

Development Assessment Panel Minute

Convened by:	Valerie Conway, Team Leader - Development Assessment		
Meeting Date:	10 April 2024	Meeting Time:	10:30 am

Addressed by:	Rachel Heath, Planit Consulting Caesar Giraldo, Planit Consulting Simon Dwyer, Tricare Scott Peabody, Arqus Design Kim Foo, Arqus Design		
Contact Address:	Planit Consulting PO Box 1623 KINGSCLIFF NSW 2487	Meeting Receipt Number:	836301

Present:	Mark Roworth, Building Surveyor Angie Cousens, Engineer - Infrastructure Michael Banks, Environmental Planning Officer Jack Porter, Acting Senior Engineer - Developments Jacqui Cord, Environmental Health Officer Jonathon Lynch, Senior Urban Designer		
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Lot / DP:	Lot 1 DP 786570	Land Number:	8522
Address:	87-89 Tweed Coast Road HASTINGS POINT NSW 2489		

Proposal:	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.		
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- **T4/0644:** Erection of two staff flats at existing tourist accommodation. Approved 18/05/1981.
- **D87/0239** (As amended): Establishment of 10 caravan sites. Approved.
- **0560/2000DA:** The relocation of site office/manager's residence. Approved 12 May 2000.
- **0618/2001DA:** Use of temporary buildings as a marine environment centre. Approved 28/08/2001.
- **DA03/0751:** Demolition of existing sign & erection of two (2) new information signs - Marine Environmental Centre & Hastings Point Holiday Village. Withdrawn.
- **DA03/1545:** Changing configuration of short term and camping sites in existing holiday park. Approved 3 February 2004.
- **DA06/0413** (as amended): 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.

Note: **DA06/0413.14** was refused by Council. This decision was subject to an Appeal in the NSW Land and Environment Court which has ultimately been discontinued.

Conditions no. 65 and 142 of this consent require the following;

65. *Prior to commencement of Stage 3 the applicant and current owners are to fund a formalised viewing and/or access point to the Creek. The final design and development approval shall be co-ordinated through liaising with Tweed Shire Council's Recreational Services Unit and Council's Waterways and Coast Co-Ordinator.*

142. *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.*

- **DA08/0948:** Provision of temporary access road and removal of vegetation. Approved 17/09/2009.
 - **DA11/0597:** Advertising sign. Approved 2 February 2012.
 - **DA13/0308:** Change of use and re-allocation of floor area within Block B of existing aged care facility. Approved 12/09/2013.
- Should a comprehensive consent history be required, Council recommends making application for a Development Consent Search over relevant land parcels to determine any past consents issued for the site. A historic search and written response is provided for a fee of \$216 (2023-2024) per lot. A copy of any available consents is provided with Council's response. The form can be found on Council's website [here](#).

Tweed LEP 2014 and State Environmental Planning Policy (Housing) 2021 definitions

- Tweed LEP 2014 defines **seniors housing** as follows;
 - **seniors housing** means *a building or place that is—*
 - (a) *a residential care facility, or*
 - (b) *a hostel within the meaning of [State Environmental Planning Policy \(Housing\) 2021](#), Chapter 3, Part 5, or*
 - (c) *a group of independent living units, or*
 - (d) *a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for—*
 - (e) *seniors or people who have a disability, or*
 - (f) *people who live in the same household with seniors or people who have a disability, or*

(g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.

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

- **residential accommodation** means a building or place used predominantly as a place of residence, and includes any of the following—

- (a) attached dwellings,
- (b) boarding houses,
- (baa) co-living housing,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (faa) (Repealed)
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,**
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

- SEPP Housing further defines this development as '**in-fill self-care housing**' and '**independent living units**', as follows;

- '**in-fill self-care housing**' which means:

seniors housing consisting of at least 2 independent living units and at which none of the following services are provided on the site—

- (a) meals,
- (b) cleaning services,
- (c) personal care,
- (d) nursing care.

- **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**—see the definition of that term in this Dictionary.

- **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 another building, measured at a height of 1.4m above the floor—

- (a) excluding the following—

- (i) columns, fin walls, sun control devices and elements, projections or works outside the general lines of the internal face of an external wall,
- (ii) cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts,
- (iii) car parking and internal access to the car parking,
- (iv) space for the loading and unloading of goods, including access to the space,
- (v) areas for common vertical circulation, including lifts and stairs,
- (vi) storage, vehicular access, garbage and services within the basement,

- (vii) for a residential care facility—floor space used for service activities provided by the facility within the basement,*
- (viii) terraces and balconies with outer walls less than 1.4m high,*
- (ix) voids above a floor at the level of a storey or storey above, and*
- (b) for in-fill self-care housing—including car parking provided at ground level, other than for visitors, in excess of 1 per dwelling.**

Tweed LEP 2014 and State Environmental Planning Policy (Housing) 2021 Permissibility

- The land is zoned **R1** General Residential and seniors housing is permitted with consent under Tweed LEP 2014.
- Development for the purposes of seniors housing may also be carried out with development consent under SEPP (Housing).
- The Tweed LEP 2014 and SEPP (Housing) 2021 are available at <http://www.legislation.nsw.gov.au>

Designated Development

- Coastal Wetlands

Clause 2.7 of the SEPP (Resilience & Hazards) 2021 relevantly provides (our emphasis added):

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.**

....

- (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.**

- The effect of the above clause is that any “development” carried out on land identified as coastal wetlands requires development consent and will be designated for the purposes of the Environmental Planning & Assessment Act (EPA Act) (except for environment protection works).
- The submitted material does not identify that any physical development works are proposed within the Coastal Wetland area. However, any proposal which impacts upon the Coastal Wetlands, for example by way of altering stormwater runoff to this area etc., could result in development within this area and would then constitute designated development.

Advertising/Notification

Development Assessment Panel

Minute

- The proponents are advised that the application would be advertised and notified for a period of 14 days in accordance with Tweed Shire Council's *Community Engagement and Participation Plan 2019-2024*. Any submissions received will be assessed based on the merits of the submission.
- If dewatering or a Controlled Activity Permit is required, the applicant may nominate the Development Application as Nominated Integrated under the *Water Management Act 2000*, which will require a 28-day advertising period.

Referrals (Integrated and Concurrence)

- Where proposed development is within 40m of a waterbody a Controlled Activity Approval under the *Water Management Act 2000* from the NSW Department of Planning and Environment's Water Operations Division is required. The proponent may nominate the Development Application as Nominated Integrated Development.
- If a dewatering approval is required for basement car parking, the Development Application could be nominated as Integrated development requiring approvals from the Water NSW in accordance with the *Water Management Act 2000*.
- The site is mapped as a bushfire hazard area and as such the Development Application will need to be supported by a bushfire assessment report. The Development Application will need to be referred to the Rural Fire Service for approval as Integrated development as the application includes a special fire protection purpose (seniors housing) - *Rural Fires Act 1997*.
- The application may be integrated under the *Fisheries Management Act 1994* and if so would be referred to NSW Department of Primary Industries (Fisheries) as integrated development.

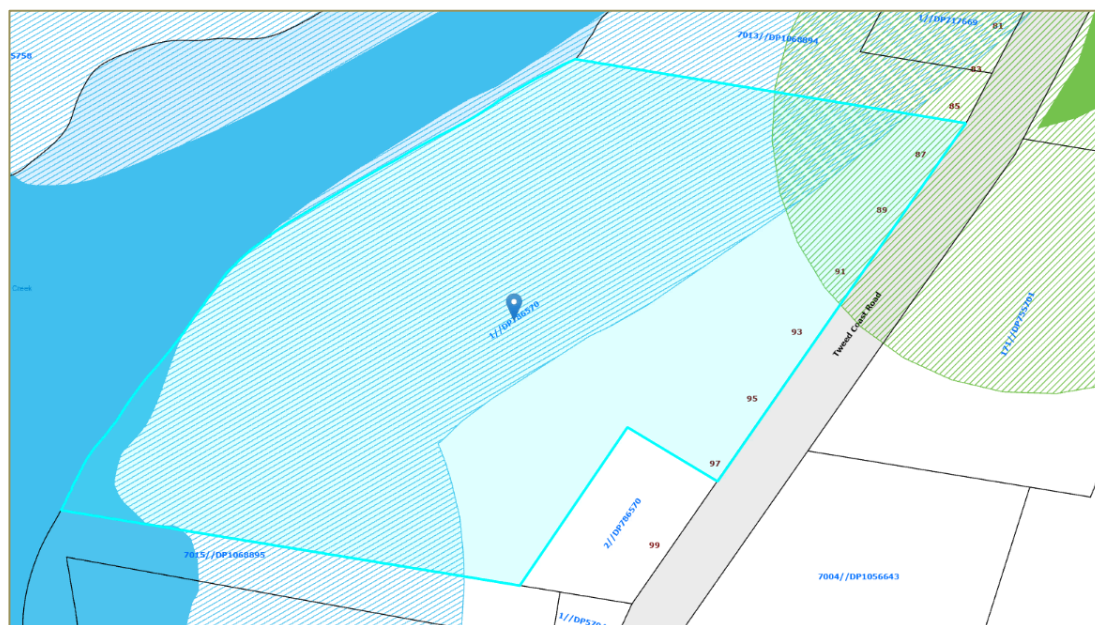
Consent Authority

- The Development Application will trigger determination by the Northern Regional Planning Panel if the proposal is stated as having a Capital Investment Value (CIV) exceeding \$30 million.
- The Development Application will trigger determination by the elected Council where the proposal is stated as having a Capital Investment Value (CIV) exceeding \$10 million or for subdivisions consisting of more than 50 lots. Where a Development Application does not trigger automatic referral to Council for determination Councillors reserve the right to call up any application for their determination.
- The Development Application will otherwise be determined by Delegated Authority under Section 4.16 of the *Environmental Planning & Assessment Act 1979*.

State Environmental Planning Policies

- SEPP (Biodiversity and Conservation) 2021
 - Chapter 2 Vegetation in non-rural areas
 - Chapter 3 Koala habitat protection 2020
 - The site occurs within the Tweed Coast Koala Management Area (Southern Tweed Coast KMA) identified in the approved Tweed Coast Comprehensive Koala Plan of Management 2020 (TCCCKPoM) made under Clause 4.17 to which Clause 4.8 of the policy applies. The TCCCKPoM is an approved plan of management for the purposes of the SEPP.
- SEPP (Industry and Employment) 2021
 - Chapter 3 Advertising and Signage would apply where any signage was proposed.
- SEPP (Planning Systems) 2021
- SEPP (Resilience and Hazards) 2021
 - Chapter 2 Coastal management

- The subject site is partially mapped as being Coastal Wetlands and Coastal Wetlands Proximity Area under this SEPP, as well as being within the Littoral Rainforest Proximity Area as demonstrated below;



Coastal Wetlands and Littoral Rainforest Areas

- Coastal Wetlands
- Coastal Wetlands Proximity Area
- Littoral Rainforest
- Littoral Rainforest Proximity Area

- The subject site is also mapped as being within the Coastal Environment Area and Coastal Use Area under this SEPP.

Part 2.2

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.

Note.

Clause 2.14 provides that, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

- (2) *Development for which consent is required by subclause (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 subclause (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 approved and in force under Division 6 of Part 5 of the Crown Lands Act 1989.*
- (4) *A consent authority must not grant consent for development referred to in subclause (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.*
- (5) *Nothing in this clause requires consent for the damage or removal of a priority weed within the meaning of clause 32 of Schedule 7 to the Biosecurity Act 2015.*
- (6) *This clause does not apply to the carrying out of development on land reserved under the National Parks and Wildlife Act 1974 if the proposed development is consistent with a plan of management prepared under that Act for the land concerned.*

As advised, this clause means that any “development” carried out on land identified as coastal wetlands requires development consent and will be designated for the purposes of the Environmental Planning & Assessment Act (EPA Act) (except for environment protection works).

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

Note. *The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.*

- (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 clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.*

- Chapter 4 Remediation of land applies.

- SEPP (Sustainable Buildings) 2022

- SEPP (Housing) 2021

- Chapter 3 Diverse housing

Part 5 Housing for seniors and people with a disability

This Part applies to land in the R1 General Residential zone and as such development consent for seniors housing is permitted under this SEPP on the subject site.

This SEPP outlines Development Standards, Site related requirements, Design requirements, Design principles and Non-discretionary development standards from Division 3-7 of this SEPP which are to be taken into account in the assessment of any application submitted.

Schedule 4 of the SEPP also outlines standards concerning accessibility and usability for hostels and independent living units which would be applicable to this development proposal.

In particular, Clause 108 of this SEPP details non-discretionary development standards for independent living units.

SEPP (Housing) 2021 has many numerical and design controls which must be complied with if consent is sought under the SEPP. A full assessment against the SEPP which clearly outlines how the development complies with all the required standards will be required with the DA.

- A detailed analysis of the proposed development against the relevant clauses of this SEPP will need to accompany the application.
 - SEPP (Planning Systems) 2021
 - SEPP (Transport and Infrastructure) 2021
 - Clause 2.48 Determination of development applications—other development
- In accordance with Clause 2.48 of this SEPP, any Development Application which involves the penetration of ground within 2m of an electricity distribution pole or within 10m of any part of an electricity tower, or within or immediately adjacent to an easement for electricity purposes or within 5m of an exposed overhead electricity powerline or development which requires the placement of powerlines underground; requires referral to Essential Energy for comment.
- The subject site is identified as having frontage to a classified road (Tweed Coast Road) and access is proposed from Tweed Coast Road.

Therefore the proposal would require assessment against Clause 2.119 and 2.122 of this SEPP.

2.119 Development with frontage to classified road

(1) *The objectives of this section are—*

- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

(2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

2.122 Traffic-generating development

(1) *This section applies to development specified in Column 1 of the Table to Schedule 3 that involves—*

- (a) *new premises of the relevant size or capacity, or*

- (b) *an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*
- (2) *In this section, **relevant size or capacity** means—*
- (a) *in relation to development on a site that has direct vehicular or pedestrian access to any road (except as provided by paragraph (b))—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
 - (b) *in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*
- (3) *A public authority, or a person acting on behalf of a public authority, must not carry out development to which this section applies that this Chapter provides may be carried out without consent unless the authority or person has—*
- (a) *given written notice of the intention to carry out the development to TfNSW in relation to the development, and*
 - (b) *taken into consideration any response to the notice that is received from TfNSW within 21 days after the notice is given.*
- (4) *Before determining a development application for development to which this section applies, the consent authority must—*
- (a) *give written notice of the application to TfNSW within 7 days after the application is made, and*
 - (b) *take into consideration—*
 - (i) *any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*
 - (ii) *the accessibility of the site concerned, including—*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
 - (iii) *any potential traffic safety, road congestion or parking implications of the development.*
- (5) *The consent authority must give TfNSW a copy of the determination of the application within 7 days after the determination is made.*

Schedule 3 Traffic-generating development to be referred to TfNSW—Chapter 2

Note— The development specified in Column 1 may involve the erection of new premises or an enlargement or extension of existing premises. If the development involves an enlargement or extension of existing premises, the relevant size or capacity specified in the table is the additional (rather than the total) size or capacity of the premises as a result of the enlargement or extension.

Column 1	Column 2	Column 3
Purpose of development	Size or capacity—site with access to a road (generally)	Size or capacity—site with access to classified road or to road that connects to classified road (if access within 90m of connection, measured along alignment of connecting road)

<i>Car parks (whether or not ancillary to other development)</i>	<i>200 or more car parking spaces</i>	<i>50 or more car parking spaces</i>
<i>Residential accommodation</i>	<i>300 or more dwellings</i>	<i>75 or more dwellings</i>

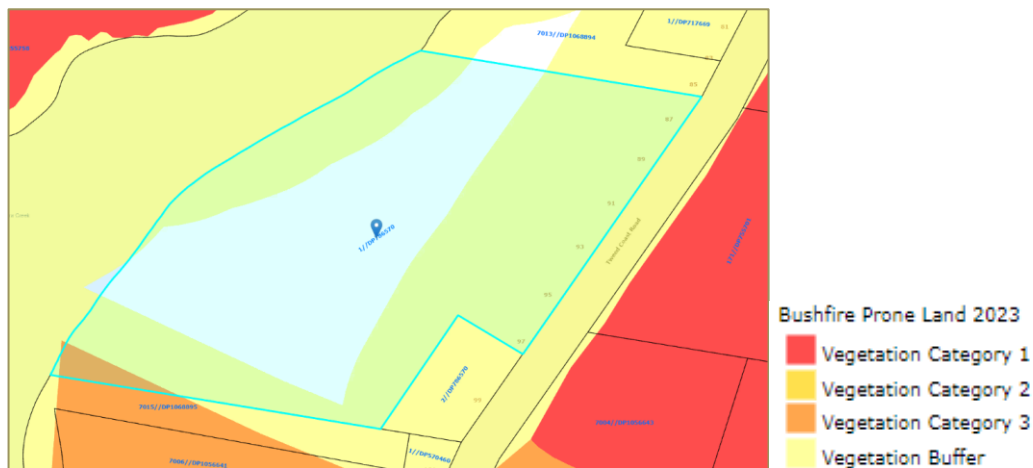
- 2.120 Impact of road noise or vibration on non-road development
 - (1) *This section applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of TfNSW) and that the consent authority considers is likely to be adversely affected by road noise or vibration—*
 - (a) *residential accommodation,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or centre-based child care facility.*
 - (2) *Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.*
 - (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*
 - (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*
 - (3A) *Subsection (3) does not apply to a building to which State Environmental Planning Policy (Housing) 2021, Chapter 3, Part 7 applies.*
 - (4) *In this section, freeway, tollway and transitway have the same meanings as they have in the Roads Act 1993.*

Relevant Clauses of the LEP (include but are not limited to)

LEP 2014
• Clause 1.2 - Aims of Plan • Clause 2.3 - Zone objectives ○ The objectives of the R1 Zone are as follows: ▪ 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.

LEP 2014

- Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)
 - Control G (450sqm minimum lot size)
- Clause 4.3 - Maximum building height
 - Control I (**8m**) - Note Clause 108 (Non-discretionary development standards for independent living units) of SEPP Housing is also applicable.
- Clause 4.4 – Floor Space Ratio
 - Control N (1:1)
 - This would also apply to any allotment which contains existing development
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
 - A Clause 4.6 variation would be required with respect to the building height for the development as the proposal exceeds the 8m building height control specified for this site.
 - The correct approach to preparing a request under clause 4.6 is summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSWLEC 118. (Link [Initial Action Pty Ltd v Woollahra Municipal Council - NSW Caselaw](#))
- Clause 5.10 – Heritage conservation
- Clause 5.10 (8) Aboriginal Cultural Heritage significance (referral)
- Clause 5.11 - Bush fire hazard reduction
 - The site is bushfire prone



- Clause 5.21 – Flood planning
 - The site is mapped as flood liable, being partially within the High and Low Flow Area, 1% AEP area, and Probable Maximum Flood (PMF) flood area.
- Clause 5.22 – Special flood considerations
 - (1) The objectives of this clause are as follows—
 - (a) to enable the safe occupation and evacuation of people subject to flooding,
 - (b) to ensure development on land is compatible with the land's flood behaviour in the event of a flood,
 - (c) to avoid adverse or cumulative impacts on flood behaviour,

LEP 2014	
(d)	to protect the operational capacity of emergency response facilities and critical infrastructure during flood events,
(e)	to avoid adverse effects of hazardous development on the environment during flood events.
This clause applies to land between the flood planning area and the probable maximum flood.	
(3)	Development consent <u>must not be granted</u> to development on land to which this clause applies unless the consent authority has considered whether the development—
(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.
Clause 7.1 – Acid sulfate soils (Class 1 & 3)	
Class of land	Works
1	Any works.
2	Works below the natural ground surface. Works by which the water table is likely to be lowered.
3	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 ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the water table is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.
- Clause 7.2 - Earthworks - Clause 7.6 – Stormwater management - Clause 7.10 – Essential Services	

Environmental Planning & Assessment Regulations 2021

- In the event that any proposal constitutes **Designated Development** the applicant must make written application to the Director-General for the environmental assessment requirements before preparing an Environmental Impact Statement.

Tweed Development Control Plan 2008 - Section A

- A1 - Residential and Tourist Development Code
 - Tweed DCP Section A1 - Preliminaries*
 - Tweed DCP Section A1 Part C Residential Flat Buildings and Shop-Top Housing applies to the proposed development. **Assessment is required against the controls where SEPP Housing and DCP Section B23 are silent.** The proposal would constitute a Block Edge Residential Flat Building under this DCP. A detailed analysis of the relevant DCP controls would need to accompany the proposed development. Any proposed variation would need to be justified and demonstrate how the proposal still meets the objectives of the control being varied.*
- A2 - Site Access and Parking Code

Development Assessment Panel Minute

- Car parking must be provided in accordance with the rates prescribed by Table 2 in this section:

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (min class)	Delivery/ Service Vehicle parking	Resident/ Visitor Parking	Staff parking	Customer car parking
A16	Seniors housing	AS per SEPP – Seniors Living						

- Under SEPP Housing, Clauses 107 & 108 relate to non-discretionary development standards and include the following car parking provisions;

- (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,
- (k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.

Section 4 (Carparking) of Schedule 4 (Standards concerning accessibility and usability for hostels and independent living units) of SEPP housing is also applicable.

- A3 - Development of Flood Liable Land**

- All relevant controls within Section A3 must be addressed in any Development Application lodged for this site.
- The subject site is mapped as being partially affected by the Probable Maximum Flood (PMF) and 1% AEP flood level. Furthermore, the site is mapped as partially within the high and low flow areas. All relevant controls within Section A3 must therefore be addressed in any Development Application lodged for this site.





- A4 - Advertising Signs Code
 - Any Development Application for proposed signage would need to be shown on separate signage plans should show all dimensions including depth, schedule of colours and materials and any illumination, wording and/or artwork. Any proposed signage would need to also comply with DCP Section A4 and SEPP (Industry and Employment) 2021.
- A13 - Socio-Economic Impact Assessment
 - Development proposals for a residential subdivision with greater than 50 lots in all stages must prepare a Socio-Economic Impact Assessment under this DCP;

A13.5.1 Proposals which Require a Statement to be Prepared

A Socio-Economic Impact Assessment is required by the applicant and submitted with the Development Application for the following types of developments:

(a) Land Use	Criteria
Residential subdivision	>50 lots/dwellings in all stages
Multi-dwelling housing	>50 units in all stages

- A15 - Waste Minimisation and Management
 - A Waste Management Plan (WMP) shall accompany the development application addressing the requirements set out within this section of the DCP. Please refer to Appendix A for a WMP template if required.
 - This DCP excludes smaller scale developments from the lodgement of Waste Management Plans (WMP), but still requires waste management issues to be addressed through the State of Environmental Effects that accompanies all development applications Clause 3.1 of Part B of the DCP specifies the types of development that are excluded from the WMP requirement.
- A16 - Preservation of Trees or Vegetation
- A19 - Biodiversity and Habitat Management
 - Any proposed removal of vegetation as part of a development must address Section A16 and Section A19 where applicable. Refer to detailed comments later from Council's Sustainability and Environment Unit.

Tweed Development Control Plan 2008 - Section B

- B23 - Hastings Point

- The subject site is located within the South Hastings Point Precinct under this DCP.

4.4.3.3 Controls - General

Specific controls which relate to the retention of native vegetation, acid sulfate soils and visual setting are detailed below. These would be applicable to any application for development works at this site.

1. *The estuary and associated foreshore public land is to be protected in accordance with the Tweed Coast Estuary Management Plan 2004-2008, Cudgera, Cudgen and Mooball Creeks*
2. *Native vegetation is to be retained and restored to protect the estuary and foreshore areas in accordance with the PART 04 - PRECINCT - SOUTH HASTINGS POINT Tweed Coast Estuary Management Plan 2004-2008, Cudgera, Cudgen and Mooball Creeks.*
5. *Development applications related to developments that are likely to disturb acid sulfate soils will be required to be supported by an Acid Sulfate Soils Investigation and Management Plan in accordance with the Acid Sulfate Soil Manual (ASSMAC, 1998) or the Council's Acid Sulfate Soil Management Plan for Minor Works.*
6. *Development applications for developments that are likely to disturb groundwater, or require dewatering of the site must be supported by a Groundwater Investigation and Dewatering Management Plan prepared in accordance with Council's Draft Guidelines for Dewatering of Soils at Construction Sites, (undated), and obtain all other relevant statutory approvals.*
7. *Basement carparking is only permissible on sites where protection from the ingress of flood water to a level of 500mm above the design flood level is feasible. Development proposals must address flood issues including emergency response provisions, flood compatibility of structures, and protection of property from flood damage. Developments are to comply with Tweed DCP Section A3 - Development of Flood Liable Land.*
8. *The filling of land to avoid flooding must be carefully considered to avoid impacts on adjoining land and water resources and in particular:*
 - *changing the existing quality of the landscape and visual setting to the settlement;*
 - *removal of vegetation generally and within key visual settings;*
 - *loss of visual privacy;*
 - *unsightly retaining walls or unsightly embankments at boundaries;*
 - *destruction of ecological systems and species, and*
 - *destruction of the delicate composition of soil and water gradations from land to water.*
9. *Lots likely to be affected by views are to comply with Part 5 - Visual Settings. Lots affected by Visual Settings are:*
 - i. *From the Bridge looking south (A): affects lots along Tweed Coast Road.*
 - ii. *Southern entry view (B): affects lots along Tweed Coast Road.*

This area is demonstrated below;

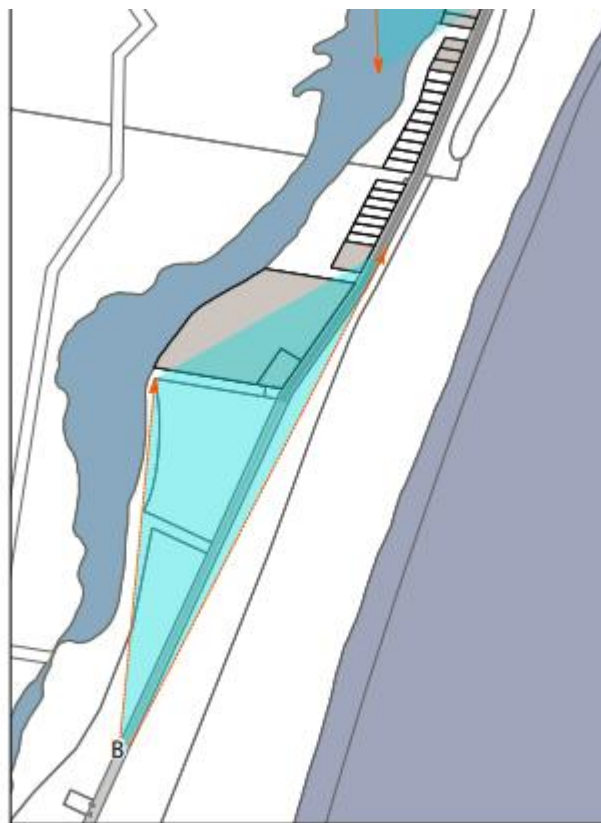


Figure 4.30 Control Diagram - South Hastings Precinct Visual Settings

Cudgera Creek Foreshore

4.4.2.3 Controls - General

The key strategies for Cudgera Creek foreshore are to:

- a. Establish a riparian buffer.*
- b. Re-establish native indigenous species.*
- c. Provide at least one pedestrian access track to the water.*
- d. Provide a natural area that separates urban uses from environmental systems.*

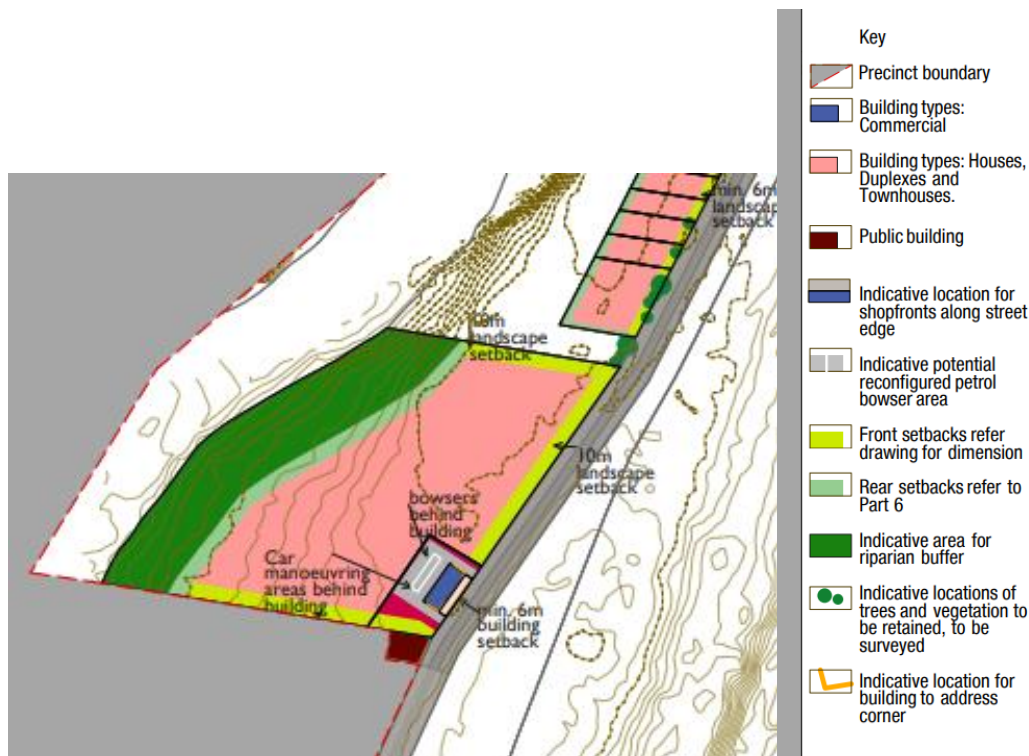
The following controls are applicable to this area;

- 1. A riparian buffer along Cudgera Creek is to be achieved in accordance with the Tweed Coast Estuary Management Plan 2004-2008, Cudgera, Cudgen and Mooball Creeks and subject to meritbased assessment on a case by case basis.*
- 2. Native vegetation is to be retained and restored to protect the Creek edge and ecology in accordance with the Tweed Coast Estuary Management Plan 2004-2008, Cudgera, Cudgen and Mooball Creeks.*
- 3. A management plan is to be prepared by Council for the Cudgera Creek foreshore in consultation with the community and stakeholders using this strategy as a guide.*

4.4.3.5 Controls – Residential Lots

- 4. Setbacks are to be in accordance with Figure 4.29 Control Diagram - South Hastings Point.*

Figure 4.29 Control Diagram – South Hastings Point demonstrates indicative controls for this area. This figure (including the subject site) is partially reproduced below;



It is noted that this plan identifies a '10m landscape setback' to the roadside elevation and the northern and southern side boundaries while a significant portion of the existing site to the west is identified as an 'Indicative area for riparian buffer'.

Part 5 – Visual Settings

The site is mapped as being a lot likely to be affected by views from the southern entry under this DCP as detailed under 4.4.3.3 Controls above.

5.8 Southern Entry

Controls

1. *Prior to any alterations and additions, removal or addition of vegetation, new buildings and public domain improvements plans with photomontages must be submitted to Council to demonstrate how this view may be impacted upon and measures to mitigate impacts.*
2. *Front setback landscaping is to result in mature vegetation, trees and a bushy and green appearance to the street, resulting in buildings being dominated by vegetation; refer to 'A' in the Control Diagram.*
3. *Commercial frontage must address the view with active frontages; refer to 'B' in the Control Diagram. Large areas of bitumen and concrete and solid walls are not permitted.*
4. *Dune vegetation on the eastern side is to be protected.*
5. *Simplify the visual qualities of the road by redesigning large and unsightly signage, under grounding power lines and repositioning urban facilities such as garbage bins to be less visually obtrusive.*
6. *Screen residential and commercial buildings with dense mature vegetation on side and front boundaries of sites.*



This photo shows that the road bends where buildings begin at the southern entry to the settlement. As such buildings along the Tweed Coast Road are square on to the view and highly prominent. A view of the side boundary of The Point development. The principle is to acknowledge this and to ensure that public and commercial buildings and lots address the view and the street, and are designed to reflect the character of a small coastal settlement set within nature. Residential buildings are to be well setback and screened by vegetation so to be less visible within the view.

Figure 5.21 Control Diagram - Southern Entry



Figure 5.22 View for photomontage - Southern Entry

Part 6 Building Type Controls

6.3.3 Residential Flat Buildings

Development controls (in addition to those identified under DCP Section A1) are detailed under 6.3.3.3 Site and building design controls of this DCP.

DESIGN CONTROL 5 - Building Footprint and Attics, Orientation and Separation

Controls in addition to Tweed DCP Section A1

- 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 (The Precinct Controls may reduce this rate, refer to Precinct Controls in Part 4.*

However please note that the maximum Building Height specified in the TLEP 2014 is 8m, with Clause 108 of SEPP Housing 2021 (Non-discretionary development standards for independent living units) also applicable.

Developer Contributions (Section 64 and Section 7.11)

- Section 64 Plans
 - Water
 - Sewer
- Section 7.11 Plans
 - Plan No. 4 - Tweed Road Contribution Plan (Sector 8)

Development Assessment Panel Minute

- Plan No. 5 - Local Open Space
Note: Charges for local casual open space only.
- Plan No. 11 - Shirewide Library Facilities
- Plan No. 12 - Bus Shelters
- Plan No. 13 - Eviron Cemetery
- Plan No. 15 - Developer Contributions for Community Facilities
- Plan No. 18 - Council Administration Offices & Technical Support Facilities
- Plan No. 22 - Cycleways
- Plan No. 26 - Shirewide/Regional Open Space

Note: Charges for shirewide casual open space only.

- Applicable plans can be viewed at <https://www.tweed.nsw.gov.au/development-business/land-use-planning-controls/environment-control-plans#contributions>
- A detailed quoted can be provided for a fee of \$216 (2023-2024) to determine the applicable development contributions.

Questions from the Applicant

- **Seeking critical feedback in relation to the current plans from key disciplines - planning, urban design, ecology, water & sewer, traffic, building, health, etc.**

Council Response

Feedback with respect to the proposal is provided under the various unit comments reproduced elsewhere in these comments.

Comments on submitted plan

- A copy of the concept plan is attached and the following specific comments were made in relation to that plan:
 - a. Development may constitute designated development in the event that works impact upon Coastal Wetlands area as detailed elsewhere in these comments.
 - b. The proposed development provides for a maximum building height exceeding **11m** where Tweed LEP 2014 provides a **8m** building height control for this site.

Under SEPP (Housing) 2021, CI 108 there are non-discretionary development standards for independent living units which enable an increased building height to **9.5m**, with an increase to 11.5m allowable to a portion of the roof for servicing equipment only.

Based on a desktop review of the submitted material, significant concern would be raised with the extent of height variation proposed under this design concept. The proposal exceeds the nominated LEP building height control (8m) by over 3m which effectively results in an additional storey of development on this site when compared to the allowable height control. This is considered, on initial review, to represent an excessive variation of the development control and a significant departure from the anticipated building height and form at this area.

It is further noted that the South Hastings Point Precinct Illustrative Plan as set out in DCP B23 – Part 4 which identifies the desired future character for the area illustrates future development for the remainder of the site as small scale individual units – the height of which would not expected to exceed 1-2 storeys based on the indicative building typology.



Figure 4.25 Plan - South Hastings Point Precinct Illustrative plan

Further Part 5 of the DCP (Visual settings) identifies that buildings on the subject lot will be highly prominent and visible from the southern entry to Hastings Point. Given the objective to *'give the visual impression of a small coastal settlement nestled within nature'* and to *'create a visually pleasing entry statement to Hastings Point that represents it as a small coastal settlement nestled within nature'* - concerns would be raised with the impacts of expanding the three storey built form across the site as proposed.

Any variation proposed to the building height would require a CI 4.6 request (to both the TLEP height control under CI 4.3 and the height control in CI 108 of SEPP Housing). A proposed height of up to, and in places in excess of 11m, as proposed in the DAP plans is considered unlikely to be supported at a Council Officer level based on the current height controls.

- c. Refer to comments from Sustainability & Environment Unit for concerns raised in relation to the inadequacy of the ecological buffers proposed and the encroachment into the required EEC and wetlands buffers.

- d. Justification for any non-compliance with the DCP controls would need to be provided, demonstrating how the objectives for the control is still being met.
 - e. The application should include a site analysis identifying surrounding land use, site constraints and opportunities (etc).
 - f. Visual analysis including a streetscape analysis which should include a visual representation of the proposal in the streetscape demonstrating its compatibility with adjoining development.
 - g. Detailed site plan, floor plans and elevations (including colours and materials). Elevations should depict adjoining buildings and open space areas to assist with assessment of privacy and other impacts.
 - h. Any security lighting provided should contain the light spill within the site.
 - i. Any vegetation removal will need to be clearly detailed. In addition, an assessment will be required against the relevant sections of the *Biodiversity Conservation Act 2016*, the Tweed Development Control Plan Section A16 Preservation of Trees or Vegetation and Section A19 Biodiversity and Habitat Management.
 - j. Consistent with the requirements of Clause 5.21 of the Tweed LEP 2014 a Flood Response Assessment and Action Plan would need to demonstrate safe occupation of, and evacuation from, the land in flood events exceeding the flood planning level.
 - k. Under SEPP Housing, **seniors** means the following people—
 - (a) *people who are at least 60 years of age,*
 - (b) *people who are resident at a facility at which residential care, within the meaning of the [Aged Care Act 1997](#) of the Commonwealth, is provided,*
 - (c) *people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.*
 - l. Any future DA should ensure that carparking meets the requirements of Part 4 (Car parking) of Schedule 4 of SEPP Housing.
 - m. Any future DA would need to demonstrate adequate access to facilities and services as required by Section 93 of SEPP Housing
 - (1) *Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—*
 - (a) *by a transport service that complies with subsection (2), or*
 - (b) *on-site.*
- facilities and services means—**
- (a) *shops and other retail and commercial services that residents may reasonably require, and*
 - (b) *community services and recreation facilities, and*
 - (c) *the practice of a general medical practitioner.*
- n. The non-discretionary development standards in Clause 108(f) specify 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. The areas of deep soil zones identified on the plans includes the perimeter road, are partially located in the Asset Protection Zone and include areas of limited landscaping (eg between car parking spaces, etc.)
 - o. There appears to be limited access to a number of the basement bin storage areas where they are located behind and in close proximity to car parking spaces.
 - p. The multi-purposes rooms in Unit Types 3 have no windows, yet have the potential to be occupied as bedrooms raising concerns in relation to solar access and natural ventilation. Multi-purpose rooms will also trigger requirements for carparking which is based on bedroom numbers.

Tweed DCP - Section B23 - Hastings Point

- q. Basement carparking is only permissible on sites where protection from the ingress of flood water to a level of 500mm above the design flood level is feasible. Development proposals must address flood issues including emergency response provisions, flood compatibility of structures, and protection of property from flood damage.
- r. Section 4.4.3.3 contains controls relating to the precinct. The proposal does not comply with the following:
The estuary and associated foreshore public land is to be protected in accordance with the Tweed Coast Estuary Management Plan 2004-2008, Cudgera, Cudgen and Mooball Creeks.
- s. The Tweed Coast Estuary Management Plan 2004-2008 referred to in Control 4.4.2.3 'Public Domain Strategies and Implementation' in Part 4 of Section B23 'Hastings Point Locality Based Development Code' of TDCP 2008 identifies setbacks from Cudgera Creek as a minimum of 50m. The proposed development significantly encroaches into this setback, which is not supported.
- t. An indicative pedestrian access track is shown on Figure 4.26 of this DCP. Public access across the site along the northern boundary as envisaged under the current conditions would meet the DCP B23 requirements. Opportunities elsewhere to achieve access to Cudgera Creek within the Southern Precinct are limited and therefore commitment to establish an access point as part of the subject development should be demonstrated.

Condition 142 of the original approval under DA06/0413(as amended) remains outstanding:

142. *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.*

No details have been provided on the dedication of land to Council which was a significant consideration in the approval of the existing development on site, and which is at this time outstanding.

In summary, the applicant is advised that the plans submitted to DAP, having regard to height, proximity to the Creek and the EEC represents an over development of the site, and that all such variations would not be supported.

Additional plans and details required in the Statement of Environmental Effects should include (but is not limited to the following)

- The application should include a site analysis identifying surrounding land use, site constraints and opportunities (etc).
- Detailed site plan, floor plans and elevations (including colours and materials). Elevations should depict adjoining buildings and open space areas to assist with assessment of privacy and other impacts.
- Engineering Report detailing prepared by a suitably qualified Engineer detailing all works associated with the proposed development, including (but not limited to) site access, water/sewer servicing, earthworks and stormwater management.
- Visual analysis. In accordance with the requirements of DCP Section B23 – Hastings Point, any development application must be accompanied by a photomontage demonstrating impacts and measures to mitigate impacts.
- Traffic Report to justify site access and parking requirements as well as the likely trip generation associated with the development.
- Bushfire Assessment report prepared by an Accredited BPAD consultant.

- Where consent is sought using the provisions of SEPP (Housing) 2021 a full assessment against the SEPP which clearly outlines how the development complies with all the required standards will be required to be submitted with the DA.
- Assessment and management of Noise/Amenity impacts arising from proposal, including an environmental noise assessment report prepared by a suitably qualified professional.
- Construction management plan including dust, erosion and sediment control, waste management, etc.
- Proposed works including cut and fill and location/depth of retaining walls.
- Demonstrate sufficient usable landscaped open space is provided.
- Impact on public views - Consideration should also be given to impact on public views. If the development would impact on public views to heritage impacts, dominant landmarks, or district views of natural features, a Visual Impact Assessment may be required.
- Locality Plan to scale 1:500 or 1:1000.
- Number of staff and hours of operation for communal facilities including swimming pool, bowling green etc. to be detailed.
- Geotechnical stability of the land.
- The application will need to address management of basement stormwater during construction.
- Details on vegetation proposed to be cleared.
- A Stormwater Management Plan.
- Acid Sulfate Soils Management Plan.
- Dewatering Management Plan
- Contamination land report may be required
- Waste Management Plan (Construction and Operation)
- BASIX Certificate
- Water Capacity Assessment
- Sewer Capacity Assessment
- Shadow diagrams should be provided. These should also depict adjoining buildings and open space areas to assist with assessment.
- Details on vegetation proposed to be cleared and impacts on flora and fauna. Please consider:
 - *Biodiversity Conservation Act*
 - *Local Land Services Amendment Act*
 - Land Management (Native Vegetation) Code 2017
 - Biodiversity Values Map
 - Sensitive Regulated Land Map
 - Native Vegetation Map
 - Tweed Shire Council Bushland Layer
 - Endangered Ecological Communities
 - Endangered Fauna
 - Tweed Coast Koala Comprehensive Plan of Management
- Aboriginal Cultural Heritage
 - Tweed Aboriginal Cultural Heritage Management Plan 2018

- The Tweed Shire area has a rich history of former Aboriginal settlement and activity. Tweed Shire Council has a shire-wide Aboriginal Cultural Heritage Management Plan (ACHMP). The ACHMP includes two mapping layers: *Aboriginal Place of Heritage Significance* (known) and *Predictive Aboriginal cultural heritage* (ACH). The ACHMP sets out the ACH assessment requirements for development within the mapped localities, including upfront consultation with the Aboriginal community, the first point of contact being the Tweed Byron Local Aboriginal Community (TBLALC).
- It is noted that the consultation and any required assessment is to be undertaken PRIOR to lodging a DA and appropriate documentation submitted with the DA.
- It is noted that the consultation and any required assessment is to be undertaken PRIOR to planning proposal application (rezoning).
- Where harm cannot be avoided you will also require an Aboriginal Heritage Impact Permit (AHIP) and may require Integrated Development approval from the NSW Office of Environment and Heritage.
- If you require further cultural information you should contact the Tweed Byron Local Aboriginal Land Council on phone (07) 5536 1763. Further information on investigating Aboriginal heritage matters can be found on the following website www.environment.nsw.gov.au (NSW Office of Environment and Heritage), including access to a database of Aboriginal objects, places and other heritage values across NSW, known as Aboriginal Heritage Information Management System (AHIMS).
- Please consider the *National Parks and Wildlife Act, 1974 Part 6*.

Advisory Notes

- All applications must be submitted via the NSW Planning Portal.
- Normal Section 7.11 and Section 64 Contributions would apply.
- All details submitted with the application including owners names and contacts will be made publicly available on Council's DA tracker website.
- No development application will be formally accepted until payment of all applicable fees are received.

ROADS & STORMWATER COMMENTS:

General

- Paved footpath for the full frontage of the site would be required and should be integrated into a legible pedestrian movement route through the site.
- Analysis will be required to determine the required amount of car parking and to assist Council in determining the applicable parking provision under the relevant DCP.
- Owners consent for ground anchors (to retain sacrificial sheet piling for basement excavations) is required from Council or neighbouring private property if ground anchors are proposed to be used within 200mm of the subject lands property boundary. A Section 138 application with a bond for each road frontage (as per Council's current fees and charges) is applicable for ground anchors.

Access

- Access to the development would need to comply with Council's "[Driveway Access to Property - Design Specification](#)". An application under Section 138 of the *Roads Act 1993* identifying driveway access and proposed levels and grades, will be required to be submitted and approved, prior to issue of the construction certificate.

Development Assessment Panel Minute

- The provisions of AS2980.1 will also apply requiring maximum gradient of 5% for the first 6 metres past the property line.

Traffic

- The application is to be supported by a Traffic Impact Assessment that addresses the suitability of the accesses, parking provision and any proposed upgrades for the road network necessary to support the proposal.

Stormwater

- On site treatment of stormwater runoff would be required prior to discharge into the public system in accordance with Council's [Development Design Specification D5 – Stormwater Design](#) and [Development Design Specification D7 – Stormwater Quality](#). An application under Section 68 of the *Local Government Act 1993* should accompany the development application to identify all site drainage, stormwater quality devices and proposed stormwater outlets and any required erosion and sedimentation control measures.
- Stormwater management plan prepared by a qualified engineer in accordance with Council's [Development Design Specification D5 – Stormwater Design](#) and [Development Design Specification D7 – Stormwater Quality](#) is to be provided with the development application.
- On site detention of stormwater is required. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be limited to pre-development flows. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. All stormwater must initially be directed to the DCP.

Flooding

- Site is partly affected by 1%AEP flood and Probable Maximum Flood. Design Flood Level is 2.6m AHD and Flood Planning Level is 3.1m AHD.

BUILDING SERVICES COMMENTS:

- The development would need to provide a BASIX certificate.
- The 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
- A Construction Certificate Application would be required for any building works after approval of any Development Application. Approval of any Development Application does not automatically assume compliance with the Building Code of Australia for the Construction Certificate.
- Mechanical ventilation to the basement area may be required. The proponent is advised to consult with a qualified mechanical engineer on this matter.
- Swimming pool safety fencing would be required in accordance with Australian Standard AS1926.1- 20

ENVIRONMENTAL HEALTH COMMENTS:

Acid Sulfate Soil and Dewatering

- 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).

Amenity

Construction

- The 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.

Use

- 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.

Contamination

- The applicant shall address current and previous land uses in accordance with *State Environmental Planning Policy (Resilience and Hazards) 2021* with the Development Application. All contaminated land reports submitted for Council review must be accompanied by a Contaminated Land Summary Table to ensure that key mandatory information has been incorporated (available at <https://www.tweed.nsw.gov.au/ContaminatedLand>).

Food Safety

- Any area to be used for the preparation and handling of food or drink for sale will need to comply with *Food Act 2003*, Food Safety Standards, and relevant Australian Standards (AS 4674 and AS 1668.2) for construction and fit-out. The applicant is to confirm in the Development Application whether the proposal includes the sale of food or drink.
- Where the sale of food or drink is proposed, it is recommended any Development Application include plans drawn to a scale of 1:50 detailing the following with regards to all food and drink related area for review:
 - Floor plan and sectional elevations in two directions;
 - Layout of kitchens and bars showing all equipment;
 - All internal finish details including benches and work surfaces, floors, wall, ceiling and lighting;
 - Hydraulic design in particular method of disposal of trade waste;

Development Assessment Panel

Minute

- Details of the location and method of mechanical exhaust ventilation for the food premises that considers noise, odour, and AS1668 Pts 1 & 2. These are to include the location of the proposed exhaust system including location of discharge point/s on the plans; and
- Servery areas including counters etc.

Note - Separate Application for Approval of Food Premises Fit-out will be required.

Lighting

- Any Development Application is to address impact from any external lighting on occupants of the subject site and surrounding properties. Applicant shall demonstrate the development will meet the requirements of AS4282 - Control of the Obtrusive Effects of Outdoor Lighting and consider preventative measure such as timers and shielding to prevent the spill of light or glare creating a nuisance to onsite occupants and neighbouring or adjacent premises.

Mosquitoes and Biting Midges

- The subject site is adjacent to Mosquito Breeding Areas identified in Council's GIS. The applicant is to address Tweed Development Control Plan 2008, Section A6 – Biting Midge and Mosquito Control in the Development Application.

On-Site Sewage Management

- The site is serviced by a Council reticulated sewerage system however contains a Private Sewage Ejection Pump Station. The applicant is to address on-site sewage management in the Development Application by providing an on-site sewage management design report prepared by a suitably qualified wastewater consultant that considers sewage management for the existing and proposed use.

Public Health – Microbial Control

- Where the development will require the use of regulated systems as identified in the *Public Health Act 2010* such as a water-cooling system (e.g. cooling tower) or warm-water system (e.g. thermostatic mixing valves), these systems must comply with the requirements of the *Public Health Act 2010* and *Public Health Regulation 2012*. The applicant shall identify any regulated systems and the proposed location of any water-cooling systems with the development application.

Public Health – Swimming Pools and Spas

- Where swimming pools and spas are identified as a 'public swimming pool or spa pool' as defined in the *Public Health Act 2010*, the swimming pools and spas must comply with the requirements of the *Public Health Act 2010* and *Public Health Regulation 2012*.

Trade Waste

- Any proposed car wash area in an impervious area shall be designed and constructed such that it does not cause water pollution. Wastewater from such an area is to be directed to sewer and an application for approval to discharge liquid trade waste to Council's sewerage system may be required. Further enquiries may be directed to Council's Water and Wastewater Unit.

Traffic Noise

- The subject site is identified as having frontage to a classified road (Tweed Coast Road) and access is proposed from Tweed Coast Road. The Development Application must address Division 17 Subdivision 2 Development in or adjacent to road corridors and road reservations of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* and Development Near Rail Corridors and Busy Roads – Interim Guideline (NSW Department of Planning 2008).

Waste

- The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW Environment Protection Authority "Waste Classification Guidelines".
- The importation of waste to the site is restricted to the following:
 - Virgin excavated natural material (as defined in Schedule 1 of the *Protection of the Environment Operations Act*);
 - Any other waste-derived material subject to a resource recovery exemption under Part 9 Clauses 91 and 92 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.
- The exportation of waste must be transported to a licensed waste facility or an approved site subject to a resource recovery order and exemption.
- Any virgin excavated natural material or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to the material's compliance and must be provided to the Principal Certifying Authority or Council on request.

WATER & WASTEWATER COMMENTS:

Water

- The existing Seniors Living development is currently serviced via an existing 200mm water main located within the western verge of Tweed Coast Road.
 - The proposed further development of the subject site is to utilise the existing water services currently servicing the subject site.
- As part of the formal proposal, please provide a Civil Engineering Report.
- The reporting shall identify the proposed water demand in accordance with Tweed Shire Council's Development Design Specification D11.

Sewer

- The existing Seniors Living development is currently serviced by a private on-site sewer ejection pump station (SPS) discharging into Council's public gravity infrastructure located near the north-eastern corner of the subject site.
 - The existing SPS is to be maintained to service the proposed further development of the subject site and as previously expressed within the original DA approval and most recent OSSM inspection, the SPS is to not exceed a maximum discharge rate of 5.2L/s.
- As part of the formal proposal, please provide a Civil Engineering Report which provides:
 - A quantification of design sewer flows (including peak demands) to be generated by the proposed development in accordance with Tweed Shire Council's Development Design Specification D12 and the current Fees and Charges Policy.

Section 64 Developer Contributions (2023-2024)

- Existing Section 64 Entitlements: **(High Level Estimation Only)**
 - The existing entitlements as shown below are applicable to the developable area as identified within the submitted DAP material.

Development Assessment Panel Minute

- Existing entitlements from the previous use as the Hastings Point Holiday Village and the previously purchased entitlements for Stage 1 of DA06/0413 have not been included in this preliminary ET calculation as they do not affect the proposal.
- The ETs for Stage 1 of the Seniors Living are: 53.2 ET for Water and 66.5 ET for Sewer.
 - Water: 6.0 ET
 - Sewer: 7.5 ET
- Proposed S64 Entitlements: **(High Level Estimation Only)**

	Totals				47.40	59.25
	Water	Sewer			Water ET	Sewer ET
Description	ET	ET	No.	m2	TOTAL	TOTAL
Accommodation						
Self Contained Retirement Units / Villas – Internal kitchen / laundry facilities						
Potential of 1 bedroom each Dwelling	0.4	0.5			0	0
Potential of 2 bedroom each Dwelling	0.6	0.75	39		23.4	29.25
Potential of 3 bedroom (or more) each Dwelling	0.8	1.0	30		24	30

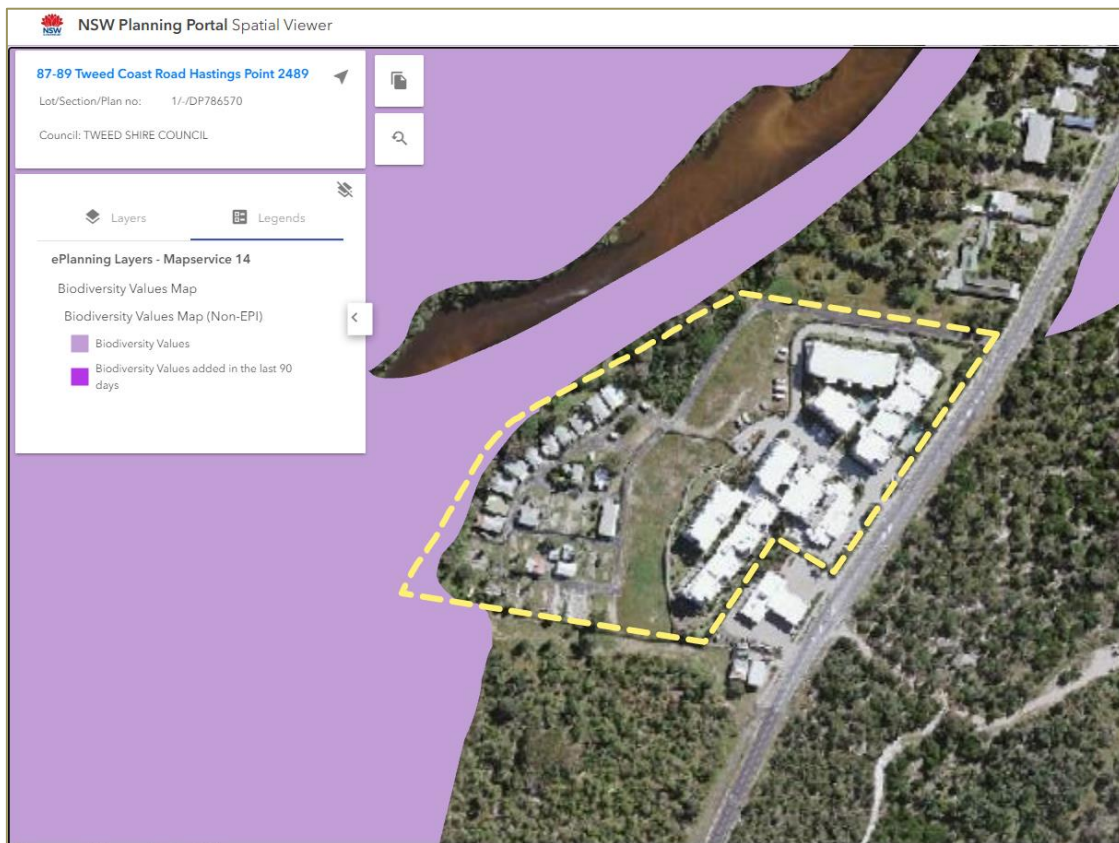
- Section 64 Developer Contributions:
 - Water: 47.40 – 6.0 = 41.40 ET @ \$12,548.00 = \$519,487.20
 - Sewer: 59.25 – 7.5 = 51.75 ET @ \$8,115.00 = \$419,951.25
- * Due to the commercial nature of the development the existing water tariff of the site will be transitioned to the Non-Res High Consumption tariff and no additional entitlements would need to be purchased.

SUSTAINABILITY & ENVIRONMENT COMMENTS:

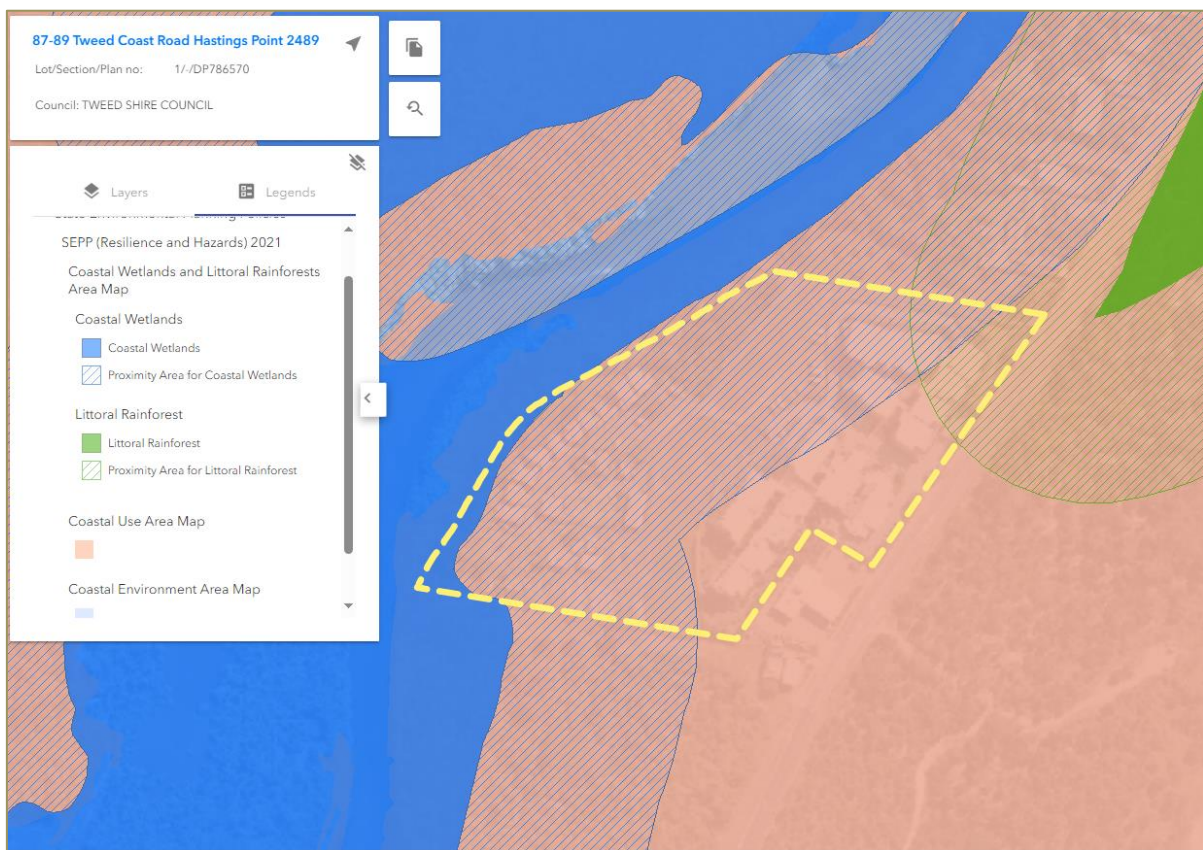
General ecological features/values

- The site is identified on the NSW Biodiversity Values Map referred to in the *Biodiversity Conservation Regulation 2017* as land containing biodiversity values.

Development Assessment Panel Minute



- With reference to the Coastal Wetlands and Littoral Rainforest Area Map referred to in *State Environmental Planning Policy (Resilience and Hazards) 2021* [SEPP (R&H)], the following coastal management areas affect the site:
 - Coastal Wetlands
 - Proximity Area for Coastal Wetlands
 - Proximity Area for Littoral Rainforest
 - Coastal Use Area
 - Coastal Environment Area



- The Tweed Vegetation Management Strategy maps a heterogeneous tract of riparian vegetation to the west of the site associated with the Cudgera Creek riverine reserve comprising the following vegetation types:
 - Broad-leaved Paperbark Closed Forest to Woodland (VC: 401)
 - Mangrove Open Forest to Woodland (VC:602)
- The Broad-leaved Paperbark Closed Forest to Woodland (VC: 401) is likely representative of:
 - Plant Community Type 4004 Northern Melaleuca quinquenervia Swamp Forest under the NSW Eastern PCT Classification System
 - Candidate Endangered Ecological Communities listed under the *Biodiversity Conservation Act 2016* being Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions
 - An Over-cleared vegetation type (greater than 70% cleared)
 - Over-cleared Mitchell Landscapes - Byron Tweed Alluvial Plains + Byron – Tweed Coastal Barriers
 - Preferred Koala Habitat under the Tweed Coast Comprehensive Koala Plan of Management 2020
 - High Probability Groundwater Dependent Ecosystem (Probable Vegetation and Wetland GDEs NSW Department of Climate Change, Energy, the Environment and Water 2022)
- The Mangrove Open Forest to Woodland (VC:602) is likely representative of:
 - PCT 4091 Grey Mangrove-River Mangrove Forest under the NSW Eastern PCT Classification System
 - Over-cleared Mitchell Landscapes Byron – Tweed Coastal Barriers
 - Type 1 and 2 Key Fish Habitat

- Medium Probability Groundwater Dependent Ecosystem (Probable Vegetation and Wetland GDEs NSW Department of Climate Change, Energy, the Environment and Water 2022)
- An unmapped unit of vegetation planted under DA06/0413 in accordance with the approved Updated Rehabilitation Strategy Report (Planit 2008) occurs to the north-west of the site.
- Based on NSW Bionet search and preferred habitat availability the following threatened fauna species have a moderate to high likelihood of occurrence (but may not be limited to):
 - Koala (*Phascolarctus cinereus*)
 - Common Planigale (*Planigale maculata*)
 - Grey-headed flying-fox (*Pteropus poliocephalus*)
 - Southern myotis (*Myotis macropus*)
 - Little Bent-winged bat (*Miniopterus australis*)
 - Collared Kingfisher (*Todiramphus chloris*)
 - Bush Stone-curlew (*Burhinus grallarius*)
 - Glossy Black-Cockatoo (*Calyptorhynchus lathami*)
 - Black-necked Stork (*Ephippiorhynchus asiaticus*)
 - Eastern Osprey (*Pandion cristatus*)
- The adjacent Cudgera Creek is mapped as a third order stream.
- Key fish habitats are identified on the subject site (DPI mapping).
- The site occurs within a Regional Wildlife Corridor.
- Tweed Coast Comprehensive Koala Plan of Management 2020 (Tweed KPoM) applies to the site. The site is identified by the Tweed KPoM as being within the Southern Tweed Coast Koala Management Area and adjoins the Koala Beach Koala Activity Precinct (to the west, south and north of the site).
- Mapped Preferred Koala Habitat occurs on and adjacent to the subject site. Broad-leaved Paperbark Closed Forest to Woodland, which is assigned a Secondary A Koala habitat category pursuant to the Tweed Coast Koala Habitat Study 2011. The mapped Preferred Koala Habitat occurs to the west of the site associated with the Cudgera Creek riparian corridor.

Comments on proposed plans and matters to be considered

- It is unclear how the '20 m EEC Buffer (DCP A19)' setback has been derived. No vegetation mapping has been included as part of the information package.
- Similarly, it is unclear how the 'Minimum Required APZ' line has been derived and to which side of the red linework an asset protection zone is to be established.
- Any future application would be expected to include refined site-based vegetation mapping to inform ecological impact assessment and bushfire hazard assessment.
- 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 (R&H)] 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 current form.
- All ecological buffers required under DCP A19 should be subject to a habitat restoration program to re-establish pre-clear vegetation/habitat and protected in perpetuity.
- Any bushfire hazard asset assessment should assume full ecological restoration of all ecological buffer zones and red flagged values onsite.

- Stormwater infrastructure, hardstand areas, roads, services and the like, would unlikely to be supported within ecological buffer zones.
- 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 unlikely to be supported within ecological buffer zones.
- Offsite asset protection zones on adjacent Council managed Crown Land would unlikely to be supported consistent with Council's Asset Protection Zones on Public Land Policy 2020.
- Where within a Mosquito/Biting Midge hazard area – pest management should not compromise expected habitat restoration outcomes.
- 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.
- The candidate EEC on and adjacent the site are considered GDE's and as such the modification of groundwater flows could be a prescribed impact under the BC Regulation.
- The proposal may be declared designated development by way of *State Environmental Planning Policy (Resilience and Hazards) 2021* [Section 2.7(2)] where the proposal involves activities prescribed in Section 2.7(1) of the SEPP (R&H).

Supporting application material required

- Layout plan that responds to those ecological constraints detailed above and any additional values identified during detailed ecological survey.
- Where the proposal is likely to affect a Coastal Wetland Area (designated development) an Environmental Impact Statement is required to accompany the application.
- A Biodiversity Development Assessment Report (BDAR) (prepared by an accredited consultant in accordance with the Biodiversity Assessment Method 2020) would be required where:
 - The proposal exceeds the Biodiversity Offset Scheme clearing threshold of 0.25 hectares based on minimum Lot size; or
 - Native vegetation removal within the high conservation value area (HCVA) mapped on the NSW Biodiversity Values Map for any purpose; or
 - An assessment of significance (5-part test) made under Section 7.3 of the BC Act performed on all threatened entities known or likely to occur on site that determines that the proposal is likely to significantly affect threatened species or ecological communities, or their habitats.
- Ecological Assessment prepared in accordance with Part D Section 5 of the DCP A19 and Assessment with Development Control Plan – Section A19 Biodiversity & Habitat Management
- Assessment with all relevant components of Part 5 of the Tweed Coast Comprehensive Koala Plan of Management 2020 based on a Koala Habitat & Activity Assessment Report.
- A detailed tree survey and arboricultural assessment report
- Bushfire Risk Assessment Report – this report should take into consideration likely retention and management (including habitat restoration) of high conservation values, red flagged buffers, compensatory habitat areas and any significant trees.
- Full details of bulk earthworks, civil infrastructure, services and any necessary structures to enable development .
- Groundwater investigation and assessment of any impact upon groundwater dependent ecosystems

- The proposal should address and respond to all relevant provisions of the following:
 - Section B23 'Hastings Point Locality Based Development Code'
 - Tweed Coast Estuary Management Plan 2004-2008, Cudgera, Cudgen and Mooball Creeks
 - Coastal Zone Management Plan for Tweed Coast Estuaries 2013
- Any future application may be considered integrated development and subsequent referral to the following concurrence agencies:
 - NSW Rural Fire Service – *Rural Fires Act 1997*
 - NSW Natural Resource Access Regulator – *Water Management Act 2000*
 - NSW Department of Primary Industries (Fisheries) – *Fisheries Management Act 1994*

STRATEGIC PLANNING & URBAN DESIGN COMMENTS:

Building Height

- Whilst this proposal cannot be considered a 'modification' in the formal sense, it is uncertain how the previously approved building heights can be applied to this proposal. It is noted the documentation references 11m building envelope here the prevailing maximum building height is 8m. The SEPP Housing provisions however allow a maximum building height of 9.5m. Any building height variations would need to be the subject of a CI 4.6 variation. Note that the TLEP 2014 building heights were amended following the endorsement of the Hastings Point Locality Plan where a revised building height of 8m now prevails. This followed extensive community consultation where limiting building height was a key issue which Council ultimately recognised.

In this regard, an amended scheme which deleted the level 3 would be consistent with the prevailing legislative frameworks. It would also have the benefit of mediating-built form from Tweed Coast Road to the Creek and bushland edge by stepping down in height to a more amenable building scale adjoining the creek foreshore.

Site Planning

- In terms of overall site planning, and notwithstanding accuracy of applied buffers, the revised configuration from an urban design perspective is an improvement on the previously approved scheme for the following reasons:
 - The revised building envelopes would result in each having north-north westerly aspect which will result in generally good solar orientation and benefit from views over the creek to the bushland beyond.
 - The building envelope configuration results in an enclosed communal open space and recreation facilities which will be easy to access from each of the building envelopes and provide a central community point of focus.
 - The revised site plan seeks to provide more legible and direct circulation (both vehicular and pedestrian).
 - The addition of a bowls green and indoor swimming pool pavilion are welcome inclusions as is the connecting with Country walking trail which would add to the existing communal facilities within Stage 01.

Further suggestions for improvement include:

- Pedestrian circulation from front of site to rear through the centre of the site so all can residents (including Stage 1) can access the connecting with Country trail and Creek foreshore.
- Additional outdoor unprogrammed communal open space areas which may include BBQs and picnic areas for use when extended family visit; combine resident events.

Development Assessment Panel

Minute

Building Form and materials

- In terms of building design and form, the proposed envelopes are relatively well articulated. Each building would have legible point of access. Balance of solid to void, deep eave overhangs, integration of screening and upper-level landscaping.
- Mix of materials is generally supported, including predominantly face brick offset by colour (rendered panels), timber infill panels and screening elements provides a sense of layering. Use of face brick is robust and would require less maintenance in consideration of the marine environment.
- The reference to native vegetation colouration and texture informing material and colour selections of the buildings is supported.
- There is however a question of the consistency of building form and material between the first constructed stage and this stage – they appear quite different.

Unit design

- It is noted that most Units are either 2 bed or 2 bed + multi-purpose room. Additional unit variety including 1 bed units are strongly encouraged to appeal to a wider range of residents and socio-economic profiles.
- Dimensions for Units haven't been provided. Floor plans have logic in terms of orientating balcony living space and principal bedroom to the north / northwest aspect. The fitout plans indicate furniture and circulation can be reasonable well accommodated.
- As seniors housing there is a requirement to address SEPP Housing Schedule 8 Design Principles as part of any future development application. Currently the internal configuration of (most) units being single aspect would be cross ventilated (3b). As such there may be a heavy reliance on air conditioning. Encourage applicants to use the ADG as a guiding document in addition to Schedule 8 to achieve a high level of internal amenity.
- The inclusion of the breakout spaces along the corridors is a welcome inclusion. It is noted that the other communal areas including pool, bowl green and other existing communal facilities would be shared by all residents.

Conclusion:

It is open to the applicant to lodge a development application and any such application would be considered on its merits having particular regard to the above issues. The comments provided above are to assist the proponent in preparing a development application. No detailed assessment has been carried out and all issues may not have been identified. Therefore, the above advice does not provide certainty of approval being obtained.

Moved:

Valerie Conway

Seconded:

Angie Cousens

RESOLVED that the Minutes of meeting held **10 April 2024** be accepted as a true and accurate record of the proceedings of that meeting.

Meeting Concluded at:

11.30