

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-199
DA Number	DA-2022-335
LGA	Bega Valley Shire
Proposed Development	<p>The proposal seeks development consent for a seniors housing development comprising 89 units.</p> <p>The development includes one 5-storey building and one 4-storey building with ancillary leisure and communal spaces, 141 car spaces, landscaping, vehicular crossings, and business identification signs.</p>
Street Address	<p>83 Lakewood Drive, Merimbula</p> <p>Lot 602 DP 1277714</p>
Applicant/Owner	<p>Owner: JFPG004 Pty Ltd</p> <p>Applicant: HDC Planning</p>
Date of DA lodgement	8 November 2022
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> 59 submissions
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	<p>The proposed development is specified as “regionally significant development” under clause 2 of Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i> as it has a capital investment value of more than \$30 million. For this reason, the Southern Regional Planning Panel (SRPP) is the consent authority under s4.5 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
CIV	\$39,883,440
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <i>Biodiversity Conservation Act 2016</i>; <i>Environmental Planning and Assessment Act 1979</i>; <i>Environmental Planning and Assessment Regulation 2021</i>; <i>National Parks and Wildlife Act 1974</i>; <i>Rural Fires Act 1997</i>. <p>Relevant Environmental Planning Instruments State Environmental Planning Policies (SEPPs)</p> <ul style="list-style-type: none"> <i>State Environmental Planning Policy (Planning Systems) 2021</i> <i>State Environmental Planning Policy (Housing) 2021</i>

	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</i> • <i>State Environmental Planning Policy (Industry and Employment) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Bega Valley Local Environmental Plan 2013</i> <p>Local Environmental Plan</p> <ul style="list-style-type: none"> • <i>Bega Valley Local Environmental Plan 2013.</i> <p>Draft Environmental Planning Instruments</p> <ul style="list-style-type: none"> • Draft SEPP reviews (Various) <p>Planning Agreements (existing/draft)</p> <ul style="list-style-type: none"> • Nil <p>Relevant Council Policy</p> <ul style="list-style-type: none"> • Bega Valley Development Control Plan 2013. • Bega Valley Section 94 and 94A Contributions Plan 2014.
List all documents submitted with this report for the Panel's consideration	<p>Attachment 1: Architectural Plans</p> <p>Attachment 2: Owner's Consent</p> <p>Attachment 3: Cost Estimate Report</p> <p>Attachment 4: Survey Plan</p> <p>Attachment 5: Civil Drawings</p> <p>Attachment 6: Landscape Plans</p> <p>Attachment 7: Statement of Environmental Effects</p> <p>Attachment 8: Addendum Statement of Environmental Effects</p> <p>Attachment 9: Biodiversity Development Assessment Report</p> <p>Attachment 10: Traffic and Parking Assessment Report</p> <p>Attachment 11: Access Report</p> <p>Attachment 12: Bushfire Assessment Report</p> <p>Attachment 13: Concept Stormwater Management Report</p> <p>Attachment 14: Waste Management Plan</p> <p>Attachment 15: BASIX Certificate</p> <p>Attachment 16: Heritage Letter</p> <p>Attachment 17: RFI Response Letter dated 21 February 2023</p> <p>Attachment 18: Aboriginal Cultural Heritage Assessment</p> <p>Attachment 19: Aboriginal Heritage Impact Permit No. 1131988</p> <p>Attachment 20: Air Traffic Sections</p> <p>Attachment 21: Site Plan Issue D</p> <p>Attachment 22: Visual Impact Assessment</p> <p>Attachment 23: Map indicating APZ encroachment into C3 zone</p>

Clause 4.6 requests	Clause 4.6 Request submitted to support variation to Clause 4.3 Height of Buildings of the Bega Valley Local Environmental Plan 2013.	
Summary of key submissions	<ul style="list-style-type: none"> • Bulk and scale • Location and proximity to services and facilities • Visual impact • Privacy impact • Overshadowing • Noise • Access and traffic • Impact to environment • Lack of supporting infrastructure • Lack of demand for seniors housing • Impact on environment • Construction impacts • Solar Access 	
Report prepared by	Adam Coburn, Consultant Planner	
Report date	27 July 2023	
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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>		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?		Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>		No
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>		No

1 EXECUTIVE SUMMARY

This report considers a Development Application (DA) DA-2022-335 for the construction of a senior housing development for eighty-nine (89) independent living units (ILU) at Lot 602 DP 1277714, being 83 Lakewood Drive, Merimbula (the Site).

The proposed development includes an administration, office, staff quarters, function centre, games/pool room and sitting rooms, library and lounge, gym, bowling greens and club house with kitchen and bar, swimming pool and pool house, men's shed and associated amenities, roof top terraces over two buildings (1 x 4 storey and 1 x 5 storey buildings). The development also proposes 141 car parking spaces including 5 visitor car spaces located partially within the road reserve along Lakewood Drive, internal driveway, hard and soft landscaping, an elevated link bridge and 2 x building identification signs.

The DA will be determined by the Southern Regional Planning Panel (SRPP) as the proposal is classified as 'regional development' pursuant to clause 2 of Schedule 6 of the *State Environmental Planning Policy (Planning Systems) 2021* as it has a capital investment value of more than \$30 million. For this reason, the Southern Regional Planning Panel is the consent authority under s4.5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The DA is integrated development and requires approvals New South Wales Rural Fire Service (RFS) under s100B of the *Rural Fires Act 1997* and Heritage NSW under s90 of the *National Parks and Wildlife Act 1974* for the development to be carried out.

Council has undertaken a detailed assessment of the application in accordance with Section 4.15 Matters for consideration-general of the EP&A Act 1979.

The application has been publicly advertised in accordance with Council's Engagement Strategy with a total of 59 public submissions were received during that period.

Section 4.15 of the EP&A Act 1979 requires a consent authority to take into consideration various matters when assessing a DA, including the provisions of any relevant environmental planning instruments that apply to the land, the likely impacts of the proposed development on the natural and built environments and the public interest.

This report provides an assessment of the DA, including those issues the Panel raised in their briefings from 22 November 2022 and 30 May 2023.

This assessment makes a recommendation for the Southern Regional Planning Panel for refusal based on the detailed assessment of the proposal against Section 4.15.

2 INTRODUCTION

Council is in receipt of a development application for a seniors housing development at Lot 602 DP 1277714 being 83 Lakewood Drive, Merimbula.

The proposal has been lodged by HDC Planning. Development consent is sought under Part 4 of the EP&A Act 1979. The applicant has defined the proposal as seniors housing and it has a capital investment value of \$39,883,440. The SRPP is the determining authority.

A chronological summary of the application background to date is outlined below in **Table 1**.

Table 1: Application timeline

Date(s)	Action(s)
16 December 2021	A pre-lodgement meeting was conducted with Council's Development Advisory Panel on 16 December 2021.
8 November 2022	The DA was lodged.
10 November 2022	Internal referrals The Council referred the DA internally to: <ul style="list-style-type: none">• Building Services• Development Engineer• Water and Sewer Assets Engineer• Environmental Services• Environmental Health• Strategic Planning• Waste Services
10 November 2022	External referrals The Council referred the DA externally to: <ul style="list-style-type: none">• New South Wales Rural Fire Service• Heritage New South Wales• Merimbula Airport• Air Services Australia• Merimbula Lake Oyster Growers• Bega Local Aboriginal Land Council• Essential Energy
11 November 2022	Strategic planning section provided comments on the development application.

21 November 2022 – 12 December 2022	<p>Exhibition</p> <p>The Council notified members of the public of the DA and invited submissions.</p> <p>The Council received 55 submissions during the exhibition period.</p>
22 November 2022	The Council briefed the Southern Regional Planning Panel on the DA (preliminary briefing).
25 November 2022	The Council issued a request for information seeking documents relating to Aboriginal Cultural Heritage (1 st RFI).
30 November 2022	Merimbula Airport provides comments on the development application.
5 December 2022	Air Services Australia (ASA) provides comments on the development application.
9 December 2022	The Council issued a request for information relating to the impacts of the proposed development on the operations of the Merimbula Airport (2 nd RFI).
9 December 2022	Essential Energy provides comments on the development application.
5 January 2023	The NSW Rural Fire Service (RFS) issues General Terms of Approval and Bushfire Safety Authority under s 100B of the <i>Rural Fires Act 1997</i> .
21 February 2023	Development engineering section provides comments on the development application (subsequently updated on 6 March 2023 and 3 April 2023).
22 February 2023	Building services section provides comments on the development application.
11 April 2023	The proponent lodged a Class 1 Application with the Land and Environment Court.
16 May 2023 – 16 June 2023	<p>Exhibition</p> <p>The Council notified members of the public of the DA and invited submissions.</p> <p>4 submissions were received</p>
29 May 2023	Environmental services and engineer provide comments on the development application.
30 May 2023	Response received from ASA.

	<p>Council, supporting DPE consulting staff and applicant briefed the SRPP on the DA and undertook a site inspection. SRPP noted the application is being assessed under the Department of Planning and Environment's Expert Assessment Program (EAP) and an Assessment Report is to be provided by the EAP to Council with recommendations for determination by the SRPP.</p> <p>The Panel requested the Council and assessment planners work towards a determination in early August 2023.</p>
31 May 2023	Response received from Civil Aviation Safety Authority (CASA).

3 SITE DESCRIPTION AND LOCAL CONTEXT

The Site is identified as 83 Lakewood Drive, Merimbula, and is legally described as Lot 602 DP1277714. The Site an existing allotment located in Merimbula, on the north side of Lakewood Drive. It is noted that Lot 602 includes a part lot on the opposite side of Lakewood Drive, which is not part of this proposed development and is not proposed to be altered in any way.

The Site is a vacant residue allotment created as part of a recent residential subdivision which also constructed Lakewood Drive at the property front boundary. The Site (excluding the part lot) is irregular in shape with a frontage along Lakewood Drive (including part of the cul-de-sac) of approximately 143m with a total area of 28,678m². The C3 Environmental Management zoned part of the site is 6,310 m² in area. The part lot is 2048 m² in area.

A creek traverses the Site near the northern boundary and the riparian corridor contains native trees and vegetation. Overhead powerlines also traverse the site in close proximity to the creek. The site topography is defined by a crest near the eastern boundary which slopes away to the north and south falling 22m towards the creek and 9m towards the front south-east corner of the site.

The Site is located approximately 2km west of the Merimbula Town Centre overlooking Merimbula Lake to the south and south-west. The Site in its context can best be described as primarily residentially zoned land in close proximity to a coastal estuary and surrounding hinterland. The site adjoins heavily vegetated vacant land to its north which is zoned C3. The surrounding development to the east of the site is characterised by low density residential allotments comprising detached housing of one – two storeys in height and to the west by a holiday resort accommodation known as “Robyn’s Nest Guest House”, which is predominantly single storey, with some two storey elements.



Figure 1: Cadastre Map of Site (SIX Maps)



Figure 2: Aerial Map of Site (SIX Maps)

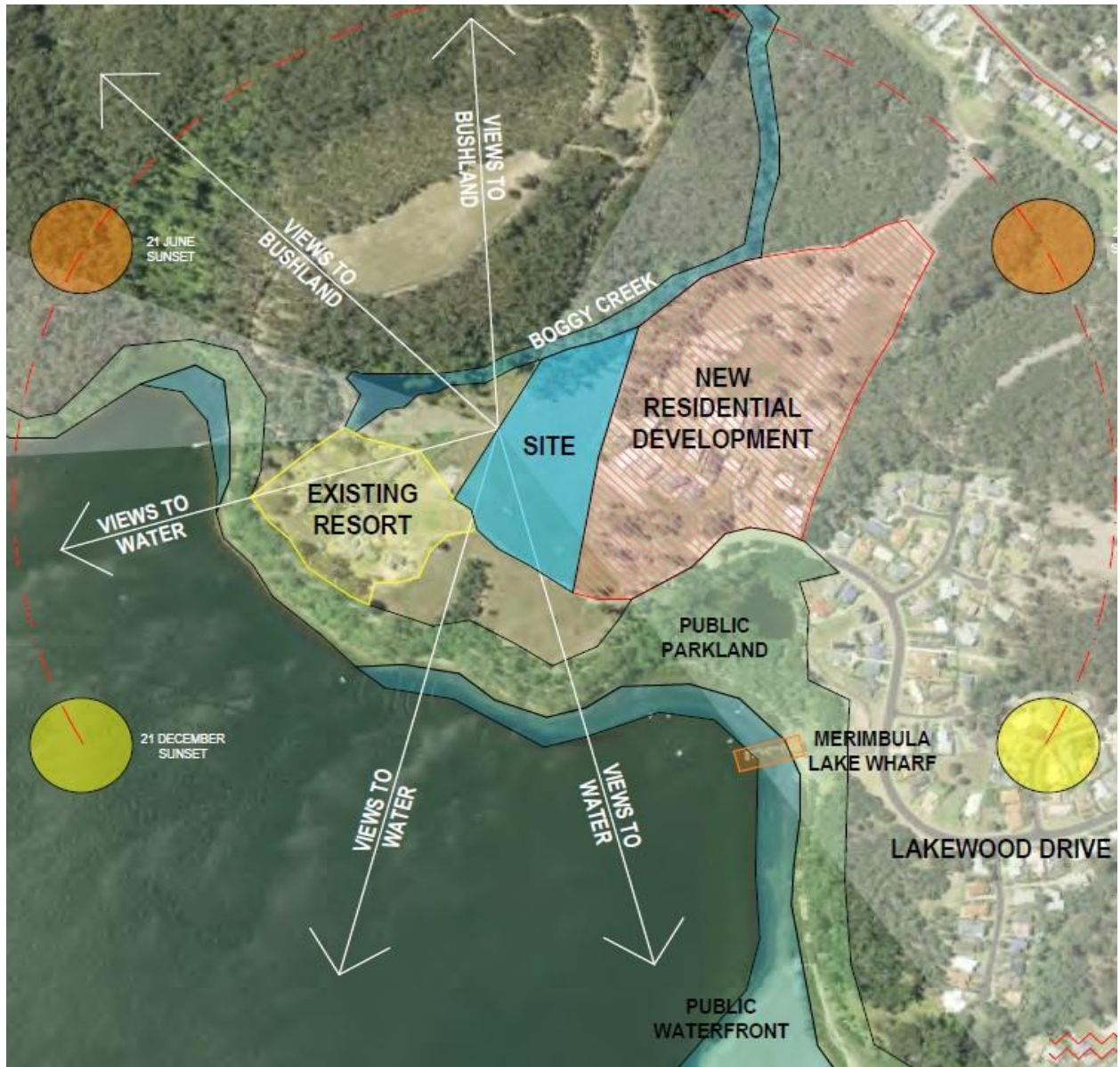


Figure 3: Site Context Map (SIX Maps)

4 DESCRIPTION OF PROPOSAL

The proposal will result in a seniors housing development consisting of two (2) residential buildings being five (5) and four (4) storeys respectively, which is oriented primarily towards Lakewood Drive with formal pedestrian entry and separate driveway for vehicular access and egress.

A breakdown of the proposal is provided below.

- One five-storey building consisting of:
 - 91 car spaces at basement and ground level;
 - Administration entry/waiting area, reception, meeting room offices, lunchroom, storage and print room at ground level;
 - Greens keeper maintenance room and storage room, and swimming pool pump room and chemical store at ground level;
 - 77 independent living units on the ground, first, second and third levels;
 - Communal sitting rooms on levels 1, 2 and 3.
 - Games/pool room at level 1;
 - Beauty/hair salon at level 1;
 - Craft area at level 2;
 - Gym at level 3;
 - Consultation room at level 3;
 - Function/multiuse room, catering kitchen and outdoor rooftop terrace at level 4;
 - 2 outdoor rooftop terraces at level 4;
 - Separate outdoor and indoor rooftop terrace at level 4;
- One four-storey building consisting of :
 - 12 independent living units on the ground, first, second and third levels;
 - Communal sitting rooms on levels 1, 2 and 3.
- Two x bowling greens;
- Bowling club house with kitchen and bar;
- Swimming pool;
- Pool house;
- A 'mens shed';
- Outdoor seating area;
- 45 staff and visitor car parking spots;
- 6 visitor car spaces located adjacent to the primary road frontage in Lakewood Drive;
- Internal driveway;
- Hard and soft landscaping;
- Elevated link bridge; and
- 2 x building identification signs.

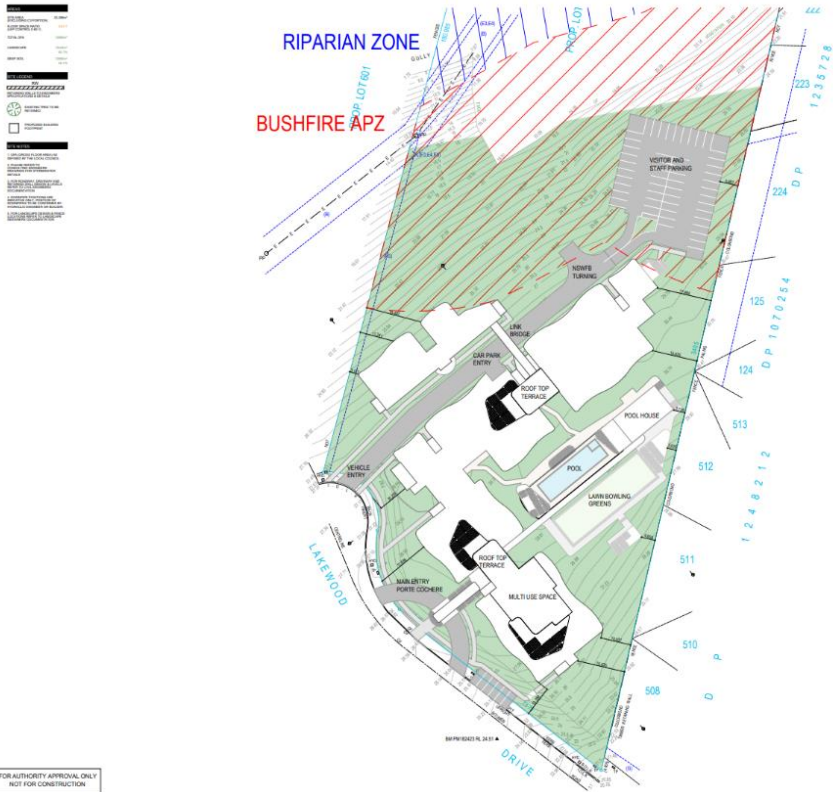


Figure 4: Site Plan (ELK Designs)



FOR AUTHORITY APPROVAL ONLY
NOT FOR CONSTRUCTION

Figure 5: Perspectives (ELK Designs)



Figure 6: West and South Elevation (ELK Designs)

5 STATUTORY PLANNING FRAMEWORK

5.1 Integrated Development

The proposed development is integrated development and requires approvals from the following authorities for it to be carried out:

- (a) New South Wales Rural Fire Service under s 100B of the *Rural Fires Act 1997*; and
- (b) Heritage NSW under s 90 of the *National Parks and Wildlife Act 1974*.

5.1.1 National Parks and Wildlife Act 1974

The Site is identified as previously having contained aboriginal cultural artefacts. The proposal is subject to approval from Heritage NSW under s 90 of the *National Parks and Wildlife Act 1974*, for an Aboriginal Heritage Impact Permit (AHIP).

Heritage NSW issued General Terms of Approval (GTA) pursuant to s 90 of the *National Parks and Wildlife Act 1974* on 5 June 2023.

Heritage NSW notes that the original Heritage Impact Permit (AHIP) 1131988 was issued to Sea Eagle Estate Pty Ltd on 30 November 2012. This AHIP related to the previous Development Application for the site remains valid and will expire on 30 November 2027.

However, under this DA the nature of development and specific scope of works has changed. Therefore, the applicant is required to vary the AHIP to include the current DA works. The application will need to include an approved DA, development plans and a map showing the proposed development superimposed on the existing AHIP boundary.

Comment:

As per GTA provided by Heritage NSW, the applicant must do the following should the application be approved.

- A s.90D Variation to an Aboriginal Heritage Impact Permit (AHIP) for the proposed works must be sought and granted prior to the commencement of works.
- The AHIP variation application must be accompanied by appropriate documentation and mapping as outlined in Applying for an Aboriginal Heritage Impact Permit: Guide for applicants (2011)

5.1.2 Rural Fires Act 1997

The Site is identified as Bushfire Prone, containing bushfire hazard Vegetation Category 1 and 3. The proposal is subject to approval from the NSW Rural Fire Service (RFS) under s 100B of the *Rural Fires Act 1997*, as development on bush fire prone land for a special fire protection purpose.

A Bushfire Assessment Report prepared by Peterson Bushfire dated 30 June 2020 accompanies the application and has been assessed by NSW RFS.

The NSW Rural Fire Service issued GTAs and Bushfire Safety Authority under s100B of the *Rural Fires Act 1997* on 5 January 2023. The GTA issued by the RFS requires the establishment and maintenance of an Asset Protection Zone (APZ), as shown in the Bushfire Assessment Report prepared by Peterson Bushfire.

The APZ extends to adjoining land at Lot 601 DP 1277714. The establishment and ongoing maintenance of the APZ will require vegetation removal works to be carried out as part of the proposed development at Lot 601 DP 1277714. Therefore, it is concluded that the proposal relates to land Lot 601 DP 1277714.

Clause 23(1) of the *Environmental Planning and Assessment Regulation 2021* (2021 EP&A Regulation) provides that a development application may be made by either the owner of the land to which the development application relates, or another person, with the written consent of the owner of the land. As the required APZ extends into Lot 601 DP 1277714, the written consent of the owner of Lot 601 DP 1277714 is required. This has not been provided and the proposal is therefore not consistent with the 2021 EP&A Regulation.

Comment: The applicant is required to provide written owners consent for Lot 601 DP 1277714 as the proposed APZ extends to adjoining land at Lot 601 to satisfy NSW RFS GTAs and 2021 EP&A Regulation.

5.2 Biodiversity Conservation Act 2016

The proposal is accompanied by a Biodiversity Development Assessment Report (BDAR) prepared by Ecoplanning dated 15 September 2022 that applies the Biodiversity Assessment Method (BAM) under the Biodiversity Conservation Act 2016 (BC Act).

It is noted a BDAR is required for the proposal as under the Biodiversity Offset Scheme (BOS) thresholds for local development under Part 4 of the NSW Environment Planning and Assessment Act 1997 (EP&A Act) is triggered.

The proposal will directly impact 2.20 ha (i.e., >0.25 ha) of native vegetation, therefore entry to the NSW BOS is triggered. Additionally, part of the proposal and required Asset Protection Zone (APZ) would impact an area mapped on the Biodiversity Values Map (BVM), therefore regardless of the area clearing threshold, this would trigger entry to the BOS.

The BDAR recorded one ecological community on the site, namely, *Coast Grey Box - Mountain Grey Gum - stringybark moist shrubby open forest in coastal gullies, southern South East Corner Bioregion*. This ecological community is identified as existing in two conditions or vegetation zones on the site, being open derived native grasslands and modified condition.

The BDAR states that the vegetation on the site contains suitable habitat for the Swift Parrot and the Long-nosed Potoroo and both species are assumed to be present on the site. Part of the site is mapped as important habitat for the Swift Parrot under the "Important Areas Map" published by the Department of Planning and Environment.

The Swift Parrot is listed as Endangered under the BC Act and as Critically Endangered under the Environment Protection Biodiversity Conservation Act 1999 (Cth) (EPBC Act). The Long-nosed Potoroo is listed as Vulnerable under the BC Act and EPBC Act.

Impacts to native vegetation and habitat

Presence for the Swift Parrot has been assumed within the Site as the Important Area Map has mapped important Swift Parrot Habitat within the northern boundary of the development site. A total of 0.40 ha area mapped as important Swift Parrot habitat will be impacted by the APZ required by proposal, with the majority (0.62 ha) of mapped habitat for the species remaining.

Within the northern boundary of the Site, 0.85 ha area of native vegetation provides potential habitat for the Long-nosed Potoroo, of which only 0.32 ha is within the development site, and therefore impacted by the proposal. The area within the development site is disturbed and does not present valuable habitat connectivity, such as a dense shrub layer or canopy cover, towards the south. By retaining a 0.53 ha area of potential habitat on the northern boundary of the Site, which contains similar habitat with connectivity to larger stands of native vegetation, north of the Site, impacts to the species are considered to be limited.

Indirect impacts associated with the proposal relating noise, erosion, altered run-off regimes or inadvertent impacts to adjacent habitat or vegetation are proposed to be managed through the development of a Construction Environmental Management Plan (CEMP).

Comment:

Insufficient information has been provided with the proposal to consider the extent of vegetation removal required for the APZ and the impacts of the APZ on biodiversity.

The establishment and maintenance of the APZ will require the removal of native vegetation in the northern part of the site, including on steeply sloping land proximate to the watercourse.

Further information is required to be considered in the BDAR including:

- Identification of, and proposed measures to mitigate, the environmental impacts of vegetation removal within the APZ, including on slope stability, erosion and the watercourse.
- A tree location plan, tree assessment table and tree assessment report identifying the vegetation required to be removed to establish the APZ and the trees proposed to be retained.

5.1 Environmental Planning and Assessment Act 1979

The proposal has been assessed in accordance with the Matters for Consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5.1.1 Section 4.15(1)(a)(i) any environmental planning instrument

The development application has been assessed in accordance with the following EPIs;

- State Environmental Planning Policy (Planning Systems) 2021

- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- Bega Valley Local Environmental Plan 2013

State Environmental Planning Policy (Planning Systems) 2021

The proposed development is specified as regionally significant development under clause 2 of Schedule 6 of the *State Environmental Planning Policy (Planning Systems) 2021* as it has a capital investment value of more than \$30 million. The Southern Regional Planning Panel (SRPP) is the consent authority under s 4.5 of the *Environmental Planning and Assessment Act 1979*.

Comment: No further comment.

State Environmental Planning Policy (Housing) 2021

Clause 87 Additional floor ratios

The proposal relies on the application of clause 87 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) for 'Additional floor ratios' which provides for additional densities and height for seniors housing developments.

Clause 87 is applicable to the site noting the site is zoned R3 Medium Density Residential and 'residential flat buildings' are permitted within the land under the Bega Valley LEP 2013 which satisfies 1(a). The proposal satisfies subclause 2(a) with over 1,500m² in site area and subclause 2(b)(i) with a floor space ratio under the permitted 0.69:1.

Notwithstanding this, the proposal does not satisfy subclause 2(c) with a maximum height of 15.9m proposed. The clause allows for an additional 3.8m height over the permissible height limit for the site allowing a maximum height of 13.8m for the site.

Whilst the applicant has submitted a Clause 4.6 Statement to support the height exceedance, the applicant notes the variation is for the height above the 13.8m limit noting application of clause 87 of the Housing SEPP.

Subclause (2)(c) states "the development will result in a building with a height of not more than 3.8m above the maximum permissible building height" and interpreted as the development must not be above 13.8m to utilise this clause. The structure and form of clause 87 is that the clause only applies if development as proposed (under clause 87) has a height that does not exceed 3.8m above the permissible building height, otherwise the whole application of clause 87 does not apply. Critically clause 87, after subclause (b)(11), includes the words 'and', meaning the additional FSR and height provisions only apply if they strictly meet both of these criteria.

Comment: Clause 87 does not apply for the proposed development and the Clause 4.6 should be amended to justify exceedance of height from the applicable height limit under the LEP of

10m for consideration. Or the development should be revised to meet the 13.8m height limit to utilise the provisions of clause 87 of the Housing SEPP.

Clause 93 Location and access to facilities and services—independent living units

Under clause 93, development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services to a transport service that complies with subsection (2), or on-site.

Comment: The site is unsuitable for the proposed seniors housing development as it is not conveniently located in proximity to essential facilities and services. The site is located approximately 2km from the Merimbula Local Centre, where the nearest essential services and facilities are located. There are inadequate and infrequent public transport services to or nearby the site to cater for residents of the proposed development.

The proposed development proposes to provide a private minibus service to take residents to retail, commercial and health facilities in Merimbula. No details have been provided regarding the type of local bus service which will be provided, including its frequency and longevity of operation.

Reliance on a private bus service to provide access to essential services and facilities is:

- contrary to the orderly and economic use and development of the Land; and
- demonstrates the unsuitability of the site for development given its distance from such services and facilities.

It has not been demonstrated that the proposed private bus service meets the requirements of subclause 93(2) of the Housing SEPP in respect to a 'transport service'.

Clause 99 Neighbourhood amenity and streetscape

The development does not meet design principles under clause 99 of the Housing SEPP relating to neighbourhood amenity and streetscape. The development fails to respond the following provisions of clause 99.

99 Neighbourhood amenity and streetscape

Seniors housing should be designed to—

(b) recognise the desirable elements of—

(i) the location's current character, or

Comment: The existing character and ability for the development to respond has been given greater weight. Based on the existing character, dominated by single dwellings of one and two storeys, compared to the proposal at 5 storeys, there is clearly an incompatibility in built form.

(ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area,

Comment: Whilst zoned medium density, the area is not undergoing transition, evident in the existing character, which is dominated, almost in its entirety by single dwellings of one and two storey.

It is advised for the applicant to reconsider the proposed height and bulk/scale of the development to fit the existing density of the current surrounding area, with 2-3 storeys considered more consistent with a 10m height control and the scale envisaged in the R3 zone. The current proposed bulk and scale is considered excessive and not consistent with the future character of the R3 zone, which is reflected in the 10m height control and 0.6:1 FSR.

In conclusion, the bulk and form of the proposal is excessive and bears little to no resemblance to the built form or locality, or the development envisaged under the planning controls applying in the R3 zone. Having regard to the planning principle in GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council [2003] NSWLEC 268 the proposed development has not been designed to minimise the visual impact of the proposed development, including using visual breaks and is monolithic in scale.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The applicant has not provided an assessment of the development against the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guideline (ADG).

The independent living units are a form of residential flat buildings and therefore SEPP 65 and the ADG applies to the proposed development.

The proposed development does not comply, nor has it been demonstrated to comply, with the Apartment Design Guide or the Design Quality Principles contained within SEPP 65.

Design Quality Principles

The proposed development is not consistent with Design Quality Principles contained within SEPP 65, in particular;

Principle 1: Context and neighbourhood character

The development is not consistent with the desired future character of the locality, which is to allow medium density development of a modest scale, 10m in height and an FSR of 0.6:1;

Principle 2: Built form and scale

The proposed built form and scale is excessive and would dominate the streetscape and result in an unacceptable visual impact when viewed from adjoining residential properties and the public domain.

Principle 3: Density

The concentration of the development towards the front of the site, given zoning, bushfire and topographies constraints of the property, has resulted in excessive bulk and scale. The

constraints of the property are not sufficient justification for the resulting impacts from the excessive bulk and scale of the development.

Principle 6: Amenity

The proposed independent living rooms do not provide adequate natural cross ventilation and give rise to acoustic privacy impacts due to proximity of windows.

Apartment Design Guide

The proposed development is not consistent with the ADG, in particular;

2F – Building Separation

Further detail required on plans to confirm separation distances.

3C – Public Domain Interface

The development proposes a long continuous façade along Lakewood Drive which is considered undesirable and unattractive streetscape.

3F – Visual Privacy

Further detail required on plans to confirm setback distances for habitable and non-habitable rooms.

4B – Natural ventilation

The calculation of natural cross ventilation is incorrect and needs to be recalculated. The calculation relies partly on slots within the development to achieve ventilation – slots at ratio of 2:1 are only used for natural ventilation and not cross ventilation purposes as per the design criteria.

The development does not achieve the design criteria contained in the ADG of a minimum of 60% naturally cross ventilated apartments as required by Objective 4B-3. An example (but not limited to) units F25, F26, FF12, and others.

4H – Acoustic Privacy.

There is inadequate acoustic privacy between some apartments, such as F25 and F26, with highlight windows directly offset each other by approximately 4.2m.

Design Verification Statement SEPP 65

A design verification statement has not been provided, pursuant to clause 29 of the 2021 EP&A Regulation.

Comment: A design verification statement is required in accordance with SEPP 65, prepared by a registered NSW Architect.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP) seeks to ensure that signage:

- is compatible with the desired amenity and visual character of an area;
- provides effective communication in suitable locations; and,
- is of high quality and finish.

The proposal seeks to propose business identification signs as relevant for the proposal.

The proposed signage is considered to be consistent with the relevant provisions.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.48 requires consultation with Essential Energy in relation to any development likely to affect an electricity transmission or distribution network. Written notice was provided to Essential Energy in accordance with the SEPP and the following advice was received;

Strictly based on the documents submitted, Essential Energy has no comments to make as to potential safety risks arising from the proposed development.

Essential Energy makes the following general comments:

- *If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment;*
- *The plans do not show the proposed electrical connections. If a padmounted substation is required as part of the development, then that padmount substation will need to be located no closer than 6 metres from any building and 30 metres from the pool.*
- *Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with;*
- *Any activities in proximity to electrical infrastructure must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure;*
- *Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW); and*
- *It is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.*

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

Chapter 2 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP) establishes a framework to manage the coastal environment of New South Wales in a manner consistent with the principles of ecologically sustainable development. The Act defines the coastal zone and includes coastal wetlands. The entire Site is

mapped as 'Coastal Environmental Area' and the southern portion of the Site is mapped as 'Coastal Use Area'.

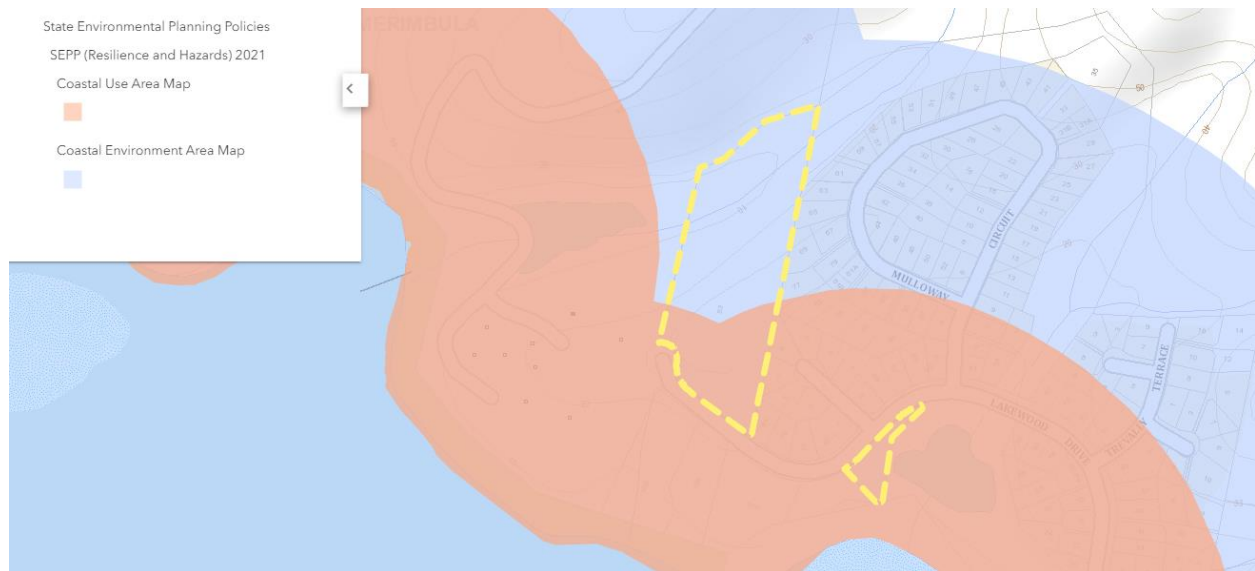


Figure 7: Coastal area maps (ePlanning Spatial Viewer – July 2023)

The provided BDAR includes assessment under Chapter 2 of the Resilience and Hazards SEPP.

Clause 2.10 Development on land within the coastal environment area

The BDAR notes there is an unnamed first order stream is mapped along the northern boundary of the Site that flows in a south western direction and joins Boggy Creek downstream, south west of the Site. The proposed development has been located away from the first order stream and its required Vegetated Riparian Zone (VRZ) is 10 m for a first order stream.

To mitigate indirect impacts from the development, a Construction Environmental Management Plan (CEMP) is proposed to be implemented prior to any construction and clearing works within the Site. The CEMP will also include an appropriate erosion and sedimentation control plan and weed control activities, to avoid the degradation of the first order stream and thereby, hydrological and ecological process of areas downstream of the study area to satisfy clause 2.10 of the Resilience and Hazards SEPP.

Clause 2.11 Development on land within the coastal use area

The BDAR concludes the Site and proposed development area is not located in an area which will cause adverse impacts to existing safe access to Merimbula Lake and notes existing residential lots and Lakewood Drive, south of the Site, separate the Site from the lake edge.

Additionally, the southern portion of the Site, which is bound by the lake will not be impacted as part of the proposal, therefore, public access to Merimbula Lake will not be adversely impacted.

Comment: Whilst the BDAR concludes the proposal is in line with the R3 land zoning and will not adversely impact the visual amenity and scenic qualities of the coast, Council does not agree that the proposal is suitable for the land.

Chapter 4 Remediation of land

Clause 4.6(1)(a) of Resilience and Hazards SEPP, requires the consent authority to consider whether the land is contaminated.

Comment: The proponent has not undertaken a preliminary site investigation (PSI) to determine whether the site is suitable for residential development. A PSI should be provided given the nature of proposed development, excavation and associated works involved.

Bega Valley Local Environmental Plan 2013

The following provisions are discussed below.

- Clause 1.2 Aims of Plan
- Clause 2.3 Zone objectives and Land Use Table
- Clause 4.3 Height of buildings
- Clause 4.4 Floor space ratio
- Clause 4.6 Exceptions to development standards
- Clause 5.11 Bush fire hazard reduction
- Clause 6.2 Earthworks
- Clause 6.4 Coastal risk planning
- Clause 6.5 Terrestrial biodiversity
- Clause 6.6 Riparian land and watercourses
- Clause 6.7 Environmentally sensitive land
- Clause 6.8 Airspace operations

Clause 1.2 Aims of Plan

Under clause 1.2 of the Bega Valley Local Environmental Plan 2013 (BVLEP), the aims of the Plan are:

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

Not applicable to proposal noting land use does not related to arts and cultural activity.

(a) to protect and improve the economic, natural and social resources of Bega Valley through the principles of ecologically sustainable development, including conservation of biodiversity, energy efficiency and taking into account projected changes as a result of climate change,

Inconsistent.

Insufficient information has been provided to ascertain the extent of vegetation removal required for the proposed APZ and the impacts of the APZ on biodiversity.

(b) to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, that respond to lifestyle choices, emerging markets and changes in technology,

Consistent.

The proposal includes ancillary retail, commercial, recreation facilities to support the seniors living development. The operation of the seniors living development and ancillary uses will generate additional employment opportunities within the area.

(c) to conserve and enhance environmental assets, including estuaries, rivers, wetlands, remnant native vegetation, soils and wildlife corridors,

Inconsistent.

The proposal includes the removal of native vegetation without sufficient information provided and is considered to adversely impact the visual amenity and scenic qualities of the coast.

(d) to encourage compact and efficient urban settlement,

Inconsistent.

The development proposes high density seniors living development located well away from existing essential services and therefore is not consistent with the desire for a compact and efficient urban settlement.

(e) to ensure that development contributes to the natural landscape and built form environments that make up the character of Bega Valley,

Inconsistent.

The proposed built form and scale is excessive and would dominate the streetscape and result in an unacceptable visual impact when viewed from adjoining residential properties and the public domain.

(f) to provide opportunities for a range of housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities,

Inconsistent.

The Site is unsuitable for the proposed seniors housing development as it is not conveniently located in proximity to essential facilities and services. There are inadequate and infrequent public transport services to or nearby the site to cater for residents of the proposed development.

The proposed development proposes to provide a private minibus service to take residents to retail, commercial and health facilities in Merimbula. No details have been provided regarding the type of local bus service which will be provided, including its frequency and longevity of operation.

The proposed ancillary uses within the development are not sufficient to support future residents of the development.

(g) to protect agricultural lands by preventing land fragmentation and adverse impacts from non-agricultural land uses,

Not applicable.

The Site is zoned medium density residential and no adverse impacts anticipated to agricultural lands.

(h) to identify and conserve the Aboriginal and European cultural heritage of Bega Valley,

Satisfactory

The proposal requires concurrence from Heritage NSW and for the applicant to respond to outstanding matters related to Aboriginal heritage. The current AHIP applicable to the Site has been determined as insufficient to support the proposal and a variation to the AHIP is required by Heritage NSW should the development application be approved.

(i) to restrict development on land that is subject to natural hazards,

Inconsistent.

The Site is identified as Bushfire Prone, containing bushfire hazard Vegetation Category 1 and 3. The proposal is subject to concurrence from the NSW RFS under s 100B of the *Rural Fires Act 1997*, as development on bush fire prone land for a special fire protection purpose.

As stated above, insufficient information has been provided with the proposal to consider the extent of vegetation removal required for the APZ and the impacts of the APZ on biodiversity.

(j) to ensure that development has minimal impact on water quality and environmental flows of receiving waters.

Consistent.

Water & sewer access can be conditioned for the proposed development as per internal Council Engineering Officer's advice dated 23/11/2022.

Additionally, Council Environmental Health Officer's advice dated 12 January 2023 raised no objections to the development from an environmental health perspective, subject to conditions.

Clause 2.3 Zone objectives and Land Use Table

Under the BVLEP 2013, the Site is zoned as R3 Medium Density Residential and C3 Environmental Management.

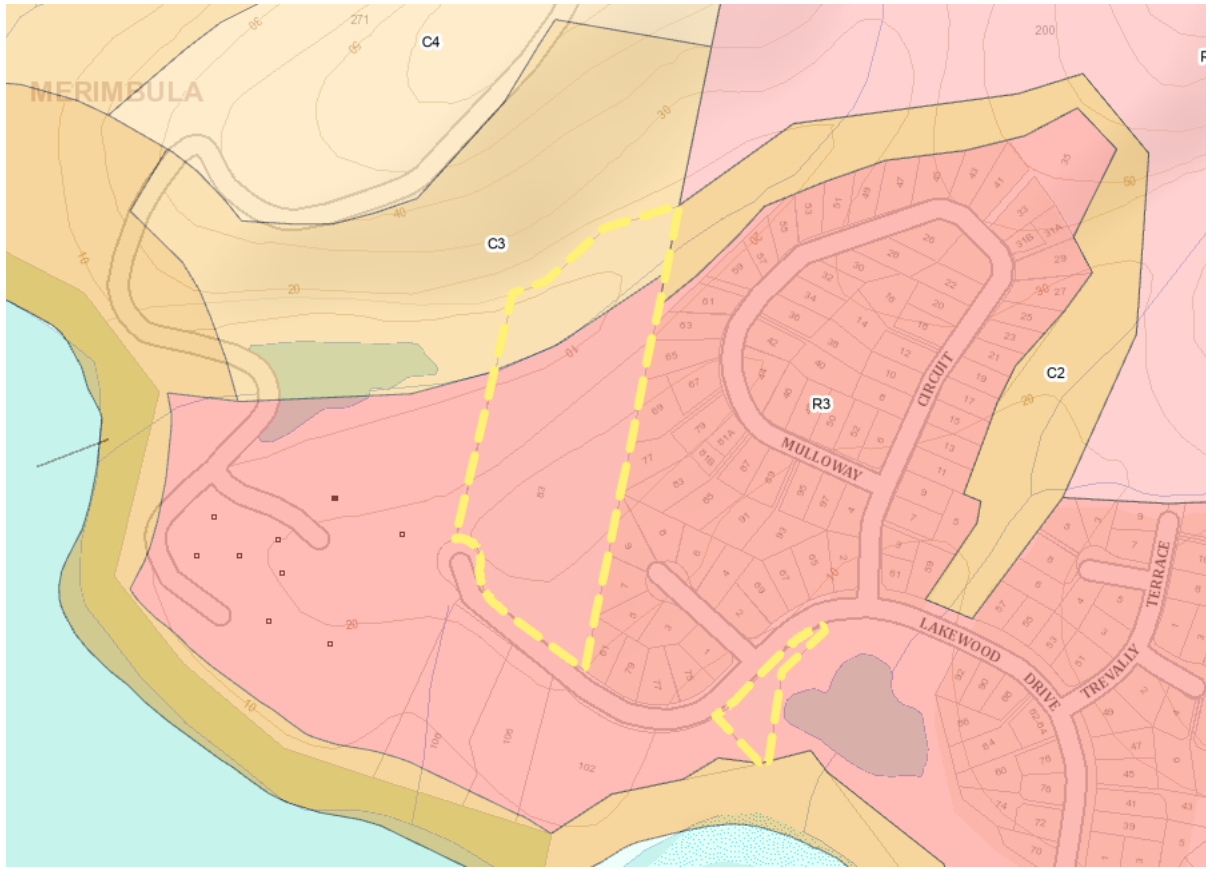


Figure 8: Zoning Map (ePlanning Spatial Viewer)

Permissibility

The proposed development is defined as for the purpose of seniors housing.

Comment: The establishment and maintenance of the APZ referred to in the submitted Bushfire Assessment Report requires vegetation removal works to be carried out on that part of the site which is zoned C3 Environmental Management. It is noted that development for the purpose of seniors housing is prohibited in the C3 zone. Attachment 23 illustrates what is understood to be the area of encroachment of the proposed APZ into the C3 zone.

Additional to this, insufficient information has been provided to establish that the proposed function room on the level described in the plans as the roof top terrace (or fifth storey) of the main building is development for the purpose of seniors housing or is ancillary to development for that purpose.

The function room is of a significant size, with catering kitchen, bar and extensive indoor and outdoor space, which would allow it to operate as a function centre separately and independently from the seniors housing development.

Function centres are prohibited in the R3 zone. Therefore, further details on the proposed operation and function of this room and a plan of management are required to establish the purpose of that part of the development and determine its permissibility.

Therefore, the applicant is required to address the above issues for the consent authority to be satisfied the proposal is permitted with consent.

Objectives of zones

Comment: The proposal is considered inconsistent with zone objectives for the R3 and C3 zones.

The objectives of the R3 zone include to provide for the housing needs of the community within a medium density residential environment and to provide a variety of housing types within a medium density residential environment. It is noted BVLEP adopts a moderate maximum height of building (HOB) and floor space ratio (FSR) control for the R3 zone which reflects the future intended 'medium density' character of the area.

The HOB and FSR control represent the suburban nature of the locality and not that which would support 5-storey development. The scale and height of the proposed development is not consistent with the provision of housing and a variety of housing types within a medium density residential environment defined with reference to the locality.

The development represents a 5-storey development, within an area where the future desired character is 2-3 storey residential development. Therefore, the proposed development is not seen to be consistent with the zone objectives.

Clause 4.3 Height of buildings

The maximum building height applicable to the Site under clause 4.3 of the BVLEP is 10m.

The height of the proposed development is stated to be 15.8m, however this height is taken to be an inaccurate calculation of 'building height' as defined in the LEP. The architectural plans submitted with the application do not accurately identify the height of the proposed development. The proposed height of the building of 15.8m has been measured from the proposed 'ridge level' as depicted on the elevation plans submitted with the application, rather than the highest point of the building (including lift overruns).

The height exceedances of the development are not supported as it is:

- Consistent with the streetscape and desired future character of the locality;
- Would have an obtrusive visual impact on the streetscape when viewed from the public domain and adjoining properties;
- Not justified by the site constraints identified in the written request;
- Not consistent with the R3 zone objectives;
- Contributes to the excessive bulk and scale of the development; and
- Results in adverse impacts in the form of overshadowing of adjoining land and properties.

It is noted a clause 4.6 request has been submitted to support the height exceedance however it does not demonstrate that compliance with the height development standard is unreasonable or

unnecessary in the circumstances of the case. Further compliance with clause 4.6 is discussed below in regard to contravention of the height limit.

Comment: The height of the proposed development will contravene the maximum building height development standard applicable for the Site and is not supported. The clause 4.6 variation is not accurate and does not correctly measure the height of building. It further seeks to utilize the provisions of clause 87 of the Housing SEPP, with an assumed maximum building height of 13.8m, for the purposes of the 4.6 variation, when instead the clause 4.6 variation needs to be measured from the EPI maximum height of 10m.

Clause 4.4 Floor space ratio

The maximum floor space ratio applicable to the Site under clause 4.4 of the BVLEP is 0.6:1.

The FSR of the proposed development is stated to be 0.61:1 and exceeds the FSR control by 0.01:1.

It is noted the applicant seeks reliance on clause 87 of the Housing SEPP which provides for an additional 15% of the permissible FSR under relevant EPI (BVLEP). As noted above, given the non-compliance with clause 87 of the Housing SEPP, it is deemed not to apply, therefore the FSR bonuses awarded under the same provision are not available.

Therefore, the applicant is required to submit a clause 4.6 request to assess the proposed non-compliance with the FSR control.

Additionally, the submitted architectural plans submitted with the application do not accurately calculate the gross floor area (GFA) of the proposed development.

'Gross floor area' is defined in the LEP as the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, including (a) the area of a mezzanine, and habitable rooms in a basement or an attic, and any shop, auditorium, cinema, and the like, in a basement or attic.

The GFA calculation plans submitted with the application exclude waste storage areas on most levels of the proposed development in the calculation of gross floor area.

As these waste storage areas are not located in the basement, these areas are not excluded from being GFA by reason of paragraphs (d) – (j) of the definition of GFA in the LEP.

Comment: The applicant is required to recalculate the GFA of the proposal in accordance with BVLEP and justify any non-compliances under clause 4.6 of the LEP.

Clause 4.6 Exceptions to development standards

A clause 4.6 request has been submitted seeking to vary clause 87(c) of the Housing SEPP to allow a 2m contravention of the maximum height standard specified in the Housing SEPP.

The clause 4.6 request is insufficient and inaccurate in that it has not sought to justify the contravention of the height control in the BVLEP or measured building height in accordance with the 'building height' definition as per BVLEP, as previously acknowledged.

Nonetheless, under clause 87(c) of the Housing SEPP, the proposal is permitted to a height of not more than 3.8m above the maximum building height allowed under the BVLEP (13.8m). However, the stated height of the proposed development is 15.8m and as the building exceeds 13.8m, clause 87 of the SEPP does not apply.

Under subclause (3), development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- that there are sufficient environmental planning grounds to justify contravening the development standard.

The clause 4.6 request does not demonstrate that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case because:

- It erroneously identifies the objectives of cl 87(c) of the Housing SEPP;
- It does not refer to and consider the objectives of the height of building control under BVLEP (clause 4.3(1)); and
- It does not justify the contravention of the relevant height development standard but seeks to promote the benefits of carrying out the development as a whole.

The clause 4.6 request does not demonstrate that there are sufficient environmental planning grounds to justify the contravention of the height development standard:

- The site constraints as indicated by the clause 4.6 request, in particular bushfire (APZ) and topography, are not sufficient to warrant a significant exceedance to the height of building control;
- The site constraints are not material in warranting the contravention and relate to the suitability of the site for development and not grounds for a contravention to the height of building control;
- The bulk of the development is excessive and its scale is not proportionate with the future character of the area;
- The development will have an unacceptable visual impact on adjoining properties and from the public domain and the additional height and bulk of the development contributes to this impact; and
- The request does not justify the contravention of the development standard on environment and planning grounds but seeks to promote the benefits of carrying out the development as a whole.

Comment: The clause 4.6 request does not demonstrate that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case. The consent authority cannot reasonably be satisfied, pursuant to clause 4.6(4)(a)(i) of the LEP, that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 5.10 Heritage conservation

The Site has been identified as land which may contain Aboriginal cultural heritage.

Comment: Heritage NSW issued General Terms of Approval (GTA) pursuant to s 90 of the *National Parks and Wildlife Act 1974* on 5 June 2023.

As per GTA provided by Heritage NSW, the applicant must do the following should the application be approved.

- A s.90D Variation to an Aboriginal Heritage Impact Permit (AHIP) for the proposed works must be sought and granted prior to the commencement of works.
- The AHIP variation application must be accompanied by appropriate documentation and mapping as outlined in *Applying for an Aboriginal Heritage Impact Permit: Guide for applicants* (2011)

Clause 5.11 Bush fire hazard reduction

The Site is identified as Bushfire Prone, containing bushfire hazard Vegetation Category 1 and 3 and subject to approval from the NSW RFS.

Comment: A Bushfire Assessment Report prepared by Peterson Bushfire dated 30 June 2020 accompanies the application and has been assessed by NSW RFS.

The NSW Rural Fire Service issued GTA and Bushfire Safety Authority under s100B of the *Rural Fires Act 1997* on 5 January 2023. The GTA issued by the RFS requires the establishment and maintenance of an APZ as shown in the Bushfire Assessment Report prepared by Peterson Bushfire.

The applicant is required to provide written owners consent for Lot 601 DP 1277714 as the proposed APZ extends to adjoining land at Lot 601 to satisfy NSW RFS GTA and 2021 EP&A Regulation.

Clause 6.2 Earthworks

The proposed development includes excavation required for basement within the building footprint and seeks approval for ancillary earthworks.

Comment: It is noted that Council's Development Engineer has raised no objection to the development, dated 3 April 2023, subject to conditions for proposed earthworks. The cut/ fill diagram indicates that excavation will remain within the site boundaries and will not be within the 2:1 zone of influence for Lakewood Drive. Proposed excavation starts close to the boundary with lot 512 and can be covered by conditions.

Clause 6.4 Coastal risk planning

The entire Site is mapped as 'Coastal Environmental Area' and the southern portion of the Site is mapped as 'Coastal Use Area'.

Comment: Assessment has been undertaken under Chapter 2 of the Resilience and Hazards SEPP. Whilst the BDAR concludes the proposal is in line with the R3 land zoning and will not adversely impact the visual amenity and scenic qualities of the coast, Council does not agree that the proposal is suitable for the land.

Clause 6.5 Terrestrial biodiversity

The entire Site is mapped as "Biodiversity" on the Terrestrial Biodiversity Map.

Comment: The proposal is supported by a BDAR prepared in accordance with the BC Act. Assessment has been undertaken with the BC Act.

The establishment and maintenance of the APZ will require the removal of native vegetation in the northern part of the site, including on steeply sloping land proximate to the watercourse.

Whilst the BDAR proposes offsets for the proposed development due to impacts on on-site terrestrial biodiversity, it is noted that insufficient information has been provided within the BDAR to consider the extent of vegetation removal required for the APZ and the impacts of the APZ on biodiversity.

Clause 6.6 Riparian land and watercourses

The Site is identified to include riparian corridors.

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

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: The proposed development is located a sufficient distance from the riparian corridor on-site to pose any direct developmental impacts, and the proposed on-site stormwater water and water quality management will ensure that the development will retain pre-development ecological processes within the creek.

It is noted that Council's Development Engineer has issued comments for proposed drainage and stormwater works dated 3 April 2023. The proposed development is deemed suitable with the following comments provided.

- The development proposes a biofiltration basin and along with a GPT and two 'Enviropods' (fine litter baskets) for SQID treatment. MUSIC modelling indicates pollutant reduction would be below load reduction targets set in ARQ 2006.
- The concept design shows the main SW line collects roof water before passing through the GTP. It also shows the main outdoor car park is serviced by two smaller 'enviropods'. The proposal is adequate.
- Stormwater detention in the form of a basin is proposed to limit flows leaving the site to predevelopment levels. This includes for flows up to the 1:100 year ARI event.
- Drainage outflow structure potentially in riparian corridor/ E3 zone (would be close). Checked against survey and its not within riparian zone.
- Merimbula flood inundation map (ESRI viewed 3/3/23) indicates the site is not subject to flooding in the 1% AEP event.

Clause 6.7 Environmentally sensitive land

A portion of the Site is identified as "Constrained land" on the Natural Resources Land Map.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the potential adverse impact on—

- (a) any land with a slope that is greater than 25%,*
- (b) any land that is subject to high erosion potential,*
- (c) any land with a high proportion of rock outcropping.*

Comment: As per RFS NSW comments, the following information is outstanding to complete assessment of proposal.

- Identification of, and proposed measures to mitigate, the environmental impacts of vegetation removal within the APZ, including on slope stability, erosion and the watercourse.

Clause 6.8 Airspace operations

The proposed development is located in an 'obstacle limitation surface' area of RL 46m, due to operations of Merimbula Airport.

The application states the maximum height obstacle of the proposed development is limited below this height at a maximum ridge of RL 43.9m. However as noted below, Airservices have measured the development to have a maximum height of 48.8m (161ft) AHD.

Comment: It is noted the application has been referred to Air Services for comment. Airservices required further information regarding the proposal including building coordinates, ground elevations, which was sent to applicant 5 December 2022. Applicant provided information with response dated 21 February 2023. As per email dated 30 May 2023, Airservices Australia provided the following comments, concluding that the proposed development would not have an

impact on any Airservices designed instrument procedures, CNS facilities or ATC operations at Merimbula aerodrome.

- *Airspace Procedures*
 - With respect to procedures designed by Airservices in accordance with ICAO PANS-OPS and Document 9905, at a height of 13.8m AGL or 48.8m (161ft) AHD, the development will not affect any sector or circling altitude, nor any instrument approach or departure procedure at Merimbula aerodrome.
 - Note: procedures not designed by Airservices at Merimbula aerodrome were not considered in this assessment.
- *Communications/Navigation/Surveillance (CNS) Facilities*
 - We have assessed the proposal to a maximum height of 48.8m (161ft) AHD for any impacts to Airservices Precision/Non-Precision Navigation Aids, Anemometers, HF/VHF/UHF Communications, A-SMGCS, Radar, PRM, ADS-B, WAM or Satellite/Links and have no objections to it proceeding.
- *Air Traffic Control (ATC) Operations*
 - There are no additional instructions or concerns from our ATC.

Further to this, the Civil Aviation Safety Authority (CASA) has also commented on the development as relevant to the Civil Aviation Safety Regulations.

CASA concluded that noting the proposal's distance from the aerodrome and the low level of infringement, the building will not be a hazard to aircraft operations and therefore, will not require any marking or lighting of the structure.

5.1.2 Section 4.15 (1) (a) (ii) the provisions of any draft EPI

Draft Remediation of Land SEPP55 (now State Environmental Planning Policy (Resilience and Hazards) 2021)

The explanation of intended effects has been reviewed and considered. No impacts are envisaged as a result of the proposal.

Draft SEPP reviews (Various)

It is noted various SEPPs have been consolidated and are now in force as of 1 March 2022. Changes to SEPPs are of an administrative nature only and no impacts are envisaged by the proposal with adoption of the new SEPPs where relevant to the site. The new SEPPs have been noted in the assessment of relevant SEPPs above.

5.1.3 Section 4.15 (1)(a)(iii) development control plans

Bega Valley Development Control Plan 2013

The proposed development is subject to the Bega Valley Development Control Plan 2013 (BVDCP)

A general summary of key non compliances is provided below.

Insufficient information to assess social impact

Insufficient information has been provided with the development application to enable consideration of the likely social and economic impacts of the development.

Section 5.4 of the BVDCP requires a development application for the purpose of housing for seniors to be accompanied by a socio- economic impact assessment.

No socio- economic impact assessment was provided with the development application.

Inconsistent with the existing and desired future character of the locality

The proposed development, by reason of its density, height, bulk and scale, is inconsistent with the desired future character of the locality. The existing locality is predominantly characterised by low-density detached dwelling housing of one or two storeys.

The desired future character of Merimbula is described in Section 3.1.10.2 of the BVDCP which identifies "...*strong desire for Merimbula to retain its coastal village charm*".

The desired future character of the locality having regard to its zoning as R3 is of a medium density residential environment, of a modest scale, with residential development up to a maximum height of 10m, which represents a 2 - 3 storey built form, and a modest FSR control of 0.6:1, only 0.1 above the R2 low density zoning FSR of 0.5:1.

The proposed development represents a predominantly 5 storey proposal, which is 2- 3 storeys above the future character anticipated in the planning controls.

By reason of the height, density, bulk and scale of the proposed development, it is not consistent with the existing character or desired future character of the locality.

Insufficient information on Waste Management

Insufficient information has been provided to adequately assess the waste management plan submitted as part of the proposed development under Section 3.2.3.4 of the BVDCP.

An updated waste management plan (WMP) should be provided which addresses the following items;

- The 'Use of Premises Phase' in the WMP fails to adequately address diversion and management of food and organic waste from the development;
- Residential waste is proposed to be diverted into at least three separate streams (general waste, recycling, and food and garden organics). Information should be provided as to the location of the waste chutes for each waste stream and how residents from the individual residences will transfer their waste in each stream to the 'waste chute rooms' and the waste storage room for disposal.

- Anticipated waste generation volumes and proposal to manage green waste from the proposed development once it is occupied and operational.
- How waste will be managed across all areas of the development, such as bowling green, mens shed, function area etc.

Removal of on street car parking

Section 5.9.2.1 of the BVDCP requires all parking to be provided on-site for residential development.

The proposal includes 6 x on street 90-degree car spaces adjacent to the entry/exit location for the development:

- presents traffic and safety concerns; and
- will have an adverse visual impact on the streetscape, given the parking is within the front landscaped setback.

This is inconsistent with the BVDCP and should be removed, as vehicles need to enter and exit the Site in a forward direction.

5.1.4 Section 4.15 (1)(a)(iiia) the provisions of 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 agreements which have relevance to the assessment and determination of the current application.

5.1.5 Section 4.15 (1)(a)(iv) The regulations

Owner's consent

Clause 23(1) of the 2021 EP&A Regulation provides that a development application may be made by either the owner of the land to which the development application relates, or another person, with the written consent of the owner of the land. As the required APZ extends into Lot 601 DP 1277714, the written consent of the owner of Lot 601 DP 1277714 is required. This has not been provided and the proposal is therefore not in consistency with the 2021 EP&A Regulation.

The applicant is required to provide written owners consent for Lot 601 DP 1277714 as the proposed APZ extends to adjoining land at Lot 601 to satisfy NSW RFS GTAs and 2021 EP&A Regulation. This is discussed in Section 5.2.2 of this Report.

Design Verification Statement

A design verification statement has not been provided, pursuant to clause 29 of the 2021 EP&A Regulation. As the development proposes independent living units in the form of residential flat buildings, SEPP 65 and the ADG applies to the proposed development. A design verification statement is required in accordance with SEPP 65, prepared by a registered NSW Architect. This is discussed in Section 5.3.3 of this Report.

5.1.6 Section 4.15 (b) Likely impacts of development

Inconsistent with current and desired character of the locality

The proposal is not consistent with the current and desired character of the locality in terms of the proposed bulk and scale. The current surrounding residential form of development within the locality consists of detached single to two storey single dwellings. Despite the R3 Medium Density Residential zoning of the locality, the bulk and scale of development proposed is considered monolithic given the existing form of low-density housing.

While the area may potentially undergo change from lower to medium density development in the future, development proposals need to respond in a sympathetic way to the current form of development.

Notwithstanding this, the proposed development is not considered an appropriate representation of the future medium density character intended within the locality. The land has a height limit of 10m which translates to a maximum of two-three storeys and considered the envisaged bulk and scale of the R3 zone and overall intended density of residential development within the Bega Valley LGA.

Visual impact

The proposed development has not been designed to minimise the visual impact of the proposed development, including using visual breaks and is monolithic in scale.

The excessive bulk of the proposal is indicated to result in loss of views of Merimbula Lake and mountains for surrounding properties. The proposal will also contribute to a loss of natural setting and landscape of area and the proposed building colours are not compatible with the environment.

Insufficient information has been submitted with the application to enable a proper assessment of the visual impact of the proposed development.

The visual impact assessment is insufficient, it is limited to qualitative analysis of the current visual environment and its sensitivity, without a quantitative analysis with the proposed built form depicted within the landscape.

The further information required is computer generated imagery of the proposed development incorporated in the visual impact assessment.

Additional viewpoints from Lakewood Drive, public and private land directly in front of the development and within the foreshore areas of and from Merimbula Lake should be modelled.

Access to facilities and services

The Site is outside convenient walking distance to the Merimbula local centre (over 2km distance) and there is a lack of regular bus services between the site and local centre. Therefore, there is concern over the location of the proposed seniors housing development and access for future residents to facilities and services. Whilst the proposal includes a minibus services, there is a lack of details to ascertain whether this will support the development and adequate to service the daily needs of future residents. .

Impact on environment

The Site is identified to have bushfire risk, biodiversity values, is within a coastal area and includes riparian corridors.

Lakewood Drive is not a through road which limits resident evacuation opportunities in case of bushfire event. Concern has been raised in public submissions as to the location of the development and the potential to result in safety issues during bushfire season with a lack of multiple escape routes.

Insufficient information has been provided with the proposal to consider the extent of vegetation removal required for the APZ and the impacts of the APZ on biodiversity.

Whilst the BDAR concludes the proposal is in line with the R3 land zoning and will not adversely impact the visual amenity and scenic qualities of the coast, Council does not agree that the current proposal is acceptable.

5.1.7 Section 4.15 (c) Suitability of the site for development

Access to services and facilities

Considering the development is proposed seniors housing, the development is to meet site-related requirements including proximity and access to facilities and services. The Site is outside convenient walking distance to the Merimbula local centre (over circa 2km distance) and there is a lack of regular bus services between the site and local centre. Therefore, there is concern over the location of the proposed seniors housing development and access for future residents to facilities and services.

As noted within the Traffic Report prepared by Intersect Traffic to support the development:

- Service 705 / D881 is an on-demand bus service which runs between Tura Beach and South Pambula, including Merimbula. Residents of the proposed development would be able to make use of this service during weekdays. However, the service does not run on weekends or public holidays.
- It is noted the applicant proposes to provide a private mini-bus service exclusive to residents to retail, commercial and health facilities in Merimbula.

Based on the current proposal, reliance on a private bus service is not considered appropriate and demonstrates the unsuitability of the site for development.

Intended density of the Site

The proposed development is not considered appropriate for the current and desired character of the area. The Council has chosen, through its LEP controls, to adopt a moderate height and FSR control for the R3 zone which reflects the future intended 'medium density' character of the area.

The HOB and FSR control represent the suburban nature of the locality and not that which would support 5 storey development. The scale and height of the proposed development is not consistent with the provision of housing and a variety of housing types within a medium density residential environment defined with reference to the locality.

The development represents a predominantly 5-storey development, within an area where the future desired character is two-three storey residential development and the proposed scale and built form is not consistent with the overriding character of the area.

5.1.8 Section 4.15 (d) Submissions

The DA has attracted 59 submissions objecting to the development, predominantly from the residents within the locality.

The submissions received by Council objecting to the development have raised a number of issues which are summarised below;

Issue	Nature of submission
Bulk and scale	Height proposed is excessive in comparison to adjoining residential area – predominantly one to two storey dwellings. Inappropriate scale of development noting distance from Merimbula CBD.
Visual impact	Loss of views of Merimbula Lake and mountains for surrounding properties. Loss of natural setting and landscape of area Proposed building colours are not compatible with environment.
Bushfire risk	Safety issues during bushfire season and lack of multiple escape routes. Currently Lakewood Drive cannot accommodate additional residents evacuated in case of bushfire event.
Overshadowing	Overshadowing to surrounding residential development – loss of solar access.
Noise	Increased noise from additional residents and building services – air conditioning units and swimming filtration and proposed pool and bowling green.

Access and traffic	<p>Increase in traffic on Lakewood Drive</p> <p>Damage to existing local roads</p> <p>Only one access road – limited vehicular access to site.</p> <p>Increased congestion on T intersection at Monaro Street.</p> <p>Unsafe road conditions – Lakewood Drive is considered to be steep, wind, blind spot corners and currently requires upgrades.</p> <p>Likely spillover of parking required on street.</p>
Amenity	<p>Disrupt amenity of residential area.</p> <p>Loss of privacy for existing development.</p> <p>Residents are concerned over loss of existing quiet residential amenity.</p> <p>Reduce attractiveness of area.</p>
Infrastructure	<p>Lack of infrastructure to support additional residents in area from this development – water, electricity, gas and sewer.</p> <p>Additional stress of local health care services.</p>
Demand for seniors housing	<p>Little demand currently in the local area for seniors housing noting the existing seniors housing developments with availability in close proximity to development site – RSL Lifecare Merimbula CBD & Tura Beach.</p>
Light spill	<p>Visual impact of light spill from proposal – security lighting, carpark (headlights) – to adjoining residential properties.</p>
Location and proximity to services and facilities	<p>Proposal is isolated – over 45 minute walk to Merimbula CBD and lack of details provided for proposed mini bus service.</p> <p>Lack of existing transport to service additional residents.</p>
Impact on environment	<p>Impact on flora and fauna and biodiversity on local area.</p> <p>Impacts on oyster farms at Merimbula Lake.</p> <p>Contamination of Merimbula Lake.</p> <p>Lack of preservation of existing trees and vegetation.</p>
Walkability	<p>Lack of pedestrian paths to service additional residents in this area.</p> <p>Lakewood Drive has a steep incline making it difficult to walk along.</p>
Stormwater	<p>Increased hardstand will result in stormwater runoff and flooding impacts to neighbouring properties.</p> <p>Impact on existing detention basin behind Lakewood Drive.</p>
Construction impacts	<p>Noise, increased traffic, dirt, and dust etc. impacts during construction.</p>
Solar Access	<p>Number of proposed apartments have no solar access.</p>
Affordability	<p>Concern over affordability of proposed apartments and rental term.</p>

5.1.9 Section 4.15 (e) Public interest

The proposed development would have some public benefit through the provision of seniors housing development within the area. However, in its current form, the proposed development is not in public interest noting its density, height, bulk and scale, is inconsistent with the desired future character of the locality.

The development represents a predominantly 5-storey development, within an area where the future desired character is two-three storey residential development and is not in the public interest

The proposal has attracted 59 submissions objecting to the development, predominantly from the residents within the locality. As discussed in detail above, the submissions have raised a number of issues in terms of bulk and scale, visual impact, bushfire risk, overshadowing, noise, access and traffic, amenity, infrastructure demand for seniors housing, light spill, location and proximity to services and facilities, impact on environment, walkability, stormwater, construction impacts solar access and affordability. Noting the large number of objections to the development and outstanding matters to be resolved, the proposal is not considered in the public interest.

The proposal seeks approval of a height exceedance to the LEP height limit. Whilst a clause 4.6 request has been submitted, the consent authority cannot be satisfied, for the purposes of cl. 4.6(4)(ii) of the LEP, that the proposed development will be in the public interest because it is not consistent with the objectives of the standard sought to be contravened and the objectives of the R3 Medium Density Residential Zone.

5.2 Any other relevant legislation/Matters

5.2.1 Bega Valley Section 94 and 94A Contributions Plan 2014.

No Section 7.11 or 7.12 Contributions would be payable for this development, if approved, as Seniors Housing is exempt from contributions in accordance with Clause 2.8 of the Bega Valley Section 94 and 94A Contributions Plan 2014.

5.2.2 Disclosure of Political Donations and Gifts

The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

6 RECOMMENDATION

This report considers a DA-2022-335 for the construction of a senior housing development at Lot 602 DP 1277714 being 83 Lakewood Drive, Merimbula.

This assessment makes a recommendation for the Southern Regional Planning Panel for refusal based on the detailed assessment of the proposal against Section 4.15.

Council has undertaken a detailed assessment of the application in accordance with Section 4.15 Matters for consideration-general of the *Environmental Planning and Assessment Act 1979*.

The DA is to be refused for the following reasons;

1. For the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 (as amended) the development has not demonstrated compliance with the following relevant environmental planning instruments.

In regard to the Housing SEPP:

- The proposal has not demonstrated compliance with clause 87 to qualify for additional FSR and height under the Housing SEPP.
- The proposal has not demonstrated compliance with clause 93 of the Housing SEPP for the consent authority to be satisfied that residents will have adequate access to facilities and services by a transport service that meets subsection (2).
- The proposal does not meet design principles under clause 99 of the Housing SEPP relating to neighbourhood amenity and streetscape.

In regard to SEPP 65:

- The applicant has not provided an assessment of the development against SEPP 65 and the ADG.
- The proposed development is not consistent with design quality principles contained within SEPP 65 including Principle 1: Context and neighbourhood character, Principle 2: Built form and scale, Principle 3: Density and Principle 6: Amenity.
- The proposed development is not consistent with the ADG including Objectives 2F – Building Separation, 3C – Public Domain Interface, 3F – Visual Privacy, 4B – Natural ventilation and 4H – Acoustic Privacy.

In regard to the Resilience and Hazards SEPP:

- The applicant has not provided sufficient information to demonstrate compliance with clause 4.6 of the Resilience and Hazards SEPP for the consent authority to consider whether the land is contaminated and determine whether the site is suitable for residential development.

In regard to Bega Valley Local Environmental Plan 2013

- The proposal is inconsistent with the aims of clause 1.2(2)(a)(c)(d)(e)(f)(h) and (i) of the BVLEP.
- The permissibility of the proposal is not satisfied to comply with the Land Use Table in clause 2.3 of the BVLEP.

- The proposal is considered inconsistent with zone objectives for the R3 and C3 zones under clause 2.3 of the BVLEP.
 - The proposal does not provide sufficient and accurate documentation to support noncompliance with the maximum height of building control under clause 4.3 of the BVLEP.
 - The proposal does not provide sufficient and accurate documentation to support noncompliance with the maximum floor space ratio control under clause 4.4 of the BVLEP.
 - The clause 4.6 request has not adequately addressed the matters required to be demonstrated by cl 4.6(3) of the BVLEP. The consent authority cannot reasonably be satisfied, that the applicant's written request development standard is unreasonable or unnecessary in the circumstances of the case.
 - The proposal requires approval from Heritage NSW and to respond to outstanding matters related to Aboriginal heritage to satisfy clause 5.10 of the BVLEP.
 - The proposal has outstanding matters to address to satisfy NSW RFS GTA and clause 5.11 of the BVLEP.
 - The proposal has outstanding matters to address for assessment to satisfy compliance with clauses 6.4, 6.5, 6.6 and 6.7 of the BVLEP.
2. For the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 (as amended) the development has not demonstrated compliance with the following relevant controls within the Bega Valley DCP 2013.
- The proposal is not in consistency with the desired future character of Merimbula as described in clause 3.1.10.2 of the BVDCP.
 - The proposal has insufficient information to enable a proper assessment of the visual impact of the proposed development under Section 3.2.2.6 of the BVDCP.
 - The proposal has insufficient information to adequately assess the waste management plan submitted as part of the proposed development under Section 3.2.3.4 of the BVDCP.
 - The proposal has insufficient information to enable consideration of the likely social and economic impacts of the development. Under clause 5.4 of the BVDCP, a development application for the purpose of housing for seniors is to be accompanied by a socio-economic impact assessment.
3. For the purpose of Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 (as amended) the development has not demonstrated compliance with the following matters within the 2021 EP&A Regulation.
- The proposal does not provide written owners consent for adjoining land at Lot 601 DP 1277714 where the proposed APZ extends to satisfy NSW RFS GTAs and clause 23(1) 2021 EP&A Regulation.
 - A design verification statement has not been provided, pursuant to clause 29 of the 2021 EP&A Regulation.

4. For the purpose of Section 4.15(1)(a)(b) of the Environmental Planning and Assessment Act 1979 (as amended), the development is considered to have the following adverse impacts.
 - The proposal is not consistent with the current and desired character of the locality in terms of the proposed bulk and scale.
 - The proposal has not been designed to minimise the visual impact.
 - The proposal is not considered to adequately address impacts to the environment including bushfire risk, biodiversity values, coastal values and riparian corridors.
5. For the purpose of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 (as amended), the application fails to demonstrate that the development site is suitable for the intended use, in relation to the following matters.
 - The proposal does not meet site-related requirements including proximity and access to facilities and services. Based on the current proposal, reliance on a private bus service is not considered appropriate and demonstrates the unsuitability of the site for development.
 - The proposal results in an inappropriate density for the current and desired character of the area. The scale and height of the proposed development is not consistent with the provision of housing and a variety of housing types within a medium density residential environment defined with reference to the locality.
6. In accordance with Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 (as amended), Council has reviewed the submissions received, and note that several matters were raised of relevance to the assessment of this application. The development as proposed is not in the public interest.
7. In accordance with Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 (as amended), the development as proposed is not in the public interest.
 - The proposal in its current form is not in public interest noting its density, height, bulk and scale, is inconsistent with the desired future character of the locality. The development represents a predominantly 5-storey development, within an area where the future desired character is two-three storey residential development.
 - The proposal has attracted 59 submissions objecting to the development, predominantly from the residents within the locality. Noting the large number of objections to the development and outstanding matters to be resolved, the proposal is not considered in the public interest.
 - The proposal seeks approval of a height exceedance to the LEP height limit. Whilst as clause 4.6 request has been submitted, the consent authority, cannot be satisfied, for the purposes of cl. 4.6(4)(ii) of the LEP, that the proposed development will be in the public interest because it is not consistent with the objectives of the standard sought to be contravened and the objectives of the R3 Medium Density Residential Zone.