

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-126
DA Number	DA-2021/1313
LGA	Wollongong City Council
Proposed Development	'Demolition of the existing structures and construction of a seniors housing development of 81 independent living units and amenities including a neighbourhood shop with café and resident clubhouse'
Street Address	Towradgi Park Village 17a Murrarar Road Towradgi – Lot 1 DP 704687 & Lot 300 DP 571212 17 Murrarar Road Towradgi - Lot 177 DP 13182/SP 11647 3 Edgar Street Towradgi - Lot 39 DP 27386 1 Edgar Street Towradgi - Lot 100 DP 776493/SP 19209 Vacant land Murrarar Road - Lot 505 DP 833242
Applicant/Owner	Applicant – MMJ Town Planning Owner – Illawarra Retirement Trust; owners of Strata Plans SP 11647 and SP19209
Date of DA lodgement	11 October 2021
Total number of Submissions	18 total submissions (includes multiple submissions from two authors)
Number of Unique Objections	17 unique objections 1 submission in support
Recommendation	Refusal
Regional Development Criteria (Schedule 6 SEPP (Planning Systems) 2021	Clause 2 Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 – general development over \$30 million.
List of all relevant s4.15(1)(a) matters	<p><u>s4.15 (1)(a)(i) Any environmental planning instruments:</u></p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 <p><i>Local Environmental Planning Policies</i></p> <ul style="list-style-type: none"> • Wollongong Local Environmental Plan 2009 <p><i>Other Policies</i></p> <ul style="list-style-type: none"> • Wollongong City Wide Development Contribution Plan 2022 <p><u>s4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority:</u></p> <ul style="list-style-type: none"> • N/A <p><u>s4.15 (1)(a)(iii) Any development control plan</u></p> <ul style="list-style-type: none"> • Wollongong Development Control Plan 2009

	<p><u>s4.15 (1)(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</u></p> <ul style="list-style-type: none"> N/A <p><u>s4.15 (1)(a)(iv) the regulations: e.g. Regs 61, 62, 63, 64 and Part 5</u></p> <ul style="list-style-type: none"> AS 2601-1991 in respect of any demolition works and the NSW Coastal Policy. <p><u>s4.15(1)(a)(v) any coastal zone management plan</u></p> <ul style="list-style-type: none"> Wollongong Coastal Zone Management Plan 2020
List all documents submitted with this report for the Panel's consideration	<p>Attachments</p> <ul style="list-style-type: none"> 1 Aerial photograph 2 WLEP zoning map 3 Plans 4 WDCP 2009 Compliance Table 5 Draft reasons for refusal
Clause 4.6 requests	Not applicable
Summary of key submissions	<ul style="list-style-type: none"> Public walkway between Marlo Road and Murranar Road Traffic and parking concerns Tree removal and landscape design Privacy impacts Construction and waste disposal Flooding
Report prepared by	Anne Starr, Senior Development Project Officer
Report date	27 September 2022

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? N/A

Special Infrastructure Contributions

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

Conditions

Have draft reasons been provided to the applicant for comment? Yes

Assessment Report and Recommendation Cover Sheet

EXECUTIVE SUMMARY

Reason for consideration by Southern Regional Planning Panel

The proposal has been referred to Southern Regional Planning Panel as it involves general development with a capital investment value of more than \$30 million.

Proposal

Demolition of all structures and construction of a seniors living development, including clubhouse with allied health facilities and neighbourhood shop/cafe.

Permissibility

The proposed seniors living development is a permissible use in the R2 Low Density Residential zone.

Consultation

The proposal was notified in accordance with Council's Community Participation Plan and received eighteen submissions.

Main Issues

- Non-compliance with flood planning controls
- Stormwater disposal on public community land
- Incomplete biodiversity assessment
- Extensive tree removal
- Insufficient visitor parking
- Provision of a public walkway between Murrarar Road and Marlo Road
- Privacy impacts on adjoining residential neighbours
- Information requested but not provided

RECOMMENDATION

It is recommended that DA-2021/1313 is refused as detailed in **ATTACHMENT 5**.

1. APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the proposal:

State Environmental Planning Policies:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Biodiversity and Conservation) 2021

Local Environmental Plans:

- Wollongong Local Environmental Plan 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong City Wide Development Contributions Plan 2022
- Wollongong Community Participation Plan 2019

1.2 DETAILED DESCRIPTION OF PROPOSAL

The application seeks consent for the demolition of all existing structures on the site and construction of 81 independent living units including a neighbourhood shop with café, allied health and resident clubhouse. All buildings are one or two storeys.

All 81 units fulfil in-fill self-care housing requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. All units are provided with minimum one garage car parking space. Plans show the villas and villa-type apartments are designed so that the internal garage space can be converted to a carer's bedroom. Not all dwellings have adequate space to allow stacked parking outside the garage.

The two-storey clubhouse is intended to be a space for communal resident activities and contains a café on the ground floor and an upper level 'allied health' tenancy.

A single storey 'neighbourhood shop/café' is located on the Murranar Road frontage and will be open to the public.

The site layout is heavily influenced by the location of sewerage and drainage easements, over which are laid internal roads. The development has responded to environmental constraints such as flooding by raising floor levels (generally RL 4.5 on an existing ground level of RL 2.95) of all buildings. Proximity to the riparian corridor has influenced boundary setbacks. The development proposes removal of 124 trees, many of which are mature and healthy. A through-site public walkway is proposed on the western boundary, providing access between Marlo Road and Murranar Road. The walkway restores public access which was a requirement of the original 1972 IRT development. This walkway is situated within an existing right of way benefiting the neighbouring property at 19 Murranar Road. The SEE refers to creation of a temporary pedestrian access path to Murranar Road along the eastern boundary during construction of the project, however it is unclear whether this would be publicly accessible or connect to Marlo Road.

Extensive pedestrian boardwalks, ramps and decks service the development. Those on the perimeter, and in particular the eastern coastal boundary, visually connect residents to the adjoining vegetated areas. The neighbourhood shop/café on Murranar Road has a deck on three sides, which connects with a ramped path to the village green communal open space. However, there are limited opportunities for at grade, accessible movement within outdoor open space areas for people on scooters, which may be some resident's preferred mobility vehicle. Wheelchair users and people less mobile may find the frequent ramp turns and elevational changes demanding. As much of the site's outdoor areas, paths and building entries are elevated, way finding throughout the site may also be challenging.

The landscape design incorporates shade trees, vegetable gardens, terraced lawns, outdoor tables and chairs both covered and uncovered, perimeter boardwalk, village green, and fitness stations.

The development is intended to be undertaken in three stages. For the purpose of sequencing, the site is separated into areas A and B, with demolition, bulk earthworks and construction occurring in area A first, and then area B. The staging is described in the demolition, bulk earthworks and construction staging plans.

Site preparation (Refer demolition plans and civil works staging plans)

- Civil works Stage A:
 - Demolition of existing buildings excluding those on Edgar Street allotments;
 - Bulk earthworks, services, roads and tree removal on land excluding Edgar Street allotments.
- Civil works Stage B:
 - Demolition of the Edgar Street allotments;
 - Bulk earthworks, services, roads and tree removal in the Edgar Street allotments.
- Removal of all trees on the site (124 trees) – Council’s landscape architect has advised that removal of the trees could be considered if an equal number of super-advanced trees were to be planted in compensation. Retention of one street tree in Edgar Street and one street tree on Murrannar Road is proposed.
- Remediation as per the Remediation Action Plan

Works / construction / building details (Refer construction staging plans)

- Construction of 81 x one and two storey independent living units (seniors housing), with associated resident clubhouse and neighbourhood shop/cafe, in three stages.
 - Stage A1: generally west of the sewerage easement
 - § Temporary resident clubhouse
 - § Shop facing Murrannar Road
 - § 17 villas (8 x 2 bedroom and 9 x 3 bedroom)
 - Stage A2: generally east of the sewerage easement
 - § Outdoor communal open space areas inc. detention basin and village green
 - § Permanent clubhouse inc. café and allied health suites
 - § 24 x villa-style apartments (12 x 2 bedroom and 12 x 3 bedroom)
 - § 8 x villas (3 x 2 bedroom and 5 x 3 bedroom)
 - Stage B: Edgar Street allotments and the southern portion of the site
 - § 32 apartments (18 x 2 bedroom and 14 x 3 bedroom)
 - § Overhead pedestrian bridge linking apartments either side of the sewerage easement
- Stormwater disposal to adjoining public land - construction of two disposal pipes (1 x 375mm diameter and 1 x 225mm diameter) and associated outlets on Lot 203 DP 241908 and Lot 501 DP 719704; and four 1500mmx600mm reinforced concrete box culverts and associated outlet structure with scour protection works on Lot 504 DP 719704.
- Substation in Murrannar Road setback.
- Pedestrian boardwalk on perimeter of the site, with varying RLs. Includes steps in some areas.
- Pedestrian ingress and egress from Edgar Street, Marlo Road and Murrannar Road.
- Fencing as shown on landscape masterplan
 - Retain existing boundary fence on western side between Marlo Road and Murrannar Road (location of the new proposed public walkway).

- Retain existing boundary fences at Edgar Street frontage.
- Retain existing boundary fence between 17 Murranar Road and 15 Murranar Road.
- Install new 1.8m timber palisade fence either side of new public walkway, with exception of retained Marlo Road-Murranar Road fencing.
- Install new 1.8m timber palisade fence on rear boundaries of 1 and 3 Marlo Road and along eastern side boundary of 1 Marlo Road.
- No fencing on the Murranar Road frontage or the side boundaries adjoining public land.

Traffic, parking and waste servicing

- Parking for total 144 cars.
 - 60 spaces within garage of units
 - 36 stacked spaces in driveway of units
 - 33 spaces in apartment basements
 - 15 visitor spaces (7 outdoor visitor/staff car parking spaces, plus 4 EV charging spaces and 4 car wash bays).
- All units have minimum one covered parking space in a garage (villas and villa style apartments) or basement (apartments).
- The Bitzios Consulting Traffic Impact Assessment states that 94 resident spaces and 48 visitor spaces are proposed, however this is inconsistent with the architectural plans which designate only 15 spaces for visitors.
- 4 scooter parking spaces outside the clubhouse.
- An elevated roadway services the villa-style apartments, allowing residents of the upper level to drive into their attached garage and directly enter their home. This street in the sky has a bin storage area and vehicle turning bay and connects with the clubhouse via a pedestrian ramp. Outdoor uncovered stairs at ground level allow access to this elevated road.
- Waste collection on-site. A loading bay is located off the two-way street adjacent to bin storage. Other bin stores are situated throughout the site.
- Vehicular access is via two driveway crossovers at Murranar Road. One crossover is both ingress and egress, and the other is egress only. No vehicle access to Marlo Road or Edgar Street will be provided.
- An existing bus stop on Murranar Road in front of the site is proposed to be relocated approximately 30m south.

The development is integrated development as a Controlled Activity Approval under the Water Management Act 2000 is required. The Natural Resources Access Regulator has provided General Terms of Approval.

1.3 BACKGROUND

Pre-lodgement meeting

Pre-lodgement meeting PL-2018/179 was held on 15 October 2018 and parties included IRT, MMJ and Council. The purpose of that meeting was to discuss flooding controls.

A further pre-lodgement meeting PL-2021/49 was held on 26 April 2021 to discuss the seniors living development proposed in this development application. The meeting was attended by IRT, MMJ and consulting engineers WMA Water.

Historic applications relevant to the proposal:

- DA-1971/407 'Nursing Home and Retirement Centre' – the first IRT presence on the site . Approved 7 March 1972.
- Various alterations and additions to existing or new IRT buildings

Customer service actions

There are no outstanding customer service requests relevant to the development. IRT's recent closure of a public walkway on the site from Marlo Road to Murranar Road prompted complaints by local residents, however the path was reopened. The application incorporates a new public walkway.

1.4 SITE DESCRIPTION

The 27493m² site is comprised of six allotments owned by Illawarra Retirement Trust. The title references are:

- Towradgi Park Village 17a Murranar Road Towradgi – Lot 1 DP 704687, Lot 300 DP 571212
- 17 Murranar Road Towradgi - Lot 177 DP 13182/SP 11647
- 3 Edgar Street Towradgi - Lot 39 DP 27386
- 1 Edgar Street Towradgi - Lot 100 DP 776493/SP 19209
- Vacant land Murranar Road - Lot 505 DP 833242

The site has frontage to Edgar Street, Marlo Road, Murranar Road and public open space. The site is relatively level at approximately 2.8m to 3.6m Australian Height Datum (m AHD), with a slight fall to the southeast. A channelised drainage line adjoins the site on the eastern boundary and drains to the south into Towradgi Arm and subsequently into Fairy Creek and the South Pacific Ocean.

The site comprises the existing IRT Towradgi Park Village, which is a residential aged care facility comprising 114 aged care beds and 68 one and two bedroom independent living units for people aged over 55. The aged care facility is currently vacant, and a portion of the independent living units are occupied. The independent units are progressively being vacated in line with the planned staging of the development. A vacant lot previously owned by Wollongong City Council and now in the ownership of Illawarra Retirement Trust forms the south eastern boundary of the site.

Vehicle access to the site is currently available via Edgar Street and Murranar Road.

The original development consent in 1972 for the subject site contained a condition that required IRT to maintain a pedestrian access route through the subject site between Marlo Road and Murranar Road. The pedestrian access route has been maintained by IRT until it decommissioned the aged care facility and the access route was temporarily closed. The closure of the access route led to a number of objections from members of the community. In response to those objections and after consultation with Council, IRT made a commitment to the community to ensure that a permanent pedestrian access route between Marlo Road and Murranar Road would be incorporated into the redevelopment of the subject site. Council supports the location of the proposed walkway and requires a right of carriageway providing public access in perpetuity.

Adjoining development is low density residential on Murranar Road, Marlo Road and Edgar Street.

Property constraints

Council records identify the land as being impacted by the following constraints:

- Flood affected – medium flood risk precinct (WLEP 2009)
- Acid sulfate soils – class 3 (WLEP 2009)
- Coastal zone – coastal wetlands, coastal wetlands buffer area (SEPP Resilience and Hazards 2021)
- Ecological sensitive land - biodiversity (WLEP 2009)
- Easement:
 - easement for sewerage purposes 12.19 wide – burdens DPs 27386, 571212 and 704687
 - right of carriageway 9.14 wide – burdens DP 571212, benefits 19 Murranar Road
 - easement to drain water 7.62 wide - burdens DP 552253 and benefits Council

1.5 SUBMISSIONS

The application was exhibited 3 December 2021-28 January 2022 in accordance with Council's Community Participation Plan 2019. A total of eighteen submissions, comprising 17 objections

(including multiple submissions from two authors) and 1 statement in support have been received. Issues identified are discussed below.

Table 1: Submissions

Submission - Objection	Comment
<p>Car parking</p> <ul style="list-style-type: none"> - Lack of parking in the development for visitors and staff 	<p>SEPP (Housing for Seniors or People with a Disability) 2004 sets different parking rates for social housing providers and non-social housing providers. In either case, visitor parking is not required.</p> <p>Council's traffic engineer has reviewed the proposed number of on-site car parking spaces and requested 48 visitor spaces (consistent with the Bitzios report) where 15 are proposed.</p>
<p>Traffic</p> <ul style="list-style-type: none"> - More congestion on Murranar Road as the existing Edgar Street vehicle entrance will be closed. - The traffic consultant report does not seem to include vehicle movements for services, staff or visitors - 34 vehicle movements per hour equals 400 additional traffic movements in Murranar Road 7am-7pm. - Murranar Road already is busy as an access street to Towradgi Beach. - Relocation of the bus stop to directly outside my property will create noise and social issues. - The neighbourhood shop/café on Murranar Road will attract more cars. If the customers are from the walking catchment as described by the traffic consultants, then the café could be moved inside the IRT complex. - The type of IRT resident is shifting away from people unlikely to drive to those likely to have 1-2 vehicles. - Council's recently created bicycle pathway in Murranar Road is to encourage cyclists, but creating more cars makes it more unsafe for cyclists. - IRT's lawnmower men park on the street outside my property because there is no provision by IRT to park inside the retirement village - The existing Murranar Road bus stop should be kept 	<p>Council's traffic engineer has reviewed the Traffic Impact Assessment submitted with the application.</p> <p>Council's engineer is of the opinion that the traffic generation from the proposed seniors living development is predicted to be comparable to the existing development. It is noted however that with the decommissioning of the aged care facility (114 aged care beds) traffic would have reduced in recent times.</p> <p>Council's engineer has no objection to the relocation of the bus stop.</p>
<p>Pedestrian access path Marlo Road to Murranar Road</p> <ul style="list-style-type: none"> - Reinstatement of the public path is important for residents of Marlo Road - There is no promise on the plans for IRT to handover the walkway to Council so access is maintained in perpetuity 	<ul style="list-style-type: none"> - Council wrote to IRT's consulting planners and asked what mechanism was proposed to legally protect the public pathway. MMJ advised their intention was to dedicate the walkway to Council. - The existing right of carriageway (ROC) benefitting 19 Murranar allows passage through the land..

Submission - Objection	Comment
<ul style="list-style-type: none"> - The old walkway was a requirement of the 1970s retirement village approval. - IRT closed the old walkway in 2019 without concern for the original consent or the local community. It has since been reopened after a community action group was formed. - IRT installed locked gates at another retirement facility preventing access between Towradgi Road and Murranar Road in the 1970s. - Public access in perpetuity is required - Current users of the walkway include cyclists, adults and parents with prams and small children. Adults walk their dogs on a lead. A 1.5m wide path is not wide enough, minimum required 2.5m. - The path should be designed as a shared bicycle/pedestrian pathway meeting Council's own standards. - The matter of the walkway should be referred to Councillor Cox's 'Walking, Cycling and Mobility Group' - The ROC benefitting 19 Murranar Road is not being extinguished and consent is not granted to put the public path in the ROC. The owners are not in discussions with IRT. - The public path will be on our boundary when it wasn't there when we bought the property. - The new path will encroach on our privacy . - An alternative location for the pathway should be considered. - Will Edgar Street residents be able to access the walkway? 	<p>Discussions regarding the ROC are a matter for IRT and 19 Murranar Road.</p> <ul style="list-style-type: none"> - The fencing plan shows no boundary fencing at Edgar Street, so it appears possible to enter the site and walk through to Murranar Road via the public walkway
<p>Privacy</p> <ul style="list-style-type: none"> - The floor level of units facing the western boundary is approximately 1.5m above proposed the new ground level of RL 4.5m. Side facing terraces will look directly into our property and back yard. 	<p>The survey plan indicates an existing ground level of approximately RL 2.75-3.27 on the eastern boundary. The proposed floor level is RL 4.5 in this location. The five villas proposed on this boundary have private open space areas facing the boundary at RL 4.5m and minimum side setback 2.93m (refer detailed boundary cross section sheet 4).</p>
<p>Flooding</p> <ul style="list-style-type: none"> - Are ground levels being raised across the entire site? What impact will this have on Marlo Road? 	<p>Council's stormwater engineer has requested further flooding information, which has not been provided.</p>
<p>During construction</p> <ul style="list-style-type: none"> - Council should work with IRT to ensure that disruption, noise and pollution (including removal of asbestos) are managed effectively. - Marlo Road residents anticipate parking problems during construction and expect this will be resolved. 	<p>Where matters are within the scope of the EP&A Act, they are typically addressed via conditions of consent:</p> <ul style="list-style-type: none"> - pre- and post-construction dilapidation reports - construction environmental management plan

Submission - Objection	Comment
	<ul style="list-style-type: none"> - demolition neighbour notification - principal certifier appointment - acoustic controls
Tree removal <ul style="list-style-type: none"> - IRT proposes to remove all 124 trees on the site, and replace them with only 14 trees with a mature height of greater than 3 metres. - Council should require IRT to plant 124 trees with mature height greater than 3m. - Tree removal is inconsistent with WDCP 2009 Chapter E17 and Council's Urban Greening Strategy - IRT should provide funding to enhance the urban tree canopy in Murranar Road, neighbouring streets and the foreshore. - I would like the existing 45 year old gum trees and banksias kept. - A recovery plan should be included for disruption to existing fauna. - Artificial turf is proposed in the raised terraces green areas, which should be replaced with natural turf. 	<ul style="list-style-type: none"> - Council's landscape officer has noted that the extensive tree removal could be considered where an equivalent number of super advanced trees were planted. This was communicated to the applicant however an amended landscape design has not been provided. - The use of artificial grass is not supported.
Footpaths and pedestrian bridge <ul style="list-style-type: none"> - Council needs to upgrade the footpaths in Murranar Road - A public pedestrian bridge across the creek on the eastern border. A bridge near Edgar Street was removed by Council many years ago. 	<ul style="list-style-type: none"> - Footpath repair typically is undertaken by a developer during construction of approved development. - There is no current proposal for a pedestrian bridge over the creek. Any future proposal would have to address environmental and planning policy constraints.
Building height and scale <ul style="list-style-type: none"> - I would be happy with increase in height if half the site could be kept as a nature park. 	<ul style="list-style-type: none"> - The 9m height limit is not currently being reviewed.
Submission in Support	
IRT congratulated for bringing the Towradgi Park Village back to life after falling into disrepair.	Noted

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Stormwater Engineer

Council's Stormwater Engineer has advised that the application does not comply with WDCP 2009 Chapters E13 and E14 and amended flooding report and architectural plans are required.

- Fundamentally, the flooding report by WMA Water (dated 28 September 2021) and the design of the development applies an incorrect WDCP 2009 classification. Seniors housing is required to be classified as 'Critical Utilities' rather than 'Residential'. The current design does not comply with the flood planning controls for Critical Utilities.
- The site is classified as Medium Flood Risk Precinct.
- It is noted that Critical Utilities are classified as an unsuitable land use within the Medium Flood Risk Precinct, and therefore a proposal for Critical Utilities would not usually be supported for

the site. However, Council also notes that the site has historically been used for a Critical Utilities purpose. In the circumstances, Council is prepared to consider an 'in principle' use of the land for Critical Utilities, and apply a merit-based assessment approach subject to the following matters being satisfactorily addressed by the applicant:

- It must be clearly demonstrated that the proposed use is not more intense than the existing use, in terms of the overall number of people residing on the site, by way of a detailed comparison between the existing approved uses and proposed development; and
 - The proposal must satisfy the controls for Critical Utilities within the Low Flood Risk Precinct, as per Schedule 5 of Appendix C of WDCP 2009 Chapter E13, which are normally applied in circumstances where Seniors Housing is allowed within the floodplain.
- The application of the flood planning controls for 'Critical Utilities' within a Low Flood Risk Precinct (as above) will require among other things all floor levels to be equal to or greater than the PMF flood level plus 0.5 metres freeboard, being above a level of RL 5.45 metres AHD. Significant design changes are required to comply with this requirement as the current floor level for many of the buildings is RL 4.5 metres AHD.
- The proposed method of addressing evacuation as described in the flooding report by WMA Water is considered unacceptable. Evacuation to the club house is considered unsafe. Taking refuge within the proposed villas/units is considered inappropriate because many of the villas/units (as proposed) do not satisfy Council's requirements for a flood refuge area, as defined in Section 3 of Chapter E13.
- In particular, the flood refuge area needs to be above the PMF level. Council notes that compliance with the floor level controls for Critical Utilities will ensure a suitable flood refuge area within each proposed dwelling. Subject to meeting those controls, the flood response strategy needs to be amended to clearly and definitively direct residents to remain on site within their dwellings during a flood event, and not attempt to travel through floodwaters.
- Insufficient information has been provided to enable assessment of the proposal in relation to proposed finished surface levels, cut/fill, and drainage. As per Section 9(3)(4) of Chapter E13, a design plan shall be provided showing design surface levels to AHD with 0.25m contour intervals. A copy of the design surface for the design of the development and used in the flood modelling in GIS format (e.g. a DEM '.asc' file) would also assist in Council's assessment of the proposal.
- The architectural and landscape plans do not appear to be compatible with the stormwater design and flood modelling for the development. For example, the landscape and architectural plans propose ramps, raised planter beds, and 'Garden Rooms' at a level of RL 3.35 m AHD within an area modelled as an open channel flood storage area at a level of approximately RL 2.15 m AHD. It is suggested that the architect and landscape architect consult with the flood and stormwater consulting engineers, to ensure the design being presented on the landscape and architectural plans is consistent with what has been modelled in the flood assessment. The proposed design including features/structures and levels will need to be consistently reflected throughout the architectural, landscape, stormwater plans and flood modelling for the development. Flood storage areas and vegetated open channels will need to be kept clear of obstructions/structures to ensure they can be maintained and function as stormwater conveyance and flood storage areas, as modelled. This will be further assessed by Council upon receipt of amended plans including details of the design surface levels and contours (as above).
- A plan is required showing unit numbers so that the units (as labelled on the elevation plans) can be identified on a plan.
- The elevations plans are inconsistent with the flood report by WMA Water. The elevation plans show fully enclosed sub-floor areas on buildings that have been modelled in the flood report as 'raised buildings' without enclosure of the sub-floor areas.
- The design of the development and flood report by WMA Water does not make allowance for climate change in accordance with Clause 5.21 of Wollongong LEP 2009 and the recommendations of Council's adopted Fairy and Cabbage Tree Creeks Floodplain Risk Management Study and Plan dated 2009. Measure No. 2.4 of the adopted Floodplain Risk

Management Plan, which was recommended as a high priority measures, requires under measure 2.4(6):

6) As an interim measure to incorporate climate change flood risk for the Fairy and Cabbage Tree Creeks floodplain, and until such time as additional climate change investigations are complete and policies are resolved at the LGA level, apply the following interim adjustments to the mapping available in 2010:

(a) in areas adjacent to the coast where flood levels are dominated by sea levels, existing flood levels are increased by 0.4m for Year 2050 and 0.9m for Year 2100;

(b) in areas distant from the coast where sea level does not influence flood levels, existing flood levels are increased by 0.15m for Year 2050 and 0.3m for Year 2100; and

(c) in between (a) and (b), flood level increases are determined by interpolation;

In relation to this measure Council notes that policies have not yet been resolved at an LGA level (in relation to flood planning for climate change) and in this regard, the above interim measure is currently being applied by Council. Council also notes that further climate change modelling was undertaken as part of Council's recently adopted Fairy and Cabbage Tree Creeks Flood Study dated 2020, which indicates (in Figure 34-1) a 20% increase in rainfall intensity and 0.9 metre rise in sea level would result in an increase in the 1 % AEP flood level at the site of between 0.1 and 0.25 metres. In relation to this matter, compliance with the controls for Critical Utilities within the Low Flood Risk Precinct (as described above) will sufficiently account for climate change.

- There are concerns that overflows from Marlo Road in the event of blockage/overload of the piped drainage system may be obstructed by the development, particularly during more localised storms where flooding at the site and Marlo Road is not dominated by backwater effects. Such potential localised impacts would not be identified in the submitted flood modelling, because it only considers impacts at the peak of the 20% AEP, 1 % AEP, and PMF event applied at a catchment wide level and where flooding at the site is governed primarily by backwater effects. Design amendments and additional information is required to ensure that the capacity of the site to accept localised overflows from Marlo Road will not be reduced by the proposal.
- The proposal includes a significant amount of fill and a triple cell box culvert over the top of an existing Council stormwater asset within a drainage easement benefiting Council. The redevelopment of the site may have impacts on the design life of the existing culvert. The redevelopment and construction of the proposed internal access road and triple cell box culvert will likely trigger a need for the developer to reconstruct the existing box culvert.
- Works proposed on Council land – refer comments by Council's Statutory Property Officer .

These concerns have been conveyed to the applicant, however the required information has not been provided. As this outstanding information relates to matters requiring further assessment, the concerns cannot be resolved via conditions of consent.

Landscape Architect

Council's Landscape Architect has reviewed the Arboricultural Impact Assessment (AIA) dated June 2021, which identifies that 124 of the 126 trees are proposed for removal. Two street trees are nominated for retention.

Council's Landscape Architect has advised:

- The proposed tree removal could be considered, subject to an equivalent number of super advanced trees being planted.
- Paths and entries are required to be redesigned to accommodate the retention of the existing street trees.
- Pedestrian paths that begin in Edgar Street have no separation from the adjoining residential lots and a landscape buffer between the development and the fence is required.
- They also noted inconsistencies between the Landscape Plan, Landscape Masterplan and Tree Retention Plan within the AIA.
- Sections are required clarifying whether the ground level landscape areas underneath the concourse are in shade, as they appear to be.

These concerns were communicated to the applicant, however amended landscape plans have not been provided. Compensatory planting of 124 super advanced trees is not considered a matter that can be resolved via conditions of consent, as it is unclear whether the current proposed site layout could accommodate the trees.

It is also noted that the AIA did not include 17 Murrar Road in its assessment and it is unclear what impact the proposed development would have on the existing street tree outside 17 Murrar Road.

Environment Officer

Council's Environment Officer has advised the following:

- State Environmental Planning Policy (Coastal Management) 2018 (now SEPP Resilience and Hazards 2021) - satisfactory
 - Clause 11 Proximity Area for Coastal Wetlands – satisfactory if the following occurs:
 - § Erosion and sediment control measures are correctly installed and maintained during the demolition, excavation and construction phases of the proposed development, and
 - § Water sensitive urban design measures are correctly installed and maintained, and
 - § All conditions of a future controlled activity approval being complied with.
 - Clause 13 Coastal Environment Area – satisfactory if the following occurs
 - § Appropriate erosion and sediment measures are correctly installed and maintained during the demolition, excavation and construction phases of the proposed development, and
 - § The acid sulfate soils management plan is properly implemented, and
 - § Any necessary site contamination remediation works are properly carried out, and
 - § All conditions of a future controlled activity are complied with, and
 - § Water sensitive urban design measures are correctly installed and maintained, and
 - § All care is taken during tree removal works to avoid harm to protected animals, and
 - § No native riparian vegetation is disturbed, and
 - § Excess fertilisers are not used on garden areas,
 - § New native plantings are installed.
 - Clause 14 Coastal Use Area – no specific comment.
 - Clause 15 Coastal hazards – satisfactory. The proposed development is not expected to increase the risk of any coastal hazards.
 - Clause 16 Coastal Zone Management Plan (CZMP) – satisfactory. The Wollongong CZMP 2020 does not contain specific actions for the site.
- State Environmental Planning Policy No. 55 – Remediation of Land (now SEPP Resilience and Hazards 2021) – satisfactory
 - The Cardno 2013 and Douglas Partners 2021 reports have been considered and it is noted that the site contains fill material of unknown origin and quantities.
 - The applicant is required to appoint a NSW EPA accredited site auditor for the purpose of a statutory site audit. The site auditor will review the Detailed Site Investigation (DSI), Remedial Action Plan (RAP) and following site validation, issue a Site Audit Statement and Site Audit Report. A site auditor from Senversa has been appointed.
 - The contamination consultant is required to issue a statement within their reports as to whether the site is suitable for the proposed use (clause 7 of the SEPP) and provide reasons. Douglas Partners submitted a DSI in January 2022 as requested by Council. The DSI involved more extensive sampling than had previously been undertaken. Douglas Partners conclude that the site can be rendered suitable for the proposed development in accordance with clause 7, subject to implementation of certain recommendations. These include a hazardous building material survey prior to

demolition, inspection of building footprints by an occupational hygienist, treatment of subsurface fill in accordance with the RAP and offsite removal of soils where required.

- The applicant should appoint a site auditor prior to determination of the application, and the site auditor should issue an 'Interim Site Auditor's Advice' letter. The site auditor is required to agree with the conclusion of the contamination consultants that the requirements of clause 7 of the SEPP are satisfied. Council has been advised that a site auditor from Senversa has been appointed and Council received the Interim Site Auditor's Advice letter dated 26 July 2022.
- State Environmental Planning Policy (Koala Protection) 2021 – satisfactory
 - The subject site is held within one ownership and has an area of more than 1 hectare.
 - No approved koala plan of management applies to the site.
 - The Arboricultural Impact Assessment Report indicates the site contains three specimens of *Eucalyptus tereticornis* – a species of tree belonging to the koala use tree species listed under South Coast Koala Management Area in Schedule 2 of the SEPP. These trees are proposed to be removed.
 - Bionet records do not provide evidence that the site is suitable koala habitat, and the development is not expected to adversely impact koalas or koala habitat.
- NSW Biodiversity Offsets Scheme (BOS) – matters outstanding
 - The proposed area of native vegetation clearing does not exceed the BOS area threshold (0.25 hectares of native vegetation clearing for a minimum lot size of 449m²).
 - The proposed development involves the construction of stormwater outlets on land mapped on the NSW Government Biodiversity Values Map.
 - The development triggers entry into the BOS. A Biodiversity Development Assessment Report from an accredited assessor is required, however has not been provided. This outstanding matter cannot be resolved via a condition of consent.
- Wollongong Local Environmental Plan 2009 – matters outstanding
 - Clause 7.2 Natural Resource Sensitivity – Biodiversity – satisfactory if retention of tree 119 river she oak (*Casuarina cunninghamiana*) is considered.
 - § This tree is not typical of the Swamp Oak Floodplain Forest, however the tree is situated in an area mapped as Natural Resource Sensitivity – Biodiversity on Lot 505 DP 833242 and has an Arboricultural Impact Assessment SULE rating of 1a. The applicant was encouraged to consider retaining this tree, however has not provided an amended landscape plan showing its retention.
 - Clause 7.4 Riparian Lands – satisfactory:
 - § Proposed encroachments on the Category 3 watercourse 10m wide riparian corridor are endorsed by the Natural Resources Access Regulator (NRAR). These encroachments include paths, raised boardwalks, kitchen gardens and fitness nodes within the 10 metre wide riparian corridor. NRAR had not completed their assessment when Council's environment officer reviewed the application, however NRAR subsequently provided General Terms of Approval, satisfying clause 7.4.
 - Clause 7.5 Acid Sulfate Soils - satisfactory:
 - § Council's mapping identifies the subject lots as being affected by Class 3 Acid Sulfate Soils. Excavation of about 1.5 – 2.0 metres is proposed. An Acid Sulfate Soils Management Plan has been submitted.
 - Clause 7.6 Earthworks – satisfactory:
 - § Excavation and filling of more than a metre are proposed. An Acid Sulfate Soils Management Plan and an Erosion and Sediment Control Plan have been submitted. Excess excavated material will need to be classified before being disposed of.
 - Clause 7.7 Foreshore Building Line – satisfactory if the following occurs:

- § Appropriate erosion and sediment measures are correctly installed and maintained during the demolition, excavation and construction phases of the proposed development, and
- § The acid sulfate soils management plan is properly implemented, and
- § Any necessary site contamination remediation works are properly carried out, and
- § All conditions of a future controlled activity are complied with, and
- § Water sensitive urban design measures are correctly installed and maintained, and
- § Excess fertilisers are not used on garden areas, and
- § Gardens are kept maintained, and
- § New native planting are installed in the riparian corridor,
- Wollongong Development Control Plan 2009 – matters outstanding
 - Chapter E7 Waste Management – satisfactory
 - § A Construction & Demolition Waste Management Plan and an Operational Waste Management Plan have been submitted.
 - Chapter E15 Water Sensitive Urban Design – satisfactory
 - § A Stormwater Site WSUD Plan has been submitted.
 - Chapter E18 Threatened Species – satisfactory
 - § The proposed development would result in the removal of native and non-native trees that would potentially provide a small amount of habitat for a range of fauna species, including foraging habitat for the Grey-headed Flying-fox, but no fauna species would be dependent on these trees.
 - § The Riparian Assessment prepared by EMM Sydney dated 16 August 2021 considers the native vegetation of the adjacent Towradgi Arm to be Swamp Oak Floodplain Forest and Coastal Swamp Oak (*Casuarina glauca*) Forest, both are listed as endangered ecological communities.
 - § Stormwater outlets are proposed in the area of Swamp Oak Floodplain Forest/Coastal Swamp Oak (*Casuarina glauca*) Forest, however this would be unlikely to significantly affect the Swamp Oak Floodplain Forest or have a significant impact on Coastal Swamp Oak (*Casuarina glauca*) Forest.
 - § The proposed development is considered to be unlikely to significantly affect threatened species or ecological communities, or their habitats listed under the NSW *Biodiversity Conservation Act 2016* and is unlikely to have a significant impact on listed threatened species or ecological communities listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
 - Chapter E21 Demolition and Hazardous Building Materials Management - satisfactory if a Demolition Work Plan is provided.
 - § A Demolition Site Plan for Stages A and B and a Hazardous Material Survey have been submitted, however a Demolition Work Plan is outstanding. This can be resolved by conditions of consent.
 - Chapter E22 Soil Erosion and Sediment Control - satisfactory
 - § An Erosion and Sediment Control Plan has been submitted.

Council advised the applicant that a Biodiversity Development Assessment Report is required. This report has not been provided and cannot be resolved by conditions of consent. Council's environment officer consequently does not support the application in its current form.

Heritage Officer

Council's Heritage Officer has reviewed the comments from Heritage NSW advising concurrence is not required under the National Parks and Wildlife Act 1974 as there is no known Aboriginal heritage on the site.

However, Council's Heritage Officer has noted that as the site is located on a water course and in close proximity to a dune system, it is considered likely the site has cultural significance to the Local Aboriginal Community. The applicant's Due Diligence does not include any consultation with the Community (which is not a requirement of the 2010 Code of Practice) regarding the significance of the site, although Illawarra Local Aboriginal Land Council was notified that the Aboriginal heritage Information Management System (AHIMS) site was being remapped.

It is recommended the applicant provide Council with a response to Designing with Country Guidelines (2019); and/or conduct Aboriginal Community consultation. This has not previously been conveyed to the applicant.

Statutory Property Officer

Proposal to drain water to Towradgi Arm

Council's Statutory Officer has advised that the proposal to drain stormwater to Towradgi Arm is not supported and is not a matter that can be resolved via conditions of consent. An amended drainage concept is required.

The stormwater site plan lodged with the development application shows a proposal to drain water to the Towradgi Arm, which is a natural watercourse located on adjoining Council-owned land (Lot 504 DP 719704, Lot 206 DP 241908 and Lot 501 DP 719704). The land is classified community land under the Local Government Act 1993 (LG Act).

A natural watercourse does not satisfy the definition of a 'facility' of Council which means Council is unable to grant an easement for the infrastructure over the affected community land, in accordance with s.46(1)(a1) of the LG Act. Further, as the applicant has advised that the proposed headwall and scour protection would not be under the surface of the ground, the project does not satisfy the requirements of s.46(1)(a1) of the LG Act. The applicant has been advised of these matters, however an amended drainage concept which meets the requirements of the LG Act has not been provided.

Pedestrian walkway from Marlo Road to Murrnarr Road

The proposal includes a public walkway on the western boundary, connecting Marlo and Murrnarr Roads. Council requires registration of a right of carriageway under the Conveyancing Act 1919, for public access in perpetuity. This could be resolved via a condition of consent.

Traffic Engineer

Council's Traffic Engineer is of the opinion that the proposed traffic generation is predicted to be comparable to the existing development and the proposed Murrnarr Road shop/cafe would not generate any noticeable traffic movements, as it would primarily serve the needs of residents and their visitors. A swept path analysis shows that a front loading waste vehicle can access the site with no more than 3 turning movements and leave the site in a forward direction.

Council's engineer advised that relocation of an existing Murrnarr Road speed cushion is required, as it is too close to the proposed eastern vehicle driveway crossover. This will require application to the Traffic Committee and a section 138 Roads Act approval. This can be addressed via conditions of consent.

Significantly, Council's engineer does not support the proposed car parking arrangement (129 resident spaces and 15 visitor spaces). They advised that 94 resident spaces and 48 visitor spaces are required. This was communicated to the applicant however amended plans have not been submitted to Council. In order to comply with the required car parking without change to the site layout, all 33 apartment basement parking spaces would have to be allocated as visitor parking. That would result in villa and villa style units being oversupplied with parking and apartments not having any parking at all. This matter is not considered able to be resolved via conditions of consent.

Geotechnical Engineer

Council's Geotechnical Officer has indicated the submitted geotechnical report satisfactorily assesses preliminary geotechnical constraints. Conditions of consent were recommended.

Community Safety Officer

Council's Community Safety Officer has recommended that crime prevention actions detailed in the SEE are implemented. This can be addressed via conditions of consent.

Contributions Officer

Council's Contributions Officer has reviewed the application and advised that no contribution is payable. The Environmental Planning and Assessment Act 1979 Revocation of Direction in force under section 94E and Direction under section 94E dated 14 September 2007 exempts payment of a contribution for development carried out under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* where undertaken by a social housing provider.

IRT Group are a registered community housing provider. This is a type of social housing provider under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. Therefore, the Wollongong City-Wide Development Contributions Plan does not apply to the proposed development and no development contributions are required.

1.6.2 EXTERNAL CONSULTATION

Natural Resources Access Regulator (NRAR)

The application was referred to the NRAR as integrated development, requiring a Controlled Activity Approval under the Water Management Act 2000. NRAR provided general terms of Approval in a letter dated 15 March 2022. The GTAs refer to the proposed controlled activity described in the plans and documents in Schedule 1, which only lists the SEE. As the SEE does not include 17 Murranar in the site description or provide a detailed discussion of proposed drainage works on waterfront land, it is unclear whether these matters have been considered by NRAR.

Endeavour Energy

Endeavour Energy were referred the application in accordance with clause 2.48 of SEPP (Transport and Infrastructure) 2021 (formerly clause 45 of SEPP (Infrastructure) 2007). Endeavour Energy recommended conditions of consent.

Heritage NSW

The application was referred to Heritage NSW as integrated development, in relation to section 90 of the National Parks and Wildlife Act 1974 (NPW Act). Heritage NSW has advised that as there are no known Aboriginal objects on the site, the development is not integrated development for purpose of the NPW Act and Heritage NSW cannot provide General Terms of Approval. Heritage NSW did recommend Council consider adopting conditions of consent detailed in their correspondence. These recommended conditions aim to ensure no additional harm is caused should Aboriginal cultural heritage be encountered.

Sydney Water

Sydney Water received the application under section 78 of the Sydney Water Act 1994. Sydney Water provided general comments regarding water and wastewater servicing, however the applicant is still required to obtain a section 73 certificate from Sydney Water. This typically occurs after development application determination and can be addressed in a condition of consent.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

COASTAL MANAGEMENT Amendment Act 2021

The *Coastal Management Amendment Act 2021* commenced on 1 November 2021, to give coastal councils until 31 December 2023 to implement their CZMPs. By effect this enables a continuation of the current certified CZMP (20 December 2017) whilst Council undertakes further studies and community consultation for a transition to a new Coastal Management Plan.

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

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

NSW Biodiversity Conservation Act 2016

Council's environment officer has advised that the proposed area of native vegetation clearing does not exceed the Biodiversity Offset Scheme (BOS) area threshold (0.25 hectares of native vegetation clearing for a minimum lot size of 449m²).

However, the development involves construction of stormwater outlets outside the site on land mapped on the NSW Government Biodiversity Values Map. Therefore, the proposal triggers entry into the BOS. A Biodiversity Development Assessment Report from an accredited assessor is required, however has not been provided.

Fisheries Management Act 1994

Not applicable.

2.1.1 STATE ENVIRONMENTAL PLANNING POLICIES

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

Part 2.4 (formerly Part 4) Regionally significant development.

The proposal is classified under schedule 6 as general development with a capital investment value exceeding \$30 million.

The Southern Regional Planning Panel is the determining authority.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

The SEPP commenced 1 March 2022, with transitional provisions making it applicable to the application. Previously, SEPP No. 55 (Remediation of Land) and SEPP (Coastal Management) 2018 applied.

Chapter 2 Coastal management

The land is located within the coastal zone. The following coastal designations apply

- 'Proximity area for coastal wetlands' – all 6 lots affected
- 'Coastal environment area' – all 6 lots affected
- 'Coastal use area' – all 6 lots affected

Whilst not part of the identified project site, the drainage plan shows that stormwater drainage infrastructure is intended to be installed on Lots 203 DP 241908, Lot 501 DP 719704 and Lot 504 DP 719704 in proximity areas for coastal wetlands and coastal environment area.

Division 1 Coastal wetlands and littoral rainforests area

Matters for consideration under clause 2.8 are satisfactory subject to the following:

- Erosion and sediment control measures are correctly installed and maintained during the demolition, excavation and construction phases of the proposed development, and
- Water sensitive urban design measures are correctly installed and maintained, and
- All conditions of a future controlled activity approval being complied with.

Division 3 coastal environment area

Matters for consideration under clause 2.10 are satisfactory subject to the following:

- Appropriate erosion and sediment measures are correctly installed and maintained during the demolition, excavation and construction phases of the proposed development, and
- The acid sulfate soils management plan is properly implemented, and

- Any necessary site contamination remediation works are properly carried out, and
- All conditions of a future controlled activity are complied with, and
- Water sensitive urban design measures are correctly installed and maintained, and
- All care is taken during tree removal works to avoid harm to protected animals, and
- No native riparian vegetation is disturbed, and
- Excess fertilisers are not used on garden areas,
- New native plantings are installed.

Division 4 coastal use area

Matters for consideration under clause 2.11 are satisfactory. No adverse impacts on the coastal environment are anticipated.

Division 5 general

Matters for consideration under clause 2.12 coastal hazards are satisfactory. The proposed development is not expected to increase the risk of any coastal hazards.

Matters for consideration under clause 2.13 Coastal Zone Management Plan (CZMP) are satisfactory. The Wollongong CZMP 2020 does not contain specific actions for the site.

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application

The potential for contamination has been considered in accordance with Chapter 4. The proposal has been reviewed by Council's environmental officer with regard to the SEPP and the relevant provisions of WDCP 2009.

The application was accompanied by a Preliminary Site Investigation (PSI), Detailed Site Investigation and Remedial Action Plan prepared by Douglas Partners. The reports have been reviewed by Council's Environmental Officer. The reports indicate there is evidence of contamination at the site.

Douglas Partners conclude that the site can be rendered suitable for the proposed development in accordance with clause 4.6, subject to implementation of certain recommendations. These include a hazardous building material survey prior to demolition, inspection of building footprints by an occupational hygienist, treatment of subsurface fill in accordance with the RAP and offsite removal of soils where required. Council has been advised that a site auditor from Senversa has been appointed and received the Interim Site Auditor's Advice letter dated 26 July 2022

The proposal is considered to be satisfactory with regard to the requirements of clause 4.6.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

SEPP (Housing for Seniors or People with a Disability) 2004 applied at date of lodgement, and was repealed on 26 November 2021 upon commencement of SEPP (Housing) 2021. The site is not environmentally sensitive land as detailed in Schedule 1.

Chapter 2 Key concepts

The development is seniors housing, consisting of a group of self-contained dwellings.

Chapter 3 Development for seniors housing

Part 1A Site compatibility certificates

Clause 24 Site compatibility certificates required for certain development applications

A site compatibility certificate is not required.

Part 2 Site-related requirements

Clause 26 Location and access to facilities

The site complies with distance requirement for a transport service and facilities including medical practitioner, shops and banking services and recreation facilities.

Clause 28 Water and sewer

The site has previously been serviced and preliminary servicing correspondence from Sydney Water has been obtained.

Clause 29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply

Criteria referred to in clause 25 (5) (b) (i), (iii) and (v) have been considered.

- 25 (5) (b) (i) natural environment – Flooding constraints have not adequately been addressed in the application (refer comments Council's Stormwater Engineer and Statutory Property Officer). The proposed development involves the construction of stormwater outlets on land mapped on the NSW Government Biodiversity Values Map. The proposal triggers entry into the Biodiversity Offset Scheme and a Biodiversity Development Assessment Report is required but has not been provided (refer Council's Environment Officer comments). Extensive tree removal is proposed, however inadequate compensatory plantings have been proposed (refer Council's Landscape Architect comments).
- 25 (5) (b) (iii) services and infrastructure – The proposed stormwater outlets on Council's community land are not permitted, and a redesign of the drainage concept is required (refer Council's Statutory Officer comments). The relationship between the proposed public walkway and the existing right of way benefiting 19 Murrarar Road is not fully resolved (refer submissions).
- 25 (5) (b) (v) bulk, scale, built form and character – The proposed floor levels do not comply with WDCP 2009. The site is categorised medium flood risk and must accommodate refuge in place. Minimum floor levels approximately 1m higher than proposed are required. (refer Council's Stormwater Engineer comments). IRT have advised that residents prefer to drive into their dwellings, which is unlikely to be achieved on this site having regard to flooding and building height constraints. Any increase in floor level would cause the development to breach the WLEP 2009 height limit.

Part 3 Design requirements

Clause 30 Site analysis

A site analysis has been provided – refer architectural and survey plan.

Clause 32 Design of residential development

The consent authority must not grant consent to a development application unless the consent authority is satisfied that the development demonstrates that adequate regard has been given to the principles set out in Division 2. These principles are discussed in clauses 33-39.

Clause 33 Neighbourhood amenity and streetscape

Several aspects of the proposal could be improved. These include:

- Undertaking consultation with the local Aboriginal community so that the development can sensitively harmonise with potential Aboriginal cultural significance.
- Providing more opportunities for at grade open space suitable for mobility impaired persons,
- Improving legibility of building entries and way finding throughout the site.
- Increasing on-site visitor car parking
- Enclosing subfloor areas only where compatible with flooding restrictions
- Providing view analysis sections through the site, testing suitability of proposed height and scale from neighbouring properties and the public domain
- Refining boundary edge treatment at Edgar Street and where the site adjoins residential properties.
- Retaining major existing trees (refer Council's Landscape Architect and Environment Officer comments)
- Locating landscape structures like the boardwalk, planters, fitness equipment and stormwater infrastructure outside the riparian zone.

Clause 34 Visual and acoustic privacy

The units located on the western boundary will be sensitive to noise from the public walkway. These units have elevated outdoor POS oriented to the walkway. Details of the walkway surface and landscaping are not shown on the landscape plan. The elevated POS of villas facing west is likely to result in privacy loss for adjoining properties. It is noted that the owners of 19 Murranar Road and IRT continue to work through details of the ROW and the planned location of the walkway and dedication to Council.

Clause 35 Solar access and design for climate

The orientation of the apartments limits north facing living room windows. Shadow diagrams have been provided.

Clause 36 Stormwater

The proposed stormwater disposal concept requires amendment (refer Council's Stormwater Engineer and Statutory Property Officer comments)

Clause 37 Crime prevention

The SEE details how CPTED principles have been implemented.

Clause 38 Accessibility

A Statement of Compliance Access for People with a Disability by Accessible Building Solutions has been submitted. The report discusses accessibility in relation to the proposed building and structural aspects of the outdoor areas.

Clause 39 Waste Management

A waste management plan for the operation of the units has been supplied (OWMP). The location of waste bin storage and collection areas is shown on the architectural plans and in the OWMP. Council's traffic engineer has confirmed the required waste vehicle can service the site.

In the apartments, a waste chute near the lift at ground and upper levels directs waste to a basement bin room. Waste is stored here in 660L and 1100L mobile bins. On collection day/s, a caretaker is required to transport the apartment bins to an outdoor collection point.

Residents in the villas will be provided with their own mobile wheelie bins, which they will transport to a collection point on collection day/s.

Residents in the villa style apartments will place bagged household waste in communal bin areas. They will not be supplied with their own household bin. As the waste truck does not pick up waste on the upper level concourse of the villa style apartments, these residents or caretaker are required to wheel the communal waste bins to a ground level collection point.

Separate residential and commercial waste contracting is proposed.

Part 4 Development standards to be complied with

Clause 40 Development standards – minimum sizes and building height

Complies.

Clause 41 Standards for hostels and self-contained dwellings

The consent authority must not grant consent to a development application unless the consent authority is satisfied that the development complies with the standards in Schedule 3.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

Not applicable/complies.

Schedule 3

The Statement of Compliance Access for People with a Disability by Accessible Building Solutions concludes that criteria either currently comply or are capable of compliance.

2.1.5 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

The proposal is not traffic generating development as defined in Schedule 3 of the SEPP, as the predicted vehicle movements per hour are less than the threshold number. The site is not located on or near a classified road and there are no significant external noise sources.

Endeavour Energy were referred the application in accordance with clause 2.48 (formerly clause 45 of *State Environmental Planning Policy (Infrastructure) 2007*). Conditions of consent were recommended.

2.1.6 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets. The certificate is dated 28 July 2021 which is less than three months before DA lodgement.

2.1.7 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

State Environmental Planning Policy (Koala Habitat Protection) 2021 applied at date of lodgement of the development application. Provisions have been transferred into State Environmental Planning Policy (Biodiversity and Conservation) 2021, which commenced 1 March 2022

The SEPP applies to the Wollongong Local Government Area, identified as being in the South Coast koala management area.

Clause 4.9 Development assessment process—no approved koala plan of management for land

There is no approved koala plan of management applying to the land, and the land exceeds 1 hectare in single ownership.

Clause 4.10 Development assessment process—other land

Consent can be issued for development on the subject land if Council is satisfied that the land is *not* core koala habitat.

core koala habitat means—

- (a) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas are recorded as being present at the time of assessment of the land as highly suitable koala habitat, or
- (b) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas have been recorded as being present in the previous 18 years.

Council's environment officer has advised that the Arboricultural Impact Assessment Report indicates the site contains three specimens of *Eucalyptus tereticornis* – a species of tree belonging to the koala use tree species listed under South Coast Koala Management Area in Schedule 2 of the SEPP. These trees are proposed to be removed. However, Bionet records do not provide evidence that the site is suitable koala habitat, and the development is not expected to adversely impact koalas or koala habitat.

2.1.8 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

The development is categorised as a 'group of independent living units' under the definition 'seniors housing'

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.

The clubhouse including allied health spaces and the Murranar Road shop/café are considered ancillary to the seniors housing primary land use.

Clause 1.8A Savings provision relating to pending development approvals

At the date of lodgement, the WLEP 2009 version that applied commenced 14 July 2021.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned R2 Low Density Residential.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

2 Permitted without consent

Home occupations

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boat launching ramps; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Hospitals; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Tank-based aquaculture; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

The proposal is categorised as 'seniors housing' as defined above and is permissible in the zone with development consent.

Clause 2.7 Demolition requires development consent

All structures are proposed to be demolished.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed building height of 8.9m does not exceed the maximum of 9m permitted for the site. However, as Council's stormwater engineer has advised, all buildings would need to be raised approximately 1m above the proposed floor level to meet flood planning requirements. Any increase in floor level would cause the development to exceed the height limit.

Clause 4.4 Floor space ratio

The maximum permitted floor space ratio is 0.5:1, or 13,746.5m² gross floor area (GFA), based on a site area of 27,493m².

The gross floor area plan indicates total proposed GFA of 10,961m², or FSR 0.40:1, which complies.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

Schedule 5 does not indicate there are items of heritage within the site. However, Council's heritage officer has advised that as the site located on a water course and in close proximity to a dune system, it is considered likely the site has cultural significance to the Local Aboriginal Community. It is recommended that consultation occurs with the local Aboriginal community.

Clause 5.21 Flood planning

The site is flood affected and categorised as within a medium flood risk precinct. The consent authority must not grant consent unless the consent authority is satisfied of matters detailed in subclause 2.

(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—

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

Council's stormwater engineer has advised that the proposal fails to provide adequate safe occupation and efficient evacuation of people in the event of a flood, in contravention of subclause 2(c) above. There are concerns that overflows from Marlo Road in the event of blockage/overload of the piped drainage system may be obstructed by the development, particularly during more localised storms where flooding at the site and Marlo Road is not dominated by backwater effects. Design amendments and additional information is required to ensure that the capacity of the site to accept localised overflows from Marlo Road will not be reduced by the proposal, as required by subclause 2(b).

The consent authority must also consider matters detailed in subclause 3:

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*

- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Council's stormwater engineer has advised that the design does not provide minimum floor levels which account for flooding impacts and climate change, and the architectural and landscape plans do not appear to be compatible with the stormwater design and flood modelling for the development. The elevations plans are inconsistent with flood report by WMA Water and show fully enclosed sub-floor areas on buildings that have been modelled in the flood report as 'raised buildings' without enclosure of the sub-floor areas..

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The proposal involves installation of a substation and fire hydrant booster within the front setback on Murranar Road. Endeavour Energy have recommended conditions of consent. Sydney Water has provided in principle approval, subject to the applicant obtaining a section 73 certificate.

Clause 7.2 Natural resource sensitivity – biodiversity

Lot 505 DP 833242 contains a small area mapped as Natural Resource Sensitivity–Biodiversity connected to a larger area mapped as Natural Resource Sensitivity–Biodiversity on the adjoining Council owned lot.

Council's environmental officer has recommended the applicant consider retention of tree numbered 119 in the submitted Aboricultural Development Assessment Report, which is located within the area mapped as Natural Resource Sensitivity–Biodiversity on Lot 505 DP 833242. Amended plans have not been provided showing retention of this tree.

Clause 7.4 Riparian lands

The site is not identified in the Riparian Land Map as containing riparian land; however does adjoin riparian land. The proposed development contains paths, raised boardwalks, kitchen gardens and fitness nodes within the 10 metre wide riparian corridor. General Terms of Approval have been issued by NRAR.

Clause 7.5 Acid Sulfate Soils

Council's mapping identifies the subject lots as being affected by Class 3 Acid Sulfate Soils. Excavation of about 1.5 – 2.0 metres is proposed. An Acid Sulfate Soils Management Plan has been submitted.

Clause 7.6 Earthworks

Excavation and filling of more than a metre are proposed. An Acid Sulfate Soils Management Plan and an Erosion and Sediment Control Plan have been submitted. Excess excavated material will need to be classified before being disposed of.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

State Environmental Planning Policies (SEPPs) were consolidated from 45 existing SEPPs into 11 new SEPPs commencing on 1 March 2022. The application was lodged prior to this date, however the provisions within the repealed SEPPs were transferred into the new SEPPs and the intent and provisions remain largely unchanged. The Department has advised that these changes do not affect applications that have already been lodged.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The application is not supported in its current form. It is noted that the development departs from design controls in the following chapters:

1. B1 Residential Development
2. E2 Crime Prevention Through Environmental Design

3. E3 Car parking, Access, Servicing/loading Facilities and Traffic Management
4. E6 Landscaping
5. E10 Aboriginal Heritage
6. E13 Floodplain Management
7. E14 Stormwater Management
8. E17 Preservation and Management of Trees and Vegetation
9. E23 Riparian Land Management

The full table of compliance can be found at **ATTACHMENT 4**.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2022

Wollongong City-Wide Development Plan - City Wide

The Wollongong City-Wide Development Contributions Plan 2022 applies to the subject property. This Plan levies a contribution based on the estimated cost of development. An exemption has been approved by Council's Contributions Officer as IRT is a social housing provider, and contributions do not apply.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

Environmental Planning and Assessment Regulation 2021

2 Savings

Any Act, matter or thing that, immediately before the repeal of the 2000 Regulation, had effect under the 2000 Regulation continues to have effect under this Regulation. The 2000 Regulation means the Environmental Planning and Assessment Regulation 2000 as in force immediately before its repeal on 1 March 2022.

6 Determination of BASIX development

A BASIX certificate has been provided.

61 Additional matters that consent authority must consider

Demolition of all structures is proposed.

62 Consideration of fire safety

Not applicable

63 Considerations for erection of temporary structures

Not applicable.

64 Consent authority may require upgrade of buildings

Not applicable.

Part 5 Modification of development consents—the Act, ss 4.55, 4.56 and 4.57

Division 1 Applications for modification of development consent

Not applicable.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

The proposal is considered unacceptable with regard to some likely impacts, as detailed below.

Context and Setting:

A seniors housing development on the site was first approved in 1972. Since that time, IRT has expanded the facility and operated a mix of high-care residential and independent living units on the site. IRT has recently acquired an undeveloped former Council allotment on the eastern boundary of the existing facility.

The site is situated in a low density residential neighbourhood, in close proximity to coastal public open space. The site is flood affected and contains riparian land. Public submissions refer to concerns about traffic generation parking, tree removal, retention of a pedestrian walkway between Marlo Road and Murranar Road, flood mitigation, privacy loss, asbestos disposal, demolition and construction impacts, beach access, landscape design and conflicts with a right of way benefitting 19 Murranar Road.

Access, Transport and Traffic:

The total number of car parking spaces proposed exceeds the rate required for social housing providers under SEPP (Housing for Seniors or People with a Disability) 2004. Council's traffic engineer and the applicant's traffic engineer recommend a higher number of visitor spaces (48, where 15 proposed). This would require redesign to allocate resident spaces to visitors. Amended plans have been requested but not provided.

The application provides for a waste vehicle to enter and exit the site in a forward direction, and manoeuvre within the site to collect waste.

Public Domain:

Stormwater infrastructure in Council's community land is proposed but not permitted under the Local Government Act 1993.

Utilities:

Endeavour Energy has recommended conditions of consent. Sydney Water has not indicated they have an objection to the development.

Heritage:

No known heritage items are located on the site. Council's heritage officer has recommended the applicant carry out consultation with the local Aboriginal community.

Other land resources:

In its current form, the proposal is not considered to represent orderly development of the site.

Water:

The site is presently serviced by Sydney Water. Water targets detailed in the BASIX certificate are satisfactory.

Soils:

The land is identified as being affected by acid sulfate soils class 3. Council's geotechnical engineer has no objection, subject to preparation of a detailed geotechnical design.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate.

Flora and Fauna:

All the trees on the site (124) are to be removed. Council's landscape officer has indicated the tree removal could be considered where the same number of super-advanced trees were planted in compensation. Council has requested further information regarding the compensatory plantings and retention of two street trees, which has not been provided. Council's environment officer has no concern regarding fauna impacts arising from the tree removal.

Waste:

Waste management plans have been provided and are generally satisfactory.

Energy:

Endeavour Energy has provided recommended conditions of consent. A BASIX certificate has been provided and is satisfactory.

Noise and vibration:

No significant external noise source has been identified. A construction environmental plan has not been provided. It is unknown what methods are intended to minimise noise generated during construction.

Natural hazards:

Council records list the site as flood affected. Information requested by Council's stormwater engineer has not been provided.

Technological hazards:

The applicant has provided a Detailed Site Investigation, which has confirmed the presence of contaminants. A Remedial Action Plan has been provided. Council records list the site as acid sulfate soil affected.

Safety, Security and Crime Prevention:

This application is not expected to result in significant opportunities for criminal or antisocial behaviour. CPTED strategies are discussed in the SEE.

Social Impact:

The proposal is not expected to result in adverse social impact.

Economic Impact:

The proposal is not expected to result in adverse economic impact.

Site Design and Internal Design:

The application results in departures from WLEP 2009 and WDCP 2009 planning controls. Significantly, the development fails to adequately address the flooding constraints affecting the site, which are a prerequisite for consent. The stormwater disposal design involves construction of infrastructure on Council owned community land, which is not permitted under the Local Government Act 1993. Amended plans have been requested but not provided.

Construction:

A construction environmental plan has not been provided. Construction impacts were raised as a concern in public submissions.

Cumulative Impacts:

In its current form, the proposal is expected to result in adverse cumulative impacts.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit in the locality?

A seniors housing facility has been present on much of the site since the 1970s, and a low scale seniors housing development is potentially compatible with the locality. Submissions support the reinstatement of a pedestrian walkway between Marlo and Murranar Road, although there are some privacy concerns from 19 Murranar Road.

However, the extensive vegetation removal will significantly alter the local setting, which has been raised in submissions as a concern. The proposal is also considered inappropriate with regard to number of on-site visitor parking spaces, based on parking demand. Flooding matters have not been adequately resolved and there are concerns flooding conditions outside the site will be adversely affected.

In its current form, and based on the information at hand, the proposal is expected to result in adverse impacts on the amenity of the locality and adjoining developments.

Are the site attributes conducive to development?

Site attributes and constraints have not adequately been incorporated into design, as noted by Council's assessment staff. Significantly, the development does not provide on-site flood refuge or minimum floor levels as required by flood planning policies. All trees on the site are proposed to be removed, and this is a concern raised in public submissions. Whilst the public walkway between Marlo Road and Murranar Road is proposed, further details are required to clarify potential impacts on adjoining neighbours. The development triggers entry into the Biodiversity Offset scheme and a Biodiversity Assessment Report is required, but not provided.

A redesign will be required.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

A total of 18 submissions have been received, including multiple submissions from two authors and are discussed in section 1.5.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

- Consideration of likely impacts - adverse potential impacts have been identified, including flooding, visitor car parking, tree retention and landscaping, and privacy.
- Zoning and applicable planning controls - the development is permissible in the R2 Low Density Residential zone. Non-compliances with WLEP 2009 and WDCP 2009 have been identified.
- Character of the area – seniors housing is compatible with the low density residential neighbourhood, subject to resolution of flooding, landscaping, biodiversity and other matters. These matters remain outstanding.
- Submissions - the submissions include concerns regarding non-compliance with Council or State planning policies.
- Referrals – external authorities have no objection. Several Council staff have advised that the current proposal cannot be supported.

3. CONCLUSION

This application has been assessed as unsatisfactory having regard to Section S4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of State Environmental Planning Policies, Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

The proposed development is permissible with consent in the R2 Low Density Residential zone. The development has been assessed with regard to all relevant SEPPs and supporting guidelines including the Managing Contaminated Land Guidelines. The proposal has some deficiencies with regard to the design principles of SEPP (Housing for Seniors or People with a Disability) 2004 and features variations in respect of LEP and DCP controls which cannot be supported based on the information at hand.

Further information and amended plans have been requested but not provided, and this outstanding information relates to critical threshold matters of non-compliance with policies. These significant matters include:

- The proposed floor levels do not comply with minimum height and flood refuge requirements for the site's flooding constraints. WLEP 2009 and SEPP (Housing for Seniors or People with a Disability) 2004 state that the consent authority can only grant consent where flooding impacts are satisfactory.
- A Biodiversity Development Assessment Report from an accredited assessor is required, however has not been provided.
- Stormwater infrastructure is proposed on community land which is not permitted under the Local Government Act 1993.

These outstanding matters cannot be resolved via conditions of consent.

The concerns raised in submissions have been considered and there are unresolved matters arising which support the position that the proposed development is unsatisfactory in its current form and should not be supported.

4. RECOMMENDATION

It is recommended that the development application is refused for the reasons detailed in **ATTACHMENT 5**.

Attachments

- 1 Aerial photograph
- 2 WLEP zoning map
- 3 Plans
- 4 WDCP 2009 compliance table
- 5 Draft reasons for refusal