptions to development standards
 - f) Clause 7.1 Acid sulfate soils; and

- Clause 7.2 Earthworks

The applicant has not provided satisfactory documentation to allow the consent authority to grant consent. Prior to granting consent the consent authority is to be satisfied certain criteria can be achieved, ensuring consistency with the objectives. The applicant has not failed to demonstrate to the satisfaction of Council Officers that impact on can be avoided and suitable justification to depart from the objectives of the abovementioned sections has not been provided.

- **Non-compliance with NCC/BCA requirements for Seniors Living** - The Development Application has significant insufficiencies to demonstrate that the proposed built form can support ageing in place and the changing demands of care needs of future residents. The development application has failed to demonstrate that the proposal will provide appropriate levels of accessibility for seniors as evidenced by the non-compliances with the Building Code of Australia and National Construction Code. The inability to comply with the applicable standards renders the residential flat buildings incapable to support for seniors living and the required adaptability required under Chapter 3 of the *State Environmental Planning Policy (Housing) 2021* and Senior Housing Design Guide.
- **Noise and vibration Assessment** - the applicant has not adequately addressed potential noise impacts during both the construction and operational phases of the development. Given the proposed four-year construction period, a Construction Noise and Vibration Management Plan must be submitted to the consent authority, detailing appropriate mitigation measures to protect sensitive noise receivers. Furthermore, post-construction consideration must be given to cumulative noise impacts arising from the ongoing operation and use of the development, with corresponding mitigation strategies identified.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

Key issues have been summarised within section 5 of this report. These reasons will form recommended reasons of refusal, which can be read in **Attachment A**.

It is considered that the key issues have been thoroughly addressed within this report. Section 5 of this report has established the key issues which formulate the reasons for refusal.

7. RECOMMENDATION

That pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*, the Northern Regional Planning Panel refuse Development Application DA No. 25/0123 for the construction of seniors housing comprising 69 independent living units & associated facilities at 87-89 Tweed Coast Road, Hastings Point, subject to the reasons for refusal in **Attachment A**.

The following attachments are provided:

- Attachment A: Reasons for refusal
- Attachment B: DAP Minutes
- Attachment C: Applicants Request to Vary A Development Standard
- Attachment D: Apartment Design Guideline Assessment

- Attachment E: Fisheries General Comments
- Attachment F: Council Review Against Fisheries Advice
- Attachment G: Rural Fire Services – s100B GTAs