

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSNTH-80
DA Number	DA2021/056
LGA	Nambucca Valley Council
Proposed Development	Seniors Housing (271 Self-contained dwellings, 75 bed care facility, and recreation facilities)
Street Address	24 Coronation Road, Congarinni North Lots:155 and 188 in DP: 755537 and Part Lot: 1 DP: 1000618 and Part Lot: 2 DP: 1265232
Applicant/Owner	Tony Owen Architects
Date of DA lodgement	23 February 2021
Total number of Submissions Number of Unique Objections	Total of 3 public submissions – all by way of objection. Issues raised in submissions: <ul style="list-style-type: none"> the site is inappropriate for the proposed development; bushfire hazard; flood hazard; proximity to river; environmental impact; safety of future residents who may wish to walk to town; increased traffic; impact on roads and bridges by heavy vehicles associated with the development.
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Capital Investment Value >\$30 Million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> SEPP (Housing for Seniors or People with a Disability) 2004 SEPP (Coastal Management) 2018 SEPP (Infrastructure) 2007 SEPP (Primary Production and Rural Development) 2019 SEPP (Koala Habitat Protection) 2020 SEPP (State and Regional Development) 2011 SEPP 55 Remediation of Land Nambucca Local Environmental Plan 2010 Nambucca Development Control Plan 2010 Clause 92(1)(b) – For development involving building demolition, refer AS 2601 Coastal zone management plan for the Nambucca Valley Coastline.
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> Architectural Plans (Revision C) by Tony Owen & Partners, 6 October 2021 Response to RFI by DMPS, 11 October 2021 Legal Advice – Clause 28 of SEPP (Seniors) 2004, by Mills Oakley 7 October 2021 Engineering RFI, Amended Engineering Plans by Meinhardt, 11 October 2021 including Flood Modelling by Water Modelling Solutions, 7 October 2021 Site Sewer Strategy Review by Meinhardt, 11 October 2021 Traffic Impact Assessment by Traffix, October 2021 Infrastructure Services Assessment and Concept Design Report by Meinhardt, 31

	<p>May 2021</p> <ol style="list-style-type: none"> 8. Landscape Masterplan Report by Town Owen Partners, 13 July 2021 9. Statement of Environmental Effects by DMPS, February 2021 10. Summary Flood Impact Assessment by Meinhardt, 17 February 2021 11. Operational Waste Management Plan by Elephants Foot, 17 February 2021 12. Land Use Conflict Risk Assessment by RMCC, 6 January 2021 13. Geotechnical Investigation by EI Australia, 16 February 2021 14. Flood Emergency Warning Plan by Meinhardt, 17 February 2021 15. Bushfire Assessment Report by Building Code and Bushfire Hazard Solutions, 14 December 2020 16. Acoustic Report by Acouras Consultancy, 9 February 2021 17. Aboriginal Due Diligence Assessment by Ecological Australia, 26 November 2020 18. BDAR by Trevor J Hawkeswood, 18 December 2020 19. BCA Report by Technical Inner Sight, 16 December 2020 20. Accessibility Design Assessment by AED Group, 10 February 2021 21. Detailed Site Investigation by EI Australia, 18 December 2020 22. Acid Sulfate Soil Management Plan by Hampton Property Services, November 2013 23. Design Statement by Tony Owen Architects, 22 December 2020 24. NCC Section J Assessment Report by Vipac, 9 February 2021
Clause 4.6 requests	<ul style="list-style-type: none"> • Nil
Key Issues	<ul style="list-style-type: none"> • Water and Sewerage Services • Rural Land Use Conflict • Flood Impact on Other Properties • Flood Isolation • Access (Power Lines) • Internal Slope Exceeding Requirements • Coastal Wetland
Report prepared by	Brad Lane
Report date	9 November 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not Applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Not Applicable

Conditions

Have draft conditions been provided to the applicant for comment?

No

EXECUTIVE SUMMARY

The proposed Seniors Housing development including a residential care facility on this site has an extensive background involving an unsuccessful Site Compatibility Certificate followed by a Planning Proposal, which resulted in amendment of the Nambucca LEP 2010 to provide an “enabling clause” for Seniors Housing development on the subject site.

The development application has been assessed and several issues have been identified, primarily associated with the availability of essential services to the site, flooding and rural land use conflict.

The issues identified during the assessment included:

- **Water and Sewerage Services** - Sufficient information has not been provided to satisfy Council that water and sewerage services are available or that adequate arrangements have been made to make that infrastructure available when it is required (Clause 7.4 of Nambucca LEP 2010, Clause 28 of SEPP (Housing for Seniors or People with a Disability) 2004).
- **Rural Land Use Conflict** – It is likely that the land to the south and west of the site will be used for horticulture (blueberries). The applicant proposes an alternative solution to the development Control Contained in Part F of the Nambucca Development Control Plan 2010.
- **Flood Impact on Other Properties** - Flood modelling provided does not satisfy Council that the proposed vehicular access to the development will not result in increased flood impact upon other properties as required by Clause 5.21 of Nambucca LEP 2010.
- **Flood Isolation** – The proposed development would be isolated from external services in flood events exceeding a 1 in 10 year event.
- **Access (Power Lines)** - The driveway alignment and height was amended and moved to the north of the originally proposed location to avoid conflict with the Transgrid power lines crossing the site. Although providing a 90° turn at the hill top entry to the proposed residential area, the amended plans address the issues identified by Transgrid during the assessment, achieving minimum vertical and horizontal clearance.
- **Internal Slope** – The grades of the internal roads exceed the site related requirements of the SEPP (Housing for Seniors or People with a disability) 2004, which would make pedestrian movement around the site by the future elderly residents, difficult.
- **Coastal Wetland** – The proposed external road works batters extend to the boundary of a Mapped SEPP Coastal Wetland, and do not allow for the provision of a pedestrian path linkage to Macksville.

The assessment of the various pre-conditions, which a consent authority must be satisfied of prior to determining a development application are summarised in **Table 1** as follows:

TABLE 1 - PRE-CONDITION CLAUSES OF ENVIRONMENTAL PLANNING INSTRUMENTS	
Clause	Assessment Summary
<p>NLEP 2010 - Clause 5.21(2) in relation to flood planning.</p> <p>“ (2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <p>(a) is compatible with the flood function and behaviour on the land, and</p> <p>(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</p> <p>(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</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.”</p>	<p>The proposal would create seniors living development including a residential care facility which would be isolated in any flood event greater than a 1 in 10 year event, without access to services including medical and food supplies. Emergency evacuation of residents from the facility would represent a resource burden for state agencies. The proposed access road across the flood plain, may impact upon other properties. In the opinion of Council Officers, this clause has not been satisfied.</p>
<p>NLEP 2010 – Clause 7.4(1) in relation to Public Utility Infrastructure.</p> <p>“ (1) Development consent must not be granted for development on</p>	<p>The essential public utility infrastructure of a reticulated sewerage service is not available</p>

<p><i>land unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.</i></p> <p><i>(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure."</i></p>	<p>to the site without substantial upgrade works to reticulation and treatment infrastructure. The proposed on site sewerage treatment plant has not been demonstrated to be able to dispose of the required daily volumes of treated effluent on the subject site. It is also not certain that the applicant would be able to obtain the required licences to operate the plant under the Water Industry Completion Act 2006.</p>
<p>NLEP 2010 – Clause 7.7(4) in relation to Flood Risk Management.</p> <p><i>" Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land—</i></p> <p><i>... (f) residential care facilities, ..."</i></p>	<p>The proposed residential care facility will be isolated in flood events exceeding the 10% AEP. Although the facility will be located above the PMF, evacuation would only be available by helicopter. There is no guarantee that a helicopter would be available in a flood event for emergency evacuation of residents.</p>
<p>SEPP (Housing for Seniors or People with a Disability) 2004 Clause 28 in relation to Water and Sewer.</p> <p><i>" (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.</i></p> <p><i>(2) If the water and sewerage services referred to in subclause (1) will be provided by a person other than the consent authority, the consent authority must consider the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure. In locations where reticulated services cannot be made available, the consent authority must satisfy all relevant regulators that the provision of water and sewerage infrastructure, including environmental and operational considerations, are satisfactory for the proposed development."</i></p>	<p>The proposal comments in relation to NLEP 2010 – Clause 7.4(1) are applicable.</p> <p>In addition, Council Officers are not satisfied that the site is suitable for the proposed method of on-site disposal of treated effluent, and that failing the ability to suitably dispose of the waste water on site that the proposal may create environmental impacts on adjoining wetlands. Council Officers are also not satisfied that the applicant would be able to obtain the relevant licences to operate the infrastructure under the Water Infrastructure Competition Act 2006, based upon the environmental and operational requirements of applicants for those licences.</p>
<p>SEPP 55 - Clause 7 in relation to potentially contaminated land.</p> <p><i>" (1) A consent authority must not consent to the carrying out of any development on land unless—</i></p> <p><i>(a) it has considered whether the land is contaminated, and</i></p> <p><i>(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</i></p> <p><i>(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.</i></p> <p><i>(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 subclause (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."</i></p>	<p>The application was supported by a detailed site investigation which indicates that minor localised contamination was present at the site. However the land can be made suitable for the proposed land use subject to the implementation of the recommendations of the detailed site investigation report.</p>

The applicant had been provided with multiple opportunities to withdraw the development application, or provide additional information to address the identified issues.

On balance, despite the proposed development being permissible with development consent, there are a number of pre-conditions and merit issues which have not been addressed to the satisfaction of Council Officers. On that basis the application is recommended for determination by way of refusal.

1. REFERRALS

1.1 Internal Referrals

Engineering – The application was referred to Council's Development and Water and Sewerage Engineers. The development site is presently not serviced by reticulated water or sewerage services. The original proposal to extend and connect to the reticulated services is not possible due to capacity constraints, which do not meet the infrastructure demands of the proposal. Alternative options have been considered by the applicant, in summary, Option 1 being a dedicated rising main to the Macksville sewerage treatment plant and Option 2 being an on-site packaged sewerage treatment plant. The only feasible option for water supply is the installation of an on-site reservoir and booster pump, which would be topped up with continuous lower flow connection to the reticulated water supply.

The amended plans indicate external road works to elevate Coronation Road between the bridge and the site entry road. Council's engineers were consulted regarding the applicants option to utilise retaining structures instead of battered road shoulders. Council's preference is to provide stable batters due to the ongoing cost associated with structures.

Health and Building – Standard conditions regarding building standards and operational standards for any on site effluent disposal system would be applied to any consent.

1.2 State Agency Referrals

NSW Rural Fire Service – The NSW RFS has provided a deemed Bushfire Safety Authority in relation to the proposed development under Section 100B of the Rural Fires Act 1997.

NSW Roads and Maritime Service – The proposed was not required to be referred to RMS.

NSW Department of Primary Industries – The amended application, which incorporates an on-site sewerage treatment plant and due to the existence of Priority Aquaculture areas on the Nambucca River, the application was referred to NSW DPI under Clause 29 of SEPP (Primary Production and Rural Development) 2019. NSW DPI subsequently referred the application to the NSW Food Authority, due their role in administering the NSW Shellfish Program. Comments from the NSW Food Authority raised concerns with the on-site package sewerage treatment plant as a potential pollution source which may impact upon sensitive shellfish growing areas, particularly where such a system may not be able to effectively deal with the high load of antibiotic waste from an aged care facility.

NSW IPART – The application was referred to IPART to advise whether a licence would be required under the Water Industry Competition Act. The advice received from IPART was that there is no reason that a WIC Act licence would not be required. Based on the information submitted it is considered that the applicant is not likely to be successful in obtaining the necessary licences. It is understood that no privately operated on site sewerage treatment plant of this scale has been successfully licenced to a private operator with no previous experience in operating such a plant.

New South Wales EPA – The application was referred to the NSW EPA for comment and advice in relation to the proposed on site sewerage treatment plant. The referral was rejected on the basis that the proposal would have been below the threshold that required an EPA Licence.

NSW State Emergency Service – The application was referred to the SES on 29 September 2021. A response had not been received at the date of finalising this report. It is noted that the SES were opposed to the Planning Proposal, which included a conceptual plan of a similar senior housing development, on the basis of the difficulty of evacuation.

1.3 Electricity Authority Referrals

The site contains electricity easements in favour of Transgrid and Essential Energy. The application was referred to both authorities for comment. Both agencies requested additional information. The application plans were amended to relocate the driveway to address Transgrid clearance issues. Comments received would be required to be applied as conditions of any consent.

2. THE SITE AND LOCALITY

2.1 Description of the Site

The site is legally described as Lots 155 and 188 in DP 755537 and is known as 24 Coronation Road, Congarinni North. The site is located on the western side of Coronation Road and the Taylors Arm waterway, approximately 1km west of the Macksville Post Office.

The site is a rural property with a total area of 60.84ha. The site is occupied by an old dwelling and farm building located on the eastern part of the property. The southern and eastern parts of the property are predominately cleared grazing land which rises from the eastern flood plain up to an elevated ridge which runs along the southern boundary.

Low land vegetation and wetland areas are located around the northern and western sides of the property.

Overhead electricity lines owned by Essential Energy and Transgrid are located within the site. The Essential Energy lines cross the wetland area at the north eastern part of the site while the Transgrid power lines cross the open paddock in the eastern part of the site in a generally north-south direction.

Vehicular access to the site is presently via an unsealed gravel driveway crossover to Coronation Road, 320m south of the Wilson Road traffic bridge.

The site constraints include the lack of urban services available to the site, flooding, the location and height of the electricity lines, access, the slope and topography of the site, bushfire hazard, ecological constraints to the west and north of the site (SEPP Coastal Wetland), upstream location to a priority aquaculture area, and the surrounding agricultural land uses.



Figure 1 - Site Location Plan



Photo 1 – The site viewed from the existing dwelling looking to the west



Photo 2 - Current Vehicular access from Coronation Drive.



Photo 3 - The eastern part of the site viewed from the existing dwelling looking west. (The proposed development area is beyond the power lines).



Photo 4 – The eastern part of the site viewed from eastern end of the elevated area.



Photo 5 - The central part of the site looking east across the proposed development area.



Photo 6 - The western part of the site looking west.



Photo 7 - The western part of the site looking south to the adjoining property.

The application was amended to include a 40m easement within the two properties to the south of the development site on Part Lot: 1 DP: 1000618 and Part Lot: 2 DP: 1265232.

2.2 Description of the Surrounds

The surrounding area of the subject site is characterised as rural land with rural residential, grazing, horticulture and boarding kennel uses.

To the north of the site on the opposite side of the low wetland area is a blueberry farm located on the elevated ridges and visible from the subject site. Other rural residential uses are located to the north.

To the east of the site on the opposite side of Coronation Road is the waterway known as Taylors Arm. To the east of the waterway is residential development located on the locality known as Kings Point.

To the south of the site are cleared paddocks which have historically been used as grazing land. One of the properties, a 70ha holding which also wraps around the western side of the subject site, has recently been purchased with the intention of undertaking intensive horticulture (blueberries).

To the west of the site is the rural property intended to be used for the purpose of horticulture. To the south west is a boarding kennel and cattery trading under the name Coronation Kennels & Cattery.

3. SITE HISTORY

3.1 Background

The site was the subject of a previously unsuccessful application for a site compatibility assessment in 2009.

Subsequently a Planning Proposal was initiated in 2013 to amend the Nambucca Local Environmental Plan 2010 to include development for the purposes of seniors housing on the subject site in Schedule 1 - Additional Permissible Uses.

A number of issues were raised and considered in the Planning Proposal assessment with the Department of Planning including flooding, rural land use conflict, bushfire, aboriginal cultural heritage and ecological.

Council at its meeting of 27 October 2016, resolved to support the planning proposal and subject to agreement of the Department in relation to compliance/ consistencies with s9.1 directions. The amendment to the NLEP was subsequently gazetted.

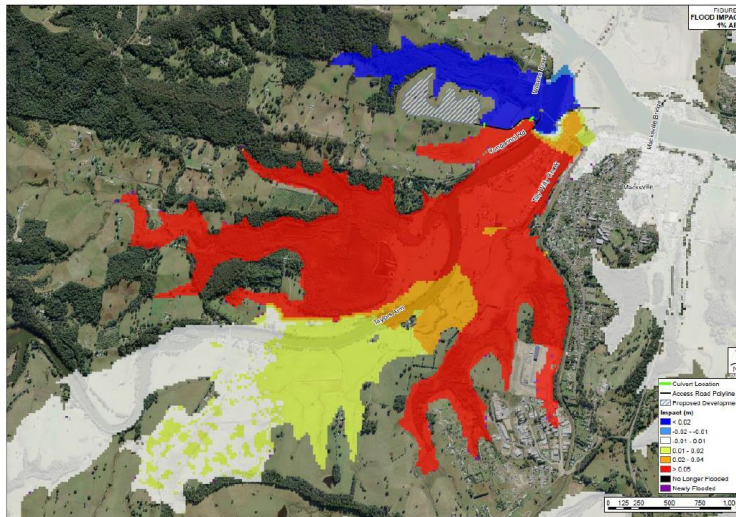
3.2 Flooding Investigations at the Planning Proposal Stage

The following text is an extract from the report to Council on 27 October 2016 in relation to the Planning Proposal:

“

At the request of Council staff further information was provided by the applicant in respect to potential flooding impacts on surrounding land. This report is titled 'summary of flood impacts' (Meinhardt, 2016) and is provided as attachment 5. This report includes additional modelling which demonstrates the impacts of a 1% AEP flood on surrounding land for an access road constructed to the 1% AEP level and alternative construction to 3m AHD level which is just above 5% AEP (1 in 20 year) level. Both of these modelled scenarios include the provision of two (2) culverts within the construction of the access road.

The modelling demonstrated that impacts of a 1% AEP event combined with an access road developed to a 1% AEP level would have unacceptable impacts on Kings Point and adjoining properties impacts of up to 50 – 60mm were modelled for Kings Point and impacts of up to 85mm were encountered on land adjoining the proposed access road. Refer to the below image.



A further model was undertaken which reduced the proposed access road level from the 1% AEP level (RL 4.2) to RL 3m (just above the 5% AEP level, 1 in 20 ARI). This access road level would be slightly below the level at which Joffre St is flooded. This model demonstrates an additional flood depth impact on 50mm on the adjoining property however no additional impact to the Kings Point area with the addition of 2 culverts (0.9m x 6m). No surrounding dwellings would be impacted should this modelled scenario be developed. See the below image.



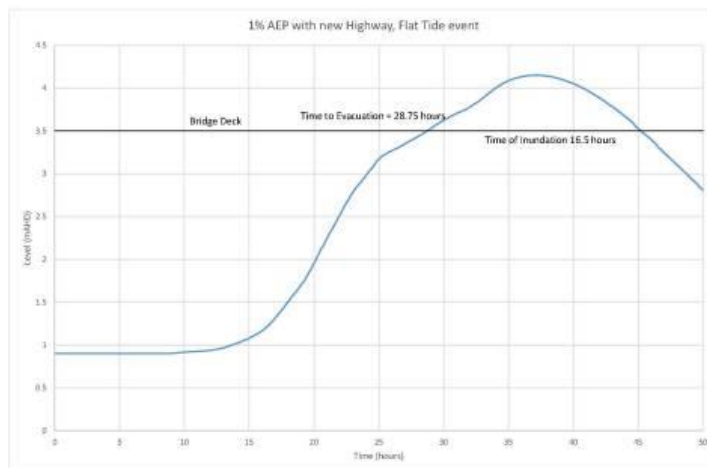
Further to this the applicant's engineer has calculated the potential for an access designed to the 1% AEP level to be constructed using multiple culverts to maintain existing floodwater flows through the site and not impact on flood waters elsewhere. According to the engineering report the inclusion of 23 culverts (2m x 3.6m) at a length of approximately 86m would accommodate the flows of a 1% AEP event. This construction option has not been modelled to demonstrate its effectiveness.

Ideally Council would require access to a 1% AEP level, nevertheless it is logical to give consideration to access availability beyond the site boundaries. It has previously been reported that Joffre Street floods during a 5% AEP event and would effectively dislocate all areas west of the Taylors Arm to the Macksville Town Centre including a development on the subject site. So although Council may demand the applicant provide access to a 1% AEP level on the land this will not result in a reduced isolation period for any residents located

on the site. The isolation period of the site will remain constant for any scale of access road constructed based on the level at which Joffre Street is flooded.

Previous reporting has provided time series flood modelling on Joffre Street between the planning proposal site and Macksville Town Centre. The modelling examines the time Joffre Street becomes inundated at its lowest point being the bridge closest to town (3.5m AHD) for a 1 in 50 and 1 in 100 event.

The graph below shows the development would be isolated from town for approximately 16.5hrs during a 1% AEP post highway event. During an event of this size there would be approximately 28hrs before the access becomes inundated.



During a 1 in 50 year event the site would be isolated for approximately 6hrs.

The modelled figures and isolation period are based purely on water levels and the existing roads (bridge deck). Council and the SES would need to determine when the road is safe to be re-opened after a flood event, this may involve, debris removal and appropriate inspections of the infrastructure.

...

The applicant has also demonstrated that lowering the road will substantially reduce offsite impacts.

The applicant has indicated that installation of culverts would accommodate flood flows through the site however this has not been modelled.

There are a number of options that could be considered through design refinements of the access prior to lodgement of a future Development application. These various options may be considered to effectively maximise access to and from the site and minimise the impact such a construction may have on surrounding properties. The types of construction methods that may be used to maximise access and reduce offsite impacts include:

- bridging;
- culvert use;
- lowering the access road (no less than Joffre St); and
- modifying the alignment of the access road.

As a requirement of any future DA process and pursuant to the requirements of the Nambucca LEP 2010 the applicant will be required to demonstrate that the design of the access will provide the maximum available safe access to and from the site and also not impact the local area.

Other matters would also need to be given consideration through this process including allowances for debris in designs and property management, safety and other such processes. The applicant has provided a flood emergency warning plan as part of this planning proposal.

The final design of the access road to the facility remains un-resolved however full detail design of such structures would not typically be required until the development application stage. The proposed access will be required to be designed to ensure that it will not result in an increased flooding impacts on surrounding properties including Kings Point."

4. THE PROPOSAL

4.1 Description of the Proposed Development

The proposed development is a senior's housing development comprising 271 self-contained detached dwellings and a residential care facility with 75 beds. The proposal also includes the ancillary elements including earthworks, construction of access roads, recreation facilities and walking tracks as well as water and sewerage infrastructure. The capital investment value of the development is \$76 million.

Complete details of the proposed development are provided in the plans and reports accompanying the development application. The key development data is provided in **Table 2**. The site plan of the proposed development is provided as **Figure 2** and an overview of the development is provided in the paragraphs below.

TABLE 2 – KEY DEVELOPMENT DATA	
Control	Proposal
Site area	60.84ha
GFA	29,299m ²
FSR	0.05:1
Clause 4.6 Requests	Not Applicable
No of Self Contained Dwellings	271
Number of Aged Care Beds	75
Car Parking spaces	595

The proposed self-contained dwellings are provided in a mix of 54 x three-bedroom dwellings, each with a double carport and 217 x two-bedroom units with two floor plan variants. The two-bedroom dwellings either having a double or a single carport. The detached self-contained dwelling are all of a single storey design and are arranged around the western, northern and eastern sides of the aged care facility and recreation facilities.

The residential care facility is a two storey “U” shaped building located at the top of the site with access via the main entry road located to the south of the building. The car parking and loading areas are also provided to the southern side. A helipad is located to the western side of the residential care facility for emergency use.

The recreation facilities are located to the east of the residential care facility and includes a gymnasium, outdoor swimming pool and a bowling green for use by residents. The open and vegetated areas to the west, north and east of the proposed dwellings are to be utilised as passive recreation and maintained as bushfire asset protection zones. Dual purpose bushfire trails/ walking tracks are to be provided within the asset protection areas.



Figure 2 - Site Plan

The proposal involves extensive earthworks. The natural ground levels will be altered generally in the order of 3 metres to 4 metres, but up to 8 meters of cut and 7 meters of fill in the vicinity of the aged care facility.

The proposal as amended includes the construction of an elevated vehicular access, which will ensure access up to a 1 in 10 year event. The design of the vehicular access way incorporates 3 banks of culverts providing a total of 32 box culverts with cross sectional dimensions of 3.6m wide x 2.4m high openings to facilitate the through flow of flood water.

The proposal includes options for the provision of sewerage services, either by the construction and commissioning of a dedicated sewerage rising main, and upgrade of the Macksville Sewerage Treatment Plant, or alternatively, an on-site packaged sewerage plant. The rising main option involves a route, which passes through an existing urban area, involves crossing the North Coast Railway and two classified roads including the Pacific Highway. The route also passes through the low lying area east of the Macksville urban area. The option to provide an on-site package sewerage treatment plant would involve the construction of a compound in the south western part of the site and the installation of a sewerage treatment plant manufactured by MAC Water. The proposal as amended on 11 October includes a 40m wide easement on two properties to the south of the site Part Lot: 1 DP: 1000618 and Part Lot: 2 DP: 1265232. Part of the easement is to contain a 700m long absorption trench to dispose of treated effluent from the on-site sewerage treatment plant.

4.2 Application Chronology

The development application was lodged on **23 February 2021**. A chronology of the development application since lodgement is outlined below.

23 February 2021 Application number DA2021/056 was submitted.

26 February 2021 a preliminary assessment undertaken.

10 March 2021 referred to JRPP, LALC, NSW RFS, Essential Energy

11 March 2021 adjoining owners notified by letter – submissions to be made by 16 April 2021.

16 March 2021 an information request was sent from NVC to the applicant requesting:

- Payment of the application fees required by 19 March 2021.
- Sewer and Water Reticulation Strategy is required investigate the existing capacity, and to describe the upgrades to be provided to the reticulated sewer and water networks. Information required by 16 April 2021.

17 March 2021 the application was advertised 17 March to 16 April.

30 March 2021 referred to Transgrid.

31 March 2021 Information Requested by Essential Energy.

21 April 2021 email from NVC to applicant requesting update on water and sewer arrangements response. Applicant advised that response to be made in 1 week.

23 April 2021 Information Requested by Essential Energy.

26 April 2021 copy of redacted submissions provided to the applicant. Total 3 submissions.

3 May 2021 email update to JRPP. Council's information request of 16/4 outstanding. Request for information from Essential Energy and Transgrid outstanding.

3 May 2021 2nd information request letter from NVC. Applicant invited to withdraw application and resubmit when all information was available.

9 May 2021 applicant requests information regarding water and sewer infrastructure.

11 May 2021 NVC responds with requested information.

26 May 2021 Essential Energy responds stating that they have safety concerns.

27 May 2021 NVC email concerns lack of information regarding the adequacy of the water supply, on site STP concern, reticulated sewer capacity constraints. The applicant again invited to withdraw application.

31 May 2021 NVC emailed applicant and advised of the extent of the application fee to be refunded if DA withdrawn.

3 June 2021 NVC email to JRPP regarding water and sewerage issues. NVC preference to withdraw and re-lodge when all information is available.

4 June 2021 Video conference with NVC officers including the GM, Manager of Water and Sewerage and the applicant with his consultants. An additional 30 days provided to respond to NVC concerns.

7 June 2021 RFS GTAs provided.

8 June 2021 NVC provided a list of concerns regarding an on-site STP.

1 July 2021 Transgrid provided a letter stating that the application would have unacceptable impacts on their power lines.

7 July 2021 NVC email to applicant – yet to receive information in relation to water and sewerage services and Transgrid. Provided 7 days to respond.

16 July 2021 the applicant emailed that the required information had been submitted to the portal. NVC unable to access the info.

28 July 2021 revised architectural plans, site sewer management letter, Infrastructure Services Assessment provided by the applicant.

29 July 2021 email from NVC to applicant advising:

- Amended proposal on site STP has been sent to NSW DPI (potential aquaculture impact).
- Transgrid information response outstanding.
- Access to the site is likely to create unacceptable flood impact to surrounding properties.

- Noted inconsistencies on plan detail, i.e. conflict between the proposed sewerage storage tanks, batters and the fire trail.

30 July 2021 EPA advised no comments as the plant was below their licencing requirements.

10 August 2021 Email from Essential Energy advising information remains outstanding.

13 August 2021 Response from DPI fisheries advising that they referred the application to NSW Food Authority for comment. They prefer the option to use reticulated sewerage due to concerns high concentrations of antibiotics in the private STP may affect treatment. Concerns of where sludge is to be disposed of.

21 August 2021 Letter received from applicant advising that Transgrid issues resolved. Applicant provided comments in response to DPI Fisheries issues. No plans of the amended access provided.

10 September 2021 3rd information request letter from NVC to applicant advising that an additional 30 day is provided to provide all outstanding information and that the application will be assessed based on the information available at that time.

13 September 2021 email from DMPS providing a copy of the access driveway under the Transgrid power lines. It does not align with any internal road within the development. The applicant advised that the Coastal Wetland issues were addressed in the SEE. Applicant does not understand why a licence for the private water and sewer infrastructure would be required.

13 September 2021 NVC responded to email referring to flood information in the 3rd information request letter, indicating where there proposal includes fill in the mapped wetland and why the proposal is likely to require a WICA licence/ why they may be unlikely to be able to obtain one.

23 September 2021 the panel was briefed by council on the above application.

11 October 2021 the applicant provided a written response to the information request, with amended plans, amended sewer management strategy (including a 5 page arborist/ ecological recommendation), traffic impact assessment, a legal advice regarding water and sewer arrangements and amended civil plans including flood modelling of the entry road.

18 October 2021 the applicants planning consultant provided an email response to an issue raised in a telephone discussion, regarding owners consent from the adjoining properties on which the rural buffer and absorption trench for disposal of treated effluent is to be located. The applicant's consultant submits that pursuant to Clause 49 of the EP&A Regulation 2000 the consent of an owner or other person under this clause is not required to be in writing.

5. ASSESSMENT

5.1 Environmental Planning and Assessment Act 1979

The proposed development is assessed against the relevant sections of the *Environmental Planning and Assessment Act 1979* as follows:

Section 1.7 – Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

It is considered that sufficient information is available to satisfy Council that the proposed development will not be contrary to the matters for consideration outlined in this section subject to the recommended conditions of consent. As such, it is not considered that the proposal will have any significant effects on threatened species, populations, communities or their habitats.

Section 4.15(1) In determining a development application a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

The matters for consideration in relation to the provisions of relevant State Environmental Planning Policies are addressed in **Table 3** of this Report.

TABLE 3 - STATE ENVIRONMENTAL PLANNING POLICIES ASSESSMENT		
Name of Policy	Complies	Comments
SEPP 36 Manufactured Home Estates	N/A	The proposed development does not comprise a manufactured home estate.
SEPP 55 Remediation of Land	Yes	The site is within a rural area and has been used for agriculture. The application was accompanied by a Detailed Site Assessment which concludes that the site can be made suitable for the proposed residential land use. Any consent would need to be conditioned that remediation and validation be provided.
SEPP (Building Sustainability Index: BASIX) 2004	No	A BASIX Certificate accompanied the originally submitted application. An amended BASIX Certificate was not provided to suit the amended plans.
SEPP (Coastal Management) 2018	No	<p>The proposed work must not encroach within the mapped wetland otherwise the proposal must instead be assessed and determined as Designated Development, addressing the relevant Secretary's Environmental Assessment Requirements. Although the road alignment is existing, and represents the only practical direct road link to the site, alternative designs including the construction of retaining structures within the road reserve are not desirable as it would create an ongoing maintenance burden to Council as the Roads Authority.</p> <p>Given the number of dwellings and despite the proposed shuttle bus, it is also desirable that the development be connected with a pedestrian link. This would require a wider road construction.</p> <p>Any consent would need to include a condition that no work is to be undertaken within the mapped wetland. The amended application plans show that the work associated with the proposed raising of Coronation Road extends to the boundary of the mapped Coastal Wetland on both sides of the road. It is difficult to see how the proposed work could practically be undertaken without impacting upon (encroaching within) the mapped Coastal Wetland.</p>
SEPP (Housing for Seniors or People with a Disability) 2004	No	<p>Clause 4 – The Policy does not strictly apply to the subject site as it is not on land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes. Nevertheless an assessment against the controls of the Policy have been provided in the Statement of Environmental Effects relevant to the proposed self-contained dwellings and residential care facility.</p> <p>Assessment comments regarding the proposals compliance with the controls are as follows:</p> <p><u>Clause 26. Location and Access to Services.</u></p> <p>The applicant proposes to provide a regular shuttle bus service to provide residents with access to the relevant services including shops, banking, commercial services and a general practitioner. This approach is generally supported, except that during flood events residents will be isolated from essential services and medical care.</p> <p><u>Clause 26(3)(c) Grades.</u></p> <p>The grades of the proposed internal roads exceed the maximum grades for accessing services, suggesting that future residents may have difficulty walking around the development. Proposed grades are up to 12% (1:8) for distances of over 100m,</p>

		<p>where the Policy calls for grades of 1:14 or 7% with exceptions for higher grades at much shorter distances than those proposed.</p> <p><u>Clause 28 Water and Sewer.</u></p> <p>As previously discussed in this report, Council Officers are not satisfied that the development can practically be connected to reticulated sewer. Considerable new infrastructure and upgrades to the Macksville STP would be required.</p> <p>Clause 28(2) provides that: <i>"In locations where reticulated services cannot be made available, the consent authority must satisfy all relevant regulators that the provision of water and sewerage infrastructure, including environmental and operational considerations, are satisfactory for the proposed development."</i></p> <p>Council Officers do not have sufficient information to be certain that the proposed methods of disposing of the required volumes of waste water on the site are feasible. Council Officers are also not satisfied that the requirements of all relevant regulators could be satisfied, particularly IPART administering the Water Industry Competition Act 2006.</p> <p><u>Clause 38 Accessibility.</u></p> <p>The applicant has indicated that a bus service will be provided. Nevertheless, it is considered that a pedestrian or mobility scooter link should be provided between the site and the existing footpath network in Macksville. The provision of a pedestrian path along the section of Coronation Road may present difficulties associated with the work extending into the mapped SEPP Coastal Wetland.</p> <p><u>Clause 41 Standards for self-contained dwellings</u></p> <p>The plans of the self-contained dwellings do not comply with the standards in Schedule 3 concerning accessibility and useability for self-contained dwellings. Many, of the non-compliances may be addressed by conditions of consent, however they would result in amendments to the plans.</p> <p>In summary, the proposal represents areas of non-compliance with the Policy such as, the steep internal grades, isolation form services, including doctors, during flood events and the inadequacy of water and sewer services. While strictly speaking this policy does not apply to the site; it is considered that the provisions of this policy should be applied in demonstrating the suitability of the site under section 4.15(1)(c) of the EP&A Act. Having regard to the above, the site is considered to be unsuitable.</p>
SEPP (Infrastructure) 2007 – Clause 45	Yes	<p>The application was referred to Essential Energy and Transgrid. Essential Energy have provided advice requiring compliance with the relevant electricity safety guideline. Such a requirement would be a condition of any consent indicated that they have no safety concerns. Transgrid following an amendment to the development application have indicated that the proposed amended access road is acceptable subject to conditions.</p>
SEPP (Koala Habitat Protection) 2020	Yes	<p>The site is predominantly cleared grazing land. The ecological report submitted with the development</p>

		application indicates that the site is not core koala habitat. A koala plan of management is not required for the proposed development.
SEPP (Primary Production and Rural Development) 2019	No	<p>The Nambucca River contains priority oyster aquaculture areas. Since the proposed development includes an on-site sewerage treatment plant the proposal was referred to NSW DPI (Fisheries) under Clause 29 of the Policy. The comments provided by DPI indicated that the Department had also consulted with the NSW Food Authority. The Department indicated that concerns were held for the proposed on site sewerage treatment plant and that the preference would be for the development to connect to reticulated sewer. The primary reason stated for this concern was that the relatively high rates of antibiotics in waste water from the seniors housing development may decrease the efficiency of bacterial treatments of the plant and ultimately lead to risk of contaminating downstream oyster leases. The Department advised that the less preferred option of an on-site STP creates a significant potential pollution source to sensitive shellfish growing areas downstream. Tertiary level treatment of effluent combined with chlorine and UV disinfection as an additional step, together with telemetry and alarms to prevent unintended discharge. The application was subsequently amended to the effect that all treated effluent is to be disposed on the site rather than release to the wetlands. Council Officers are not convinced that the proposed absorption trenches are suitable given the grade (16m difference in levels), the lack of geotechnical investigation and the lack of consideration for disposal during periods of extended wet weather when the trenches may be sodden.</p> <p>Having regard to the information provided it is not considered that the proposed sewerage servicing satisfies the requirements of this policy or NSW DPI (Fisheries).</p>
SEPP (State and Regional Development) 2011	Yes	The proposed development has a capital investment value of greater than \$30 Million. In accordance with clause 20 and Schedule 7 of the Policy, the development comprises Regionally Significant Development. The application will be reported to the Northern Regional Planning Panel.

The matters for consideration in relation to the relevant clauses of the Nambucca Local Environmental Plan 2012 are addressed in **Table 4** of this Report.

TABLE 4 - NAMBUCCA LOCAL ENVIRONMENTAL PLAN 2010		
CLAUSE	COMPLIES	COMMENTS
2.3 – Zone objectives and Land Use Table	See Comment	<p>The site is predominantly located within the RU1 Primary Production Zone. The vegetated area at the north eastern part of site is located within the E2 Environmental Conservation and E3 Environmental Management Zones.</p> <p>The development work is to be undertaken entirely within the part of the site that is zoned RU1. Development for the purpose of Seniors Housing is prohibited in the RU1 Zone. Notwithstanding this, Development for the purpose of Seniors Housing is made permissible with development consent on the</p>

		<p>subject land, under Schedule 1 Item 3 of the Nambucca LEP 2010 (Additional Permitted Uses).</p> <p>The objectives of the RU1 zone are:</p> <ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To encourage diversity in primary industry enterprises and systems appropriate for the area. • To minimise the fragmentation and alienation of resource lands. • To minimise conflict between land uses within this zone and land uses within adjoining zones. <p>The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.</p> <p>The proposed development is not a primary industry and introduces a potential land use conflict for surrounding agricultural land. The proposal is to provide a buffer which does not comply with the NDCP 2010 control of 80m including 40m of vegetation buffer.</p> <p>In summary, the proposed development is permissible with development consent, however the development is not consistent the zone objectives such as fragmentation and introduction of land use conflict.</p>
4.3 – Height of buildings	N/A	<p>The height of building map does not provide a development standard for the subject site. The development provides a maximum building height of 8.5m (residential care facility) plus any variation in relation to ground level existing.</p>
4.4 – Floor space ratio	N/A	<p>The floor space ratio map does not provide a development standard for the subject site.</p>
5.10 – Heritage conservation	Yes	<p>The application was accompanied by an Aboriginal Cultural Heritage Due Diligence Assessment. The site does not contain any registered sites. The part of the site to be developed site is predominantly cleared (disturbed) land. Unexpected finds may be adequately dealt with via a standard condition.</p>
5.16 – Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones	No	<p>The proposal includes the erection of dwellings in a rural zone. In relation to the matters for consideration under subclause 4, the existing uses and approved uses of land in the vicinity of the development include a dog boarding kennel and cattery approximately 320m to the south west of the proposed dwellings and agriculture on the adjoining properties including likely blueberry horticulture on the property to the south and west of the site. The existing blueberry horticulture to the north of the site is buffered by the vegetated wetland area which varies from 150m to 300m in width.</p> <p>The existing uses may continue regardless of the proposed development, however the development may present limitations on future growth of the horticulture uses and may generate complaints which could hinder normal agricultural operations.</p> <p>The proposed development is a sensitive land use and represents a land use conflict with the likely rural activities on the property to the south of the site. Rural land uses such as agriculture and horticulture are the</p>

		<p>preferred and the predominant land uses in the vicinity of the development. Likely impacts include visual impact, noise, light and dust associated with the blueberry farm, such as spraying crops which may occur at night or early morning. These activities are likely to have a significant impact on the proposed seniors housing development.</p> <p>An assessment of the proposed buffer is provided in comments relating to Section 4.15(3A) of the Nambucca DCP 2010. In summary the proposal seeks to vary (reduce) the width of the vegetation buffer.</p>
5.21 – Flood planning	No	<p>The preconditions under Subclause 2 of this Clause are assessed as follows:</p> <p><i>(a) is compatible with the flood function and behaviour on the land, and</i></p> <p><u>Assessment Comment:</u> The residential component of the development is located on elevated land, above the probable maximum flood (PMF). The proposed access road would be subject to inundation in the 10% AEP flood event. In this regard the proposal, subject to the appropriate design and flood modelling of the proposed access road is compatible with the flood function and behaviour on the land.</p> <p><i>(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</i></p> <p><u>Assessment Comment:</u> The proposed access road design incorporates a series of culverts. The flood modelling provided does not indicate the invert level of the proposed culverts, but indicates the road surface level to demonstrate the impact of the design on the surrounding area. The need for flood modelling including the consideration of debris blockages was signalled at the Planning Proposal stage. The background of this issue is provided in Section 3.2 of this Report. The flood modelling provided is an amendment to the application and is based upon the installation of either 32 or 40 reinforced concrete box culverts with dimensions of 3.6m wide x 2.4m high. The report indicates that the afflux of the proposed driveway may be plus or minus 10mm over the Kings Point area. Any potential increase in flooding on the existing residential areas is not an acceptable outcome.</p> <p><i>(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</i></p> <p><u>Assessment Comment:</u> The evacuation routes from the site to the evacuation centre in Macksville are at a relatively low level and would be subject to inundation in a 10% AEP (1 in 10 year) event. It is noted that the Planning Proposal reports referred to inundation in a 5% AEP (1 in 20 year) event. The application proposes that the risk associated with the evacuation of residents to the evacuation centre at Macksville High School poses greater risk than those residents sheltering in place. Depending on the nature of the</p>

		<p>flood event the site may be isolated for a few hours or up to several days.</p> <p>Although all proposed dwellings are located above the PMF level, given that the proposal would comprise a significant, elderly population and a residential care facility, it is entirely possible that multiple evacuations may be required during a flood event. There are no staff accommodated on site and they would be isolated for potentially several days.</p> <p>The site includes a helipad for the evacuation of residents that may require urgent medical care which is not catered for on-site, during a flood emergency. The issue with this strategy is that a helicopter is not proposed to be provided/ operated by the facility, and in reality may not be available for patient or staff transfer at the time that it is required. When isolated by flood water, the reality is that residents and staff would not have access to doctors or any other services or facilities. In this regard the ability to undertake emergency evacuations during a flood event is likely to exceed the capacity of the existing evacuation routes.</p> <p>It is noted that the NSW SES opposed the original Planning Proposal and are likely to also oppose this development application.</p> <p><i>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</i></p> <p><u>Assessment Comment:</u></p> <p>As mentioned above, all proposed residential uses will be located on high ground at a level above the PMF. The proposal includes a helipad, which would enable air transfer of patients requiring emergency care and staff transfers during a flood emergency. However the ability to obtain the use of a helicopter, when required, is not guaranteed.</p> <p>Boat or road transfers would present significant risk to life, in the event of a flood. Notwithstanding that the issue was considered at the planning proposal stage, on merit, it is considered that the proposal does not provide adequate measures to manage risk. Particularly since it contains a residential care facility and due to the large number of potential elderly residents in the self-contained dwellings, which could potentially require emergency evacuation during a flood event which would isolate the development from medical care and other services.</p> <p><i>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</i></p> <p><u>Assessment Comment:</u> Subject to appropriate design of the access roads and scour protection to the battered road filling, bridges or culverts, and adequate protection and operation of on-site infrastructure, the proposal is unlikely to create any adverse environmental impacts</p>
7.1 – Acid sulfate soils	Yes	<p>The site contains soil mapped as Class 5, Class 3 and Class 2 on the Acid Sulfate Soil Planning Map. The application is accompanied by an Acid Sulfate</p>

		Management Plan, which satisfies this clause.
7.4 – Public utility infrastructure	No	<p>The preconditions under Subclause 1 of this Clause are in the following terms:</p> <p><i>Public utility infrastructure</i></p> <p><i>(1) Development consent must not be granted for development on land unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.</i></p> <p>The applicant has provided two options to provide sewer services to the site, as described in Section 4.3 of this Report. Both options, i.e. the on-site sewerage treatment plant, or construction of a dedicated rising main to the Macksville Sewerage Treatment Plant, are subject to various constraints.</p> <p>The applicant submits that their preferred option is to install an on-site sewerage treatment facility which would require the disposal of approximately 170,000 litres of water per day. The disposal of water includes approximately 80,000 litres per day to absorption trenches and the balance used for toilet flushing, laundry water and landscape irrigation. Approximately 700m of the proposed absorption trenches are located on an adjoining property on undulating ground (16m difference in levels). No soil tests or detailed plans have been provided to support the suitability of the disposal areas. Council Officers are not satisfied that the location of the trenches are suitable or that the trenches are capable of disposing of the proposed quantities of water. As Macksville Sewerage Treatment Plant has limited capacity, the proposal is to remove and transport the sludge produced by the plant to Kempsey Sewerage Treatment Plant. This continual road transport is also considered unsustainable as a long term solution.</p> <p>The constraints that apply to the rising main option include the difficult route which crosses two significant water ways, the north coast railway and two classified roads; as well as the capacity constraint to the existing inlet works and the actual treatment capacity of the Macksville Sewerage Treatment Plant itself.</p> <p>Reticulated water supply to the site is also subject to flow and pressure constraints associated with the sizing of water mains on the fringes of the urban area. The applicant proposes an extension of a 150mm water main towards the site, with an onsite water reservoir and booster pump. While this will provide a solution, ownership and maintenance of the infrastructure within the site would be the responsibility of the development. The proposed location of the on-site reservoir is on the southern boundary. It is understood that this will be a significant structure with a capacity in the order of 1.4 million litres. Council Officers are not satisfied that sufficient details have been provided to enable a proper assessment of the height of the reservoir, the visual impact, earthworks and retaining.</p> <p>In summary, Council officers are not satisfied that the preconditions in Clause 7.4(1) of the LNLEP have been satisfied.</p>

7.6 – Earthworks	Yes	The proposal includes substantial earthworks with changes in level of up to 9m. The earthworks relate to the creation of the footprint of the proposed buildings and also the construction of the access road to Coronation Road. The impacts associated with the proposed earthworks would mostly be internalised to the site. Conditions of any consent would need to ensure that geotechnical monitoring and reporting is undertaken and that appropriate erosion and sedimentation controls are in place.
Schedule 1 - Additional Permitted Uses	Yes	Item 3 in Schedule 1 provides that development for the purpose of seniors housing is permitted with development consent on Lots 155 and 188 in DP 755537, 24 Coronation Road, Congarinni North.

(a)(ii) The provision of any draft environmental planning instrument (EPI)

There are no draft environmental planning instruments relevant to the proposed development.

(a)(iii) The provision of any Development Control Plan

The matters for consideration in relation to the relevant parts of the Nambucca Development Control Plan 2010 are addressed in **Table 5**.

TABLE 5 - NAMBUCCA DEVELOPMENT CONTROL PLAN 2010		
Part	Complies	Comments
Site Analysis (Part A)	Yes	The application plans and material accompanying the development application were adequate to identify the site opportunities and the constraints presented by the site.
Car Parking & Traffic (Part C)	Yes	The proposed development is required to provide a total of 247 spaces for the self-contained dwellings and 15 spaces for the residential care facility. As the recreation facilities are ancillary to the development and for residents use only, no additional parking is required for those facilities. The proposed development provides a total of 547 spaces, which easily complies with the DCP requirement.
Sediment & erosion control (Part D)	Yes	This matter may be managed via appropriate consent conditions.
Rural and environmental development (Part F)	No	<p>The controls in this part of the DCP require the provision of a 150m buffer between dwellings and horticulture uses or an 80m buffer which includes a 40m vegetative buffer.</p> <p>The development proposes a total buffer width of 80m with a 20m wide vegetative buffer, a 3m high earth mound and a 1.8m high fence. 40m of the proposed buffer is to be located on the adjoining property, which the applicant submits will be secured by an easement or potentially purchase of the adjoining properties.</p> <p>This proposal does not meet the development control of Clause F1.3.2, however Section 4.15(3A) requires a consent authority to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.</p> <p>In this respect the applicant has indicated that the 20m vegetative buffer will include earth mounding to a height of 3m with a 1.8m high acoustic fence located at</p>

		<p>the top for the mound. The majority of the development will also be cut into the northern side of the hill which would reduce the potential for direct line of sight between the two uses.</p> <p>The relevant objectives of the control are to:</p> <ul style="list-style-type: none"> - <i>Minimise land use conflict primarily between dwellings and permissible land use activities;</i> - <i>Ensure adequate land use and vegetation buffers are provided between commercial activities/rural industries and dwellings.</i> <p>The effectiveness of the proposed alternative solution to the rural buffer is dependent upon the existence of an effective vegetative buffer, in terms of height and depth. Given that the proposal is not a single dwelling, but rather an intense and sensitive residential use, i.e. 271 self-care seniors dwellings and a 75 bed residential care facility, the proposed reduced buffer is not considered to be adequate. A solution involving the inclusion of a further 20m of vegetative buffer on the adjoining land, may conflict with the proposed absorption trench for the disposal of treated effluent or affect bushfire requirements.</p> <p>The proposed alternative solution to the rural buffer control is not considered to meet the objectives of the control in this instance.</p> <p>Furthermore, the application was lodged on 23 February 2021. Clause 49 of the Environmental Planning and Assessment Regulation (the regulation) has been amended so that written owners consent is not required for development applications. This amendment was made to facilitate the use of the NSW Planning Portal. However, clause 296 of the regulation enables the consent authority to require a development application lodged prior to 1 July 2021 to be lodged as if this amendment had not been made. This is the case with this development application.</p> <p>Written owners consent was submitted as part of the lodgement of the development application on 23 February 2021 from the owners of Lots 155 & 188 DP 755537. However, the development application was amended post lodgement to include effluent absorption trenches and an agricultural land use buffer easement on the adjoining Lot 1 DP 1096562. Although requested, no written owners consent has been submitted from the owners of Lot 1 DP 1096562 for the installation of absorption trenches on their land. However, an email from the applicant has been received outlining that they have been given owners consent for the buffer easement. This email did not contain any written advice from the land owners or address the proposed installation of a 700m absorption trench.</p> <p>Given the proposal is dependent on being able to use the adjoining land for a rural buffer and absorption trenches of the scale proposed, written owners consent is considered essential for consideration of the proposal.</p>
Waste Minimisation and Management (Part N)	Yes	<p>The applicant has provided an Operational Waste Management Plan which is suitable for the operational phase of the development. Waste management during</p>

		the construction phase may be controlled via a condition of consent.
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(a) (iia) 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.

There are no planning agreements applying to the subject site.

(a) (iv) Any Matters prescribed by the Regulation

The proposed development is assessed against the relevant matters for consideration prescribed by the Environmental Planning and Assessment Regulation (2000) in **Table 6**.

TABLE 6 - MATTERS PRESCRIBED BY THE REGULATION		
Clause	Complies	Comments
Clause 92(1)(b) – For development involving building demolition , refer AS 2601	Yes	A condition has been included within the consent requiring any demolition works to be undertaken in accordance with AS2601.

(a) (v) Any Coastal Zone Management Plan

It is not considered that the nature or location of the proposed development will be contrary to any of the management actions outlined within the *Coastal Zone Management Plan for the Nambucca Valley Coastline*.

(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.

An assessment of the likely impacts of the proposed development are provided in **Table 7**.

TABLE 7 – ASSESSMENT OF THE LIKELY IMPACTS OF THE DEVELOPMENT			
Issue	Applicable	N/A	Comments
Context and Setting	x		The proposed development is essentially an urban development in a rural setting. The large setback from the Coronation Road frontage assists in mitigating impacts on the streetscape. An effective rural buffer is required to the southern boundary.
Access, Transport and Traffic	x		The proposal seeks to upgrade the vehicular access to the site is to provide improved flood immunity to at least the 10% AEP. Pedestrian access is also required to service the proposed development. The development provides adequate on-site car parking and the traffic generation of the proposed development is unlikely to exceed the capacity of the surrounding road network.
Public Domain	x		The proposed development is well setback from the public road frontage. The site is not highly visible from nearby public vantage points and is unlikely to create any adverse impact upon the public domain.
Utilities	x		The proposed development is unable to be connected to the existing reticulated sewerage network, without a new rising

			<p>main directly to the STP together with upgrades to the capacity of the plant. The proposed on site STP is not considered to be a practical solution for the development. Insufficient detail was provided in relation to the suitability of the site to dispose of the large volume of treated effluent.</p> <p>A practical concept was provided for water supply, involving an on-site water reservoir and booster pump which would be fed by a low flow connection to Councils water network. However insufficient details of the siting and visual impact of the proposed reservoir were provided.</p> <p>The proposed privately operated on site water and sewerage proposals would require licencing under the Water Industry Competition Act 2006. It is not certain that the applicant would be able to obtain such licences.</p> <p>Council Officers are not satisfied that the proposed arrangements for water and sewerage utilities are adequate.</p>
Heritage	x		<p>In accordance with the Due Diligence Code of Practice, there are no relevant confirmed site records or other associated landscape feature information on AHIMS, no other sources of information of which a person is already aware, and the development will not impact on any landscape features that are likely to indicate the presence of Aboriginal objects.</p>
Other Land Resources	x		<p>The proposed development would consume available rural land for essentially an urban use. The land is undulating and is suitable for grazing or horticultural uses. The loss of the agricultural land within the site and adjoining land for a minimum of 40m is not desirable, but would not be critical to the survival of agriculture in the area. Any residential proposal on the land must provide appropriate measures to mitigate potential rural land use conflict. Council officers consider that the alternative solution to the requirements of NDCP Part F controls, are not adequate, given the scale, nature and rural setting of the proposed development.</p>
Water	x		<p>The proposed development will require extensive earthworks. The proposal would require the implementation of effective erosion and sedimentation measures to prevent sediment leaving the site and creating water quality issues during construction. Waste water from the proposed on site STP should not be released from the site due to the location of a SEPP Coastal Wetland</p>

			immediately to the east. Sufficient details have not been provided to demonstrate that the treated effluent may be disposed of on the site.
Soils	x		An acid sulfate soil management plan was provided with the application material. The implementation of the plan would be required as a condition of any consent.
Air and Microclimate	x		The site is located within a rural area and is likely to be adjacent to an intensive horticulture use. Dust and the use of chemical fertiliser and herbicides from that neighbouring use do have potential to affect the air quality of the proposed development, unless an effective rural buffer is provided.
Flora and Fauna	x		The site is predominantly cleared grazing land, however a mapped SEPP Coastal Wetland is located to the north of the mail development area and both sides of Coronation Road. The application has been amended to remove the road works from the wetland area, however the proposed external road works extend to the mapped wetland boundary. The proposed on site sewerage treatment plant would discharge approximately 170,000 litres of treated effluent per day. The amended application proposes not to discharge this water directly to the wetland but rather, reuse part of the water and dispose of approximately 80,000 litres per day to trenches. The reliance on the proposed trenches for the disposal of such a large daily volume of volume of treated effluent is of concern. The trenches areas are sloping and no reserve areas appear to be available should they prove to be unsuccessful. In the even that on site disposal of the treated water is not possible, the discharge of the treated effluent to the wetland may create impacts on the wetland due to the nutrients, salt or chlorine content or simply due to the changed hydrology regime.
Waste	x		The proposed development will generate waste during the construction and operational phases. The construction waste is able to be effectively controlled via conditions of any development consent. Provision has been made within the design of the proposal to allow for the on-site storage and collection of operational waste. In summary the proposed waste storage and collection arrangements are suitable.
Energy	x		The proposed development would include construction to comply with the

			requirements of BASIX.
Noise and Vibration	x		An acoustic report was submitted with the development application. The proposed development is
Natural Hazards	x		The proposed development is subject to bushfire and flood hazards. The assessment of the flood impact is discussed in assessment comments relating to Clause 5.21 of the NLEP 2010 in Table 4 of this Report. A bushfire report accompanied the development application and demonstrates that the majority of the proposed buildings would be within the BAL Low category with BAL 12.5 for some dwellings located on the southern western and northern fringes of the development. The original report was based on the hazard to the south comprising grassland. The amended application proposes a dense vegetative of 20m, however a vegetative buffer of 40m would be required to comply with the NDCP2010. The vegetative buffer on the southern boundary may increase the construction standards to be applied to the buildings.
Technological Hazards	x		The proposed development involves a privately operated sewerage treatment plant, which would be reliant to a certain degree upon technical systems for the provision of essential infrastructure services.
Safety, Security & Crime Prevention	x		The proposed development would be a private community with clearly defined boundaries and limited access points. The design of the proposal would allow effective containment and monitoring of visitors to the site. In this regard the proposal is considered to be consistent with the CPTED principles.
Social Impact in the Locality	x		The proposed development represents an opportunity to increase the available stock of seniors housing dwellings within the area, which is a positive social impact. On the other hand the constraints associated with the proposal such as the availability of water and sewerage services, and the isolation of the site, particularly during relatively minor flood events are considered to outweigh the potential positive social impacts.
Economic Impact in the Locality	x		The proposed development would have potential for significant positive economic impacts associated with the direct investment of the construction cost as well as ongoing operational employment opportunities.
Site Design and Internal Design	x		The design of the proposed development has attempted to respond to the site topography, however a

			significant amount of earthworks and retaining structures are required to provide buildable grades and access to the elevated part of the site. The altered
Construction	x		Due to the size of the development it is likely that the development would be constructed in stages. Adequate areas would be available within the site for construction access and parking of construction vehicles. Work hours and associated nuisance impacts may be controlled via conditions of consent.
Cumulative Impacts	x		The proposed development would create a number of cumulative impacts associated with flooding impact on surrounding properties, the proportion of residents that would be isolated in flood events and the number of potential emergency evacuations during a flood event. The proposal would also result in an encroachment of a relatively intensive, sensitive land use upon rural activities, and increased potential source of contamination to oyster aquaculture on the Nambucca River, in the event of a failure of the on-site sewerage treatment plant.

(c) The suitability of the site for the development

The site contains an elevated area at the western end of the property, however there are a number of major site constraints including flooding, lack of reticulated water and sewerage services, slope, rural land use conflict, and proximity to a coastal wetland. The site has previously been the subject of a Planning Proposal, however there are a number of serious deficiencies with the suitability of the site for the current proposal, particularly in relation to the ability to provide utility services to the site, demonstrating flood impact upon the surrounding area and minimising land use conflict. All of these issues would have to be appropriately addressed before the site could be considered suitable for the proposed development.

d) Any submissions made in accordance with this Act or the Regulations

A total of 3 individual submissions were received during the notification of the development application in accordance with the Nambucca Community Participation Plan. A discussion of the matters raised in the submissions are provided in **Table 8**.

TABLE 8 – CONSIDERATION OF MATTERS RAISED IN SUBMISSIONS	
Summary of Matters Raised in Submissions	Reporting Officers Comment
The site is inappropriate for the proposed development.	The site is located in a rural area and physically separated from the urban area on the eastern side of the Taylors Arm waterway. Notwithstanding this, the site is subject to an enabling clause in Schedule 1 of the Nambucca LEP 2010, which makes the development permissible with development consent. The development application has been assessed on its merits.
Bushfire hazard	The application was accompanied by a bushfire assessment and referred to the NSW RFS. The RFS have provided a deemed Bushfire Safety Authority, of which the conditions would be required to be included in any development consent.
Flood hazard	Although the proposed dwellings would be located above the Probable Maximum Flood (PMF), the site is site will be isolated in a 10% (1 in 10) year flood

	event. The isolation of the future elderly population, particularly in smaller flood events is considered to be a significant issue which has been considered in the assessment.
Increased flood impact for dwellings on Kings Point	The need for the proposed access driveway to cross the floodway within the subject site and the raising of Coronation Road does have potential to increase flood impacts on properties located on Kings Point. The flood modelling provided and the potential for the proposed culverts to be partially blocked has been considered in the assessment.
Proximity to river	The proposed development is located in proximity to the river. The potential impacts associated with the on-site sewerage treatment plant have been considered in the assessment.
Environmental impact	The information submitted with the amended application recommends that no treated effluent be released from the site. The suitability of the site to dispose of volumes of treated effluent have been considered in the assessment.
Safety of future residents who may wish to walk to town	Although the provision of a footpath is not a requirement of the Development Control Plan or SEPP Seniors Housing, and notwithstanding the provision of a shuttle bus, there is a reasonable expectation that residents may seek to walk to Macksville. Council Officers would propose that any consent be conditioned to include the provision of a pedestrian link to the existing footpath network. This would comprise a pedestrian link along Coronation Road from Wilson Bridge to the site.
Increased traffic	The traffic report accompanying the development application demonstrates that the traffic generated by the proposed development is unlikely to exceed the capacity of the surrounding road network.
Impact on roads and bridges by heavy vehicles associated with the development	Heavy vehicles associated with the development are permitted to use the local road network provided that and load restrictions are adhered to.

(e) The public interest

The proposed development in its current form, is considered to be contrary to the public interest because it is unable to be adequately serviced and may result in significant social and environmental impacts.

Section 7.11 & 7.12- Contributions

The amount of any contribution has not been calculated, given the recommendation for refusal.

Section 64 – Construction of Works for Developers (Local Government Act 1993)

Section 64 of the *Local Government Act 1993* enables council to levy developer charges for water supply, sewerage and stormwater. This derives from a cross-reference in that Act to Section 306 of the *Water Management Act 2000*.

The amount of any contribution has not been calculated, given the recommendation for refusal.

RECOMMENDATION:

That the Joint Regional Planning Panel, as the consent authority, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, refuse the development application for the following reasons.

- **Essential Services Sewer and Water** – Sufficient information has not been provided to satisfy the consent authority under Clause 7.4 of Nambucca LEP 2010 that public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required. Similarly, sufficient information has not been provided to determine, whether, under Clause 28 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, the site is suitable for the disposal of the required volumes of treated effluent or that the requirements of all relevant regulators can be met. Specifically, any required licences under the Water Industry Competition Act 2006.
- **Flood Impact** – In accordance with Clause 5.21 of Nambucca Local Environmental Plan 2010, sufficient information has not been provided to demonstrate that the proposed development will not result in an increased flood impact upon other properties. In this regard no details of the invert levels of the proposed culverts were provided and therefore the accuracy of the modelling is not known. In addition the flood modelling does not address the potential for the relatively narrow openings of the culverts to be blocked by large debris (i.e. trees, entangled fences and other farm structures) which are likely to be present in a flood event.
- **Flood Isolation/ Evacuation** – The proposed development will be isolated in a 10% AEP (1 in 10) year flood event. The evacuation of residents from the site for urgent medical assistance or provision of food or other supplies would be reliant upon a helicopter. The availability of a helicopter is not guaranteed for these purposes. The proposal does not meet the pre-condition of Clause 7.7(4) of Nambucca Local Environmental Plan 2010.

Rural Land Use Conflict – The proposed rural buffer does not comply with the development control in Clause F1.3.2 of Nambucca Development Control Plan 2010. The proposed alternative solution, in the context of the scale and nature of the proposed use in a rural area, does not meet the objectives of the control.

Potential Encroachment upon a Coastal Wetland – The existing pavement design to raise Coronation Road to the 10% AEP flood level extends to the boundaries of a mapped SEPP Coastal Wetland. The construction of batters with required erosion and sedimentation control will require work within the SEPP Wetland. A pedestrian link has not been provided between the site and the existing footpath network. It is considered, on merit, that a footpath linkage would be a reasonable expectation of future residents. Providing a foot path linkage within the road design will provide further difficulty to not encroach into the SEPP Coastal Wetland, which in turn would make the proposal designated development.

Slope of the Site – The proposed internal grades of the road ways within the site exceed the maximum degree and length grades required by State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. As a result, the proposed grades are considered to be unsuitable to facilitate convenient pedestrian movement around the development site by the future elderly residents.

Owners Consent – The application was lodged on 23 February 2021. Although requested, no written owners consent has been submitted from the owners of Lot 1 DP 1096562 for the installation of the proposed absorption trenches or land use buffer on their land. Clause 296 of the Environmental Planning and Assessment Regulation (the regulation) enables the consent authority to require a development application lodged prior to 1 July 2021 to be lodged as if the amendment to clause 49 of the regulation had not been made. This is the case with this development application.

- **BASIX Certificate** - A BASIX Certificate accompanied the originally submitted application. An amended BASIX Certificate was not provided to suit the amended plans as required by clause 55A of the regulation.

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Reporting Officer



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Brad Lane
SENIOR TOWN PLANNER