

STATEMENT OF ENVIRONMENTAL EFFECTS

**Lot 602 in DP1277714,
83 Lakewood Drive,
MERIMBULA NSW 2548**

Proposed Construction of a Seniors Housing Development consisting Eighty-nine (89) independent living units, social and recreation amenity, swimming pool, ground floor and basement car park, and landscaping.

September 13, 2022

HDC
Haskew de Chalain
PLANNING

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1 Introduction

This report has been prepared as a Statement of Environmental Effects in assessment of a Development Application seeking consent for the construction of a Seniors Housing development comprising:

- Eighty-nine (89) x self-contained independent living units, each with two (2) bedrooms;
- Administration, office, and staff quarters;
- Function Room with bar and kitchen;
- 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;
- Basement parking, undercroft parking, and at-grade parking; and
- Landscaping.

The proposed Seniors Housing development will occur over existing **Lot 602 DP1277714** known as **83 Lakewood Drive, Merimbula**.

This report is submitted in accordance with Clause 24(1) of the Environmental Planning and Assessment Regulation 2021 ("the EPAA Regulation 2021"). The purpose of this Statement of Environmental Effects is to provide a description and general information about the site and the proposed development. Furthermore, this Statement of Environmental Effects provides the following information:

- Description of the site, surrounding development and the wider locality;
- Description of the proposed development;
- Assessment of the proposed development in accordance with all statutory controls and Council's Development Control Plan (DCP); and,
- A broader environmental assessment of the proposal, having regard to the matters for consideration contained within Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The proposed Seniors Housing development will occur upon land zoned R3 Medium Density Residential and 'Seniors housing' and the associated ancillary development is a permitted land use within this zone.

The subject site provides a total land area of 30,726sqm (3.07ha) across two part lots, and the development as proposed satisfies the *State Environmental Planning Policy (Housing) 2021*, *Bega Valley Local Environmental Plan 2013*, and the applicable parts of the *Bega Valley Development Control Plan 2013*.

The proposed development is Integrated Development requiring approval by the Rural Fire Service NSW pursuant to the Rural Fires Act 1997, by Heritage NSW pursuant to the National Parks and Wildlife Act 1974, and by the NSW Office of Environment and Heritage pursuant to the Biodiversity Conservation Act 2016.

Provided with this Statement of Environmental Effects are architectural plans and supporting documentation to enable the determination of the development application. These are:

- Access Report prepared by Lindsay Perry Access, Ref: 22113, Revision 2, dated 2nd June 2022;
- Architectural package prepared by ELK Design Group, Project No: 21159, Revision B, dated 9th August, 2022;
- BASIX Certificate prepared by Building Sustainability Assessments, Certificate Number 1329983M, dated 12 September 2022;
- Civil Engineering plans and detail, prepared by Northrop Consulting Engineers Pty Ltd, Job No. NL220874, Revision A, dated 29.06.22;
- Concept Stormwater Management Report, prepared by Northrop Consulting Engineers Pty Ltd, Job No. NL220874, Revision A, dated 27/6/22;
- Landscape Documentation prepared by Green Space Planning Co., Project No. GSP210320, Issue B, dated September 2022;
- Traffic and Parking Assessment Report prepared by Intersect Traffic, Project No. 22/043, Issue B, dated 8th July, 2022; and
- Visual Impact Assessment prepared by Green Space Planning Co.; and
- Waste Management Plan prepared by ELK Design Group, Issue A, dated 19/08/2022.

The site, proposal and development controls are discussed, and with a Section 4.15 summary assessment of the proposal, forms the required Statement of Environmental Effects.



Figure 1: Front street-view (main pedestrian entry) perspective

2 Site details

2.1 SITE DESCRIPTION

The subject development site is identified as an existing allotment located in Merimbula, on the north side of Lakewood Drive. In entirety the subject site 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 subject land is known as 83 Lakewood Drive, Merimbula, and is legally described as Lot 602 DP127714.

The development 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 28,678sqm. The C3 Environmental Management zoned part of the site is 6,310sqm in area. The part lot is 2048sqm in area. A creek traverses the site near to 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 subject allotment is best described as vacant land with a watercourse containing significant vegetation in the northern periphery.

A survey is provided with the application which details the dimensions and levels of the site.

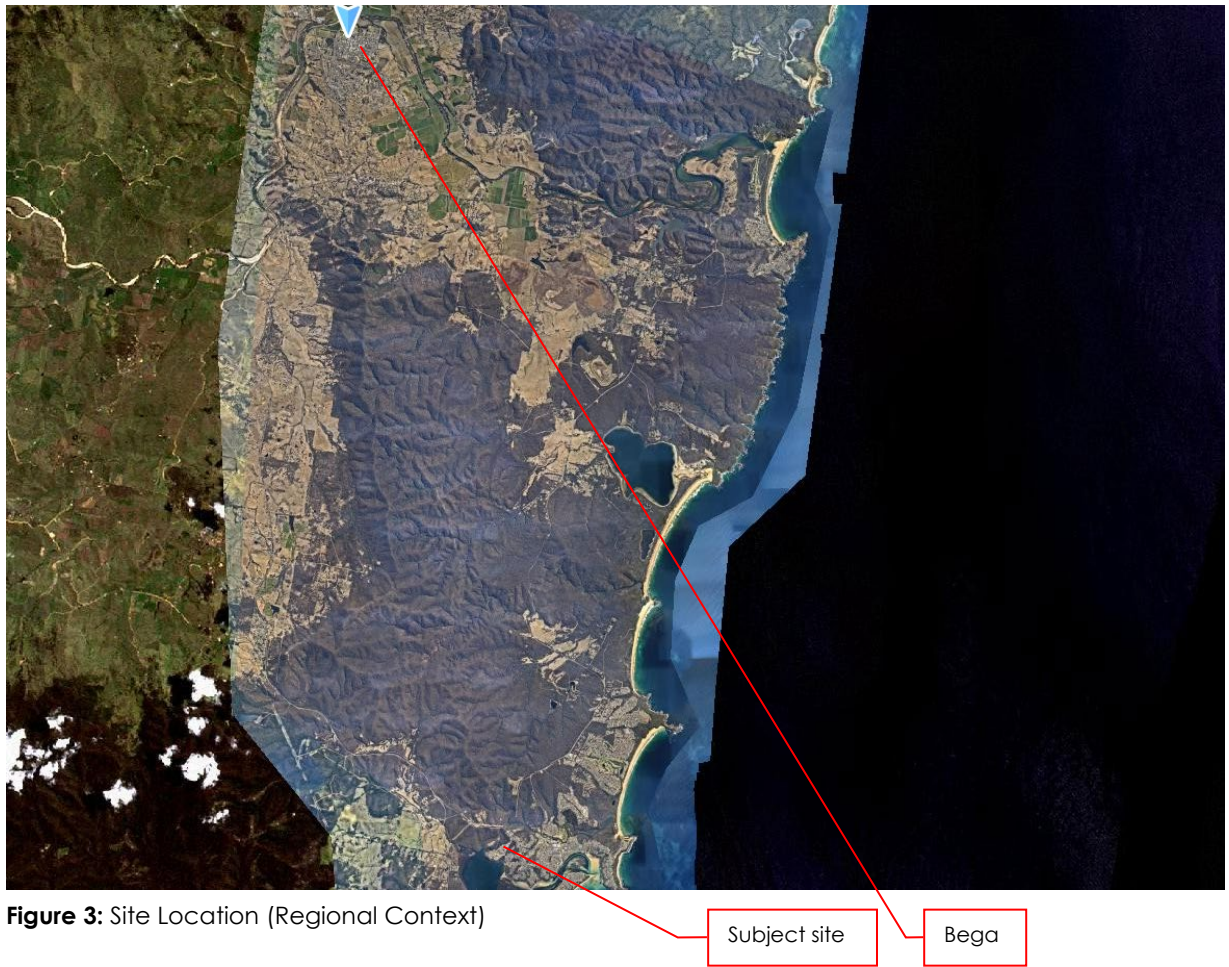
The site's location is shown in the detailed site view context in Figure 2 below, and Figures 3 & 4 are aerial photographs depicting the site in its regional and local context and as a detailed site view.



Figure 2: Aerial Photograph of development site including part lot

Subject site

Part Lot



2.2 ADJOINING AND OPPOSITE LAND / DEVELOPMENT

Adjoining the subject site to the east are low density residential allotments containing detached housing. To the north is heavily vegetated vacant land. To the west is a large allotment containing holiday resort accommodation. Opposite from Lakewood Drive to the south is vacant land containing vegetation associated with coastal land and foreshore to Merimbula Lake.

2.3 SITE CONTEXT

The subject site is located within the western most district of Merimbula overlooking Merimbula Lake to the south and south west, and is approximately 2km west of the Merimbula Town Centre. The site in its context can best be described as primarily residentially zoned land in close proximity to a coastal estuary and surrounding hinterland.

2.4 DEVELOPMENT BACKGROUND

A Pre-DA meeting was held with Bega Valley Shire Council's planning and development officers on 16th December 2021 and the formal written advice was made available in February 2022. The advice provided included commentary that the proposed land use is desirable in the local government area due to a lack of downsized residential accommodation to support seniors in the community, which due to changing demographics, is a cohort of residents who are increasing in the community. Otherwise, the relevant legislation, site constraints, and possible operational issues were identified as requiring attention throughout the development design and strategy phase of any potential proposal.

2.5 SUITABILITY OF THE SITE

The key opportunities from which the proposed development responds are as follows;

The development site:

- is located in an area with planning controls designed to encourage significant new development;
- is a recently subdivided residue allotment set aside to enable the proposed housing diversity;
- is of proportions able to support development of the scale proposed;
- is within proximity to existing retail and commercial services which will support the future residential population; and,
- is ideally located with water-views and aspect to coastal areas and hinterland, to promote an attractive lifestyle for a cohort of the community for which such housing is limited and generally desired.

3 Proposed Development

3.1 OVERVIEW

This development site is zoned R3 Medium Density Residential within the proposed development area and is zoned partially C3 Environmental Management in proximity to the creek and riparian corridor to the north of the site. The development as proposed is permitted within the zone.

It is argued that this proposal will:

- provide an aesthetically pleasing and contemporary addition to the locality;
- allow for development at the scale encouraged by the local environmental plan over a site that has been set aside as a residue allotment of a size to support the proposed bulk and scale;
- contribute to the immediate area of Merimbula within the local government area of Bega Valley Shire, eighty-nine (89) seniors housing (independent living units), including staff and administration support, all with high levels of social and recreational amenity, in close proximity to access local services; and,
- despite a lack of local public transport to meet the increased population demand, the operator will provide an exclusive mini-bus service for residents to access local services in Merimbula.

With respect to design, this proposal was derived after careful consideration of the *State Environmental Planning Policy (Housing) 2021*, *The Bega Valley Local Environmental Plan 2013*, and the *Bega Valley Development Control Plan 2013*.

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

The proposed height and bulk is consistent with that anticipated for this form of development and generally represents appropriate bulk and scale for the site and the locality, particularly given its isolated location and minimal impact on adjoining sites.

All floors and units, and facilities have been designed to be made fit for purpose with respect to the BCA requirements.

Pedestrian access throughout the site to all levels and facilities has been designed to ensure accessibility standards are achieved, in particular given the specific housing needs of future residents.

Vehicles of employees, staff and residents shall access and egress the site from the end of Lakewood Drive (in the cul-de-sac) via the driveway into the basement, under-croft and ground level car-park, and servicing/loading area for the development. Care has been taken to reduce vehicle/pedestrian conflict while promoting easy parking and vehicular access serviced by lifts to access the building. The development complies with the required parking rates.

The development as proposed consists of;

Construction

A Seniors Housing development located across two (2) distinct buildings, one of four (4) levels and the other being the main building with five (5) levels over a basement, consisting of;

Main Building (consisting of 77 independent living units across 4 levels)

Basement Level of the Main Building

- 30 car-spaces for residents (including 20 accessible) accessed from the internal driveway which accesses Lakewood Drive via the cul-de-sac,
- a turning area,
- ramp up to ground floor,
- three (3) carpark foyers, two (2) with access to two (2) lifts each to access the upper floors,
- electrical services room, and
- an accessible WC.

Ground Floor of the Main Building

- front main pedestrian entry from Lakewood Drive which accesses Lakewood Drive,
- main entry foyer,
- 2 x lifts to access the basement and upper floors,
- letterboxes room,
- services cabinet, and
- accessible WC

- corridor accessing ground floor apartments and garbage store,
- eight (8) x 2 bedroom independent living units, each with a courtyard, and
- garbage store with internal corridor access and external driveway access for servicing.

- corridor accessing the administration/staff quarters,
- administration entry/waiting area, reception, meeting room, offices, lunchroom WCs, storage/print room, and
- greens keeper maintenance room and storage room, and swimming pool pump room and chemical store.

Ground Floor of the Main Building associated site layout

- covered external pathway accessing external social and recreation amenities,
- 2 x bowling greens and seating area with associated tables and chairs with awning over,
- bowling club house with kitchen and bar, sanitary facilities, and storage rooms, and
- a lift up to the Level 1 swimming pool level.

- corridor accessing the under-croft car park,
- 61 car-spaces in the under-croft car park for residents (including 43 accessible) accessed from the internal driveway which accesses Lakewood Drive via the cul-de-sac,
- ramp down to basement, and
- two (2) carpark foyers, one (1) with access to two (2) lifts to access the basement and upper floors,

- a men's shed with sanitary facilities, storage, workshop, accessible WC and external courtyard.

- six (6) times fire stairs,

- landscaping and garden beds along the buildings.
- external visitor and staff car park with 45 car-spaces (including one accessible), and
- 5 visitor car-spaces located partially within the road reserve along the primary road frontage in Lakewood Drive (including one accessible).

Level 1 of the Main Building

- 2 x lift foyers,
- 2 x lifts per each foyer to access the lower and upper floors, and
- accessible WC.
- corridor accessing Level 1 apartments, and social and recreational amenities,
- twenty-three (23) x 2 bedroom independent living units, each with a balcony,
- a games/pool room,
- a beauty/hair salon,
- 2 x sitting rooms,
- waste shute room, and
- 6 x fire stairs,

Level 1 of the Main Building associated site layout

- access to external social and recreation amenities,
- swimming pool and spa and associated seating areas and garden terrace with awnings over,
- pool house with sanitary facilities, sauna, kitchenette, external and internal shower, and
- associated gardens and landscaped areas.

Level 2 of the Main Building

- 2 x lift foyers,
- 2 x lifts per each foyer to access the lower and upper floors, and
- accessible WC.
- corridor accessing Level 2 apartments, and social and recreational amenities,
- twenty-three (23) x 2 bedroom independent living units, each with a balcony,
- a library and lounge,
- a craft area,
- a sitting room,
- waste shute room,
- 6 x fire stairs, and
- an air-bridge over the internal driveway linking this building to the main building.

Level 3 of the Main Building

- 2 x lift foyers,
- 2 x lifts per each foyer to access the lower and upper floors, and
- accessible WC.
- corridor accessing Level 3 apartments, and social and recreational amenities,
- twenty-three (23) x 2 bedroom independent living units, each with a balcony,
- a gym,
- a consult room,
- 2 x sitting rooms,
- waste shute room, and
- 6 x fire stairs,

Level 4 of the Main Building

- 2 x lifts per each lift lobby to access the lower floors, and
- 2 x accessible WC.

- A function/multi-use room with kitchen and bar areas and associated seating,
- sanitary facilities, and
- 2 x outdoor (rooftop) terraces, and a fire stair

- a separate internal and outdoor rooftop terrace, and
- a fire stair

Minor Building (consisting of 12 independent living units across 4 levels)

Ground Floor of the four (4) level Building

- front entry from internal driveway which accesses Lakewood Drive via the cul-de-sac,
- an entry and lift foyer,
- 2 x lifts to the upper floors,
- corridor accessing ground floor apartments,
- 3 x two (2) bedroom independent living units, each with a courtyard,
- a communal sitting room with access to an external communal courtyard, and
- 2 x fire stairs and exits.

Level 1 of the four (4) level Building

- lift foyer,
- 2 x lifts to the lower and upper floors,
- corridor accessing Level 1 apartments,
- 3 x two (2) bedroom independent living units, each with a balcony,
- a communal sitting room with access to an external communal balcony, and
- 2 x fire stairs and exits.

Level 2 of the four (4) level Building

- lift foyer,
- 2 x lifts to the lower and upper floors,
- corridor accessing Level 2 apartments,
- 3 x two (2) bedroom independent living units, each with a balcony,
- a communal sitting room with access to an external communal balcony,
- 2 x fire stairs and exits, and
- an air-bridge over the internal driveway linking this building to the main building.

Level 3 of the four (4) level Building

- lift foyer,
- 2 x lifts to the lower floors,
- corridor accessing Level 3 apartments,
- 3 x two (2) bedroom independent living units, each with a balcony,
- a communal sitting room with access to an external communal balcony, and
- 2 x fire stairs and exits.



Figure 6: West and South Elevations

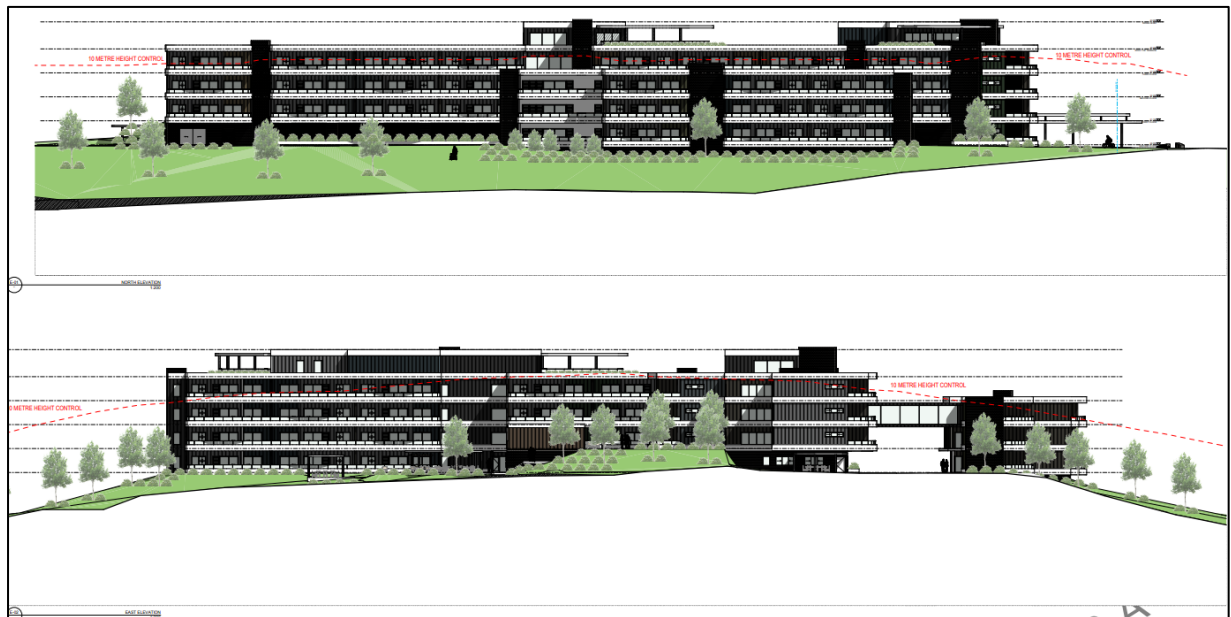


Figure 7: North and East Elevations

3.2 ECOLOGICAL CONSTRAINT

A suitably qualified ecologist (EcoPlanning) has been engaged in addressing whether the proposed development and establishment of Asset Protection Zones (APZs) for bushfire hazard management, will impact any sensitive ecological values present on the subject site (flora and fauna), and whether the site has been identified on Biodiversity Values Mapping.

After having undertaken on-site surveys and having reviewed the final Bushfire Hazard Assessment Report and Architectural documentation accompanying this application, EcoPlanning has advised that Biodiversity Offsets are required to support the proposed development.

The process of completing the Biodiversity Development Application Report (BDAR) is currently underway (at the time the application is submitted) pursuant to the Biodiversity Conservation (NSW BC) Act 2016, and it has been confirmed that the proposed offsets scheme shall be consistent with both the NSW BC and Australian Environmental Protection and Biodiversity Conservation (EPBC) Act.

3.3 BUSHFIRE HAZARD

The subject site is affected in part by bushfire hazard Vegetation Category 1 and 3. There are also hazards identified on adjoining land to the west, north and east, and opposite Lakewood Drive to the south.

A Bushfire Hazard Assessment has been prepared by Peterson Bushfire identifying that an APZ can be managed on-site and on the adjoining land to the west via a maintenance easement, provided any proposed buildings are located clear of the extent of the APZ affecting the subject site.

The proposed development has responded to the Bushfire affectation of the land in accordance with the assessment report and an adjoining owner's consent for an easement is currently being sought to ensure the grassland on the adjoining site to the west can be maintained ongoing.

Reference should be made to the Bushfire Hazard Assessment Report accompanying this application.

3.4 ABORIGINAL CULTURAL HERITAGE

The proposed development is identified as being on land which has previously contained aboriginal cultural heritage as part of the previous subdivision of land. As part of that assessment and development process, an Aboriginal Heritage Impact Permit (AHIP) was issued and has been carried out and executed with the Office of Environment and Heritage approval.

A search was undertaken by consultant Extent Heritage and an AHIP Number: 1131988 has been sourced. Extent Heritage has been engaged with Heritage NSW since May 2022 in identifying that in fact all previously identified artefacts and objects have been removed from the site and are no longer considered a site constraint to the proposed development, as required prior to works in the creation of the allotment. Additionally, as the proposed development does not result in an impact upon the riparian corridor, it is anticipated that upon confirmation with Heritage NSW, evidence will be provided by Extent Heritage with respect to the suitability of development for the site.

3.5 CONTAMINATION

The proposed development seeks to retain the use of the land as it was created for residential purposes coinciding with the recent subdivision, despite remaining a vacant allotment. As such it is considered the site is suitable for a residential use and that any previous contamination had been identified and has since been remediated through the processes required within the previous development.

3.6 VEHICULAR ACCESS AND PARKING

Off-street parking is to be provided in a basement, under-croft, at-grade, and front boundary car parking area consistent with the provisions of State Environmental Planning Policy (Housing) 2021. That is, this development is not carried out by or on behalf of a social housing provider, hence:

- at least 0.5 parking spaces are provided for each bedroom within an independent living unit.

Noting that the above car parking requirements are not standards that must be complied with, but standards if met, cannot be used to refuse consent.

Off-street parking is proposed for a total of 135 cars, meeting the requirements of SEPP (Housing) 2021.

Vehicular access to the off-street parking facilities is to be provided via a new vehicular entry / exit driveway located on the northern side of the cul-de-sac in Lakewood Drive.

Garbage collection for the proposed development is expected to be undertaken by private waste contractor on-site on arranged collection days.

A Traffic and Parking Impact assessment supports this proposal subject to a daily private mini-bus service to and from the site, transporting future residents to local commercial and service operations.

The geometric design layout of the proposed parking facilities has been designed to generally comply with the relevant requirements specified in the Standards Australia publication Parking Facilities Part 1 - Off-Street Car Parking AS2890.1 - 2004 and Parking Facilities Part 6 - Off-Street Parking for People with Disabilities AS2890.6 - 2009 in respect of parking bay dimensions, aisle / driveway widths, overhead clearances and ramp grades / transitions.

In summary, the proposed parking facilities satisfy the relevant requirements specified in the SEPP (Housing) 2021 document as well as the Australian Standards and it is therefore concluded that the proposed development will not have any unacceptable parking implications.

Reference should be made to the Traffic and Parking Impact Assessment accompanying this application.

3.7 BCA/DDA REQUIREMENTS

The development has been designed to ensure compliance with the BCA/DDA. An Access Review Report has been prepared responding to the AS1428 series, Building Code of Australia (BCA), DDA Access

to Premises Standards (including DDA Access Code) and the Commonwealth Disability Discrimination Act (DDA).

The design documentation was reviewed to ensure that ingress and egress, paths of travel, circulation areas, and sanitary facilities comply with relevant statutory guidelines, and in addition, compliance with a higher level of accessibility and inclusiveness benchmarks.

An assessment for compliance with the BCA has also been undertaken and any requirements as identified by Council can be confirmed through finalized documentation prior to the issue of any consent, or as a condition of any consent.

Reference should be made to the Access Assessment Report accompanying this application.

3.8 OVERSHADOWING

Solar access diagrams provided with the application depict the extent of shadows cast by this proposal. In this regard, the bulk of shadows fall primarily to the south over Lakewood Drive, minimising impact to adjoining premises, and restricting the impacts to afternoon hours only.

Reference should be made to the shadow diagrams submitted with this application.

3.9 LANDSCAPING

When fully developed this proposal would result in significant landscape improvements. Landscape Plans and diagrams have been prepared consistent with the submitted architectural designs, are integrated into the existing topography and on-site vegetation with complimentary species, and are provided along site peripheries within suitably buffered vegetation areas to invoke a bushland feel of the surrounding natural environment areas. The proposed on-site landscaping provides excellent amenity for future residents and ensures efficient and quality screening of the development to adjoining properties.

Reference should be made to the landscape plans and diagrams submitted with this application.

3.10 WASTE MANAGEMENT

The design includes a waste storage room on the main building ground floor, and upper-level waste shutles. Refuse storage and collection facilities have been designed to comply with the requirements of Council and industry best practice, and the site will be serviced by a private contractor.

Reference should be made to the Waste Management Plan accompanying this application.

3.11 STORM-WATER & EROSION AND SEDIMENT CONTROL

The development of the site will adopt the use of appropriate stormwater management, water-quality, and erosion and sedimentation control measures to ensure a safe work site and protection to the coastal ecology of the locality. All conditions of development consent detailing such will be complied with.

A storm water design and report, and an erosion and sedimentation control plan are provided with this development application.

4 Relevant Planning Controls

The relevant environmental planning instruments and development controls are outlined below and comment on compliance provided.

4.1 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

The relevant clauses of the State Environmental Planning Policy (Housing) 2021 are considered to be those contained within Part 5 – Housing for seniors and people with a disability. The relevant clauses are reproduced and comment provided where appropriate.

Division 1 Land to which Part applies

79 Land to which Division applies

This part applies to land in the following zones:

- (a) Zone RU5 Village,*
- (b) Zone R1 General Residential,*
- (c) Zone R2 Low Density Residential,*
- (d) Zone R3 Medium Density Residential,*
- (e) Zone R4 High Density Residential,*
- (f) Zone B1 Neighbourhood Centre,*
- (g) Zone B2 Local Centre,*
- (h) Zone B3 Commercial Core,*
- (i) Zone B4 Mixed Use,*
- (j) Zone B5 Business Development,*
- (k) Zone B6 Enterprise Corridor,*
- (l) Zone B7 Business Park,*
- (m) Zone B8 Metropolitan Centre,*
- (n) Zone SP1 Special Purposes,*
- (o) Zone SP2 Infrastructure,*
- (p) Zone RE2 Private Recreation.*

Comment: This proposal (the development site) is located within Zone R3 Medium Density Residential part of the site. Hence this policy applies to this proposal.

Division 3 Development Standards

84 Development standards—general

(1) *This section applies to development for the purposes of seniors housing involving the erection of a building.*

Comment: Noted

(2) *Development consent must not be granted for development to which this section applies unless—*

(a) *the site area of the development is at least 1,000m², and*

Comment: The site area is greater than 1,000sqm.

(b) *the frontage of the site area of the development is at least 20m measured at the building line, and*

Comment: The frontage of the site area of the development is greater than 20m measured at the building line.

(c) *for development on land in a residential zone where residential flat buildings are not permitted—the development will not result in a building—*

(i) *with a height of more than 9.5m, or*

(ii) *with more than 2 storeys if the building is adjacent to the boundary of the site area.*

Comment: Residential flat buildings are permitted in the R3 Medium Density Residential zone.

(3) *The development may result in a building with a height of not more than 11.5m if servicing equipment on the roof of the building—*

(a) *is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*

(b) *is limited to an area of no more than 20% of the surface area of the roof.*

Comment: The proposed development exceeds an 11.5m building height in the application of clause 87 Additional floor space, enabling an additional 3.8m above the 10m permissible building height.

(4) *Subsection (2)(a) and (b) do not apply to development the subject of a development application made by the following—*

(a) *the Land and Housing Corporation,*

- (b) another social housing provider.

Comment: The development application is not made by the land and housing corporation or another social housing provider.

85 Development standards for hostels and independent living units

- (1) *Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.*

Comment: Independent living units are proposed and all units comply with the relevant standards specified in Schedule 4 as demonstrated in Appendix 1 of this report.

- (2) *An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider.*

Comment: The development application is not made by, or by a person jointly with, a social housing provider. As such Schedule 4 applies in full.

87 Additional floor space ratios

- (1) *This section applies to development for the purposes of seniors housing on land to which this Part applies if—*

- (a) *development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or*
- (b) *the development is carried out on land in Zone B3 Commercial Core.*

Comment: The development application is for seniors housing on land on which residential flat buildings are permitted.

- (2) *Development consent may be granted for development to which this section applies if—*

- (a) *the site area of the development is at least 1,500m², and*

Comment: The site area is greater than 1,500sqm.

- (b) *the development will result in a building with the maximum permissible floor space ratio plus—*

- (i) *for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or*
- (ii) *for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or*

- (iii) *for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and*

Comment: The maximum floor area of the development is greater than the maximum allowed floor space ratio of 0.6:1 when non-calculable C3 zoned land is excluded from total site calculations. Any additional floor area is used only for independent living units and does not exceed the additional permitted 15%.

- (c) *the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.*

Comment: The maximum height of buildings, in the main does not exceed 13.8m above the natural ground level, with some exceedance to a maximum height building height of 15.8m, for which a clause 4.6 Request to Vary this Development standard is sought with this application.

88 Restrictions on occupation of seniors housing

- (1) *Development permitted under this Part may be carried out for the accommodation of only the following—*
 - (a) *seniors or people who have a disability,*
 - (b) *people who live in the same household with seniors or people who have a disability,*
 - (c) *staff employed to assist in the administration and provision of services to housing provided under this Part.*

Comment: The proposed development is designed to be fit for purpose to accommodate only seniors or people with a disability, those who live with them, and staff employed to assist in administration and provision of services to housing, if required.

- (2) *Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in subsection (1) will occupy accommodation to which the development relates.*

Comment: Noted.

Division 4 Site-related requirements

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

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

- (2) The transport service must—
- (a) take the residents to a place that has adequate access to facilities and services, and
 - (b) for development on land within the Greater Sydney region—
 - (i) not be an on-demand booking service for the transport of passengers for a fare, and
 - (ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and
 - (c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.
- (3) For the purposes of subsections (1) and (2), access is adequate if—
- (a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and
 - (b) the distance is accessible by means of a suitable access pathway, and
 - (c) the gradient along the pathway complies with subsection (4)(c).
- (4) In subsection (3)—
- (a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and
 - (b) the distance is to be measured by reference to the length of the pathway, and
 - (c) the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—
 - (i) 1:12 for a maximum length of 15m at a time, or
 - (ii) 1:10 for a maximum length of 5m at a time, or
 - (iii) 1:8 for a maximum length of 1.5m at a time.
- (5) In this section—facilities and services means—
- (a) shops and other retail and commercial services that residents may reasonably require, and
 - (b) community services and recreation facilities, and
 - (c) the practice of a general medical practitioner.
- provide a booking service has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016, section 7.

Note—Provide a booking service is defined as carrying on a business taking bookings for taxis or hire vehicles to provide passenger services, whether immediately or at a later time, and communicating the bookings to drivers for passenger services or providers of passenger services.

Comment: As recommended in the Traffic and Parking Assessment, a private mini-bus service arranged by the operator will provide daily transport to and from the site to enable future residents access to facilities and services in Merimbula town centre or to other particular local services. The residents will be picked up from within the Seniors Housing development which has accessible pathways and gradients throughout the development.

95 Water and sewer

- (1) *A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will—*
 - (a) *be connected to a reticulated water system, and*
 - (b) *have adequate facilities for the removal or disposal of sewage.*
- (2) *If the water and sewerage services will be provided by a person other than the consent authority, the consent authority—*
 - (a) *must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or*
 - (b) *if reticulated services are not available—must satisfy the relevant authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.*
- (3) *In this section—relevant authority means the public authority responsible for water and sewerage services in the area in which the seniors housing is located.*

Comment: Council has confirmed in writing that potable water supply and sewerage infrastructure extensions from recently subdivided and serviced residential land can be extended to service the development.

96 Bush fire prone land

- (1) *A consent authority must not consent to development under this Part on bush fire prone land unless the consent authority is satisfied the development complies with the requirements of Planning for Bushfire Protection.*
- (2) *In determining a development application for development under this Part on land near bush fire prone land, the consent authority must—*
 - (a) *consult with the NSW Rural Fire Service and consider its comments, and*
 - (b) *consider the following including—*
 - (i) *the location of the development,*

- (ii) *the means of access to and egress from the location,*
 - (iii) *the size of the existing population within the area,*
 - (iv) *age groups within the population and the number of persons within the age groups,*
 - (v) *the number of hospitals and other facilities providing care to the residents of the facilities within the area, and the number of beds within the hospitals and facilities,*
 - (vi) *the number of schools within the area and the number of students at the schools,*
 - (vii) *existing seniors housing within the area,*
 - (viii) *the road network within the area and the capacity of the road network to cater for traffic to and from existing development if there were a need to evacuate persons from the area in the event of a bush fire,*
 - (ix) *the adequacy of access to and from the site of the development for emergency response vehicles,*
 - (x) *the nature, extent and adequacy of bush fire emergency procedures that can be applied to the development and its site,*
 - (xi) *the requirements of Fire and Rescue NSW.*
- (3) *In this section—bush fire prone land means land identified on a bush fire prone land map, certified under the Act, section 10.3, as the following—*
- (a) *"Bush fire prone land—vegetation category 1",*
 - (b) *"Bush fire prone land—vegetation category 2",*
 - (c) *"Bush fire prone land—vegetation category 3",*
 - (d) *"Bush fire prone land—vegetation buffer".*

Planning for Bushfire Protection means the document titled Planning for Bush Fire Protection (ISBN 978 0 646 99126 9) prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, Industry and Environment, dated November 2019.

Comment: The proposed development is accompanied by a Bushfire Hazard Assessment with respect to the Bushfire Prone nature of the land, made utilising the PBP2019 to ensure recommendations in maintenance of hazards and bushfire response strategies are achieved.

Division 5 Design Requirements

98 Design of seniors housing

A consent authority must not consent to development for the purposes of seniors housing unless the consent authority is satisfied that the design of the seniors housing demonstrates adequate consideration has been given to the principles set out in Division 6.

Comment: Note. See Below.

Division 6 Design principles

99 Neighbourhood amenity and streetscape

Seniors housing should be designed to—

- (a) recognise the operational, functional and economic requirements of residential care facilities, which typically require a different building shape from other residential accommodation, and*

Comment: The proposed design sets apart the proposed development from existing surrounding residential building typologies.

- (b) recognise the desirable elements of—*

- (i) the location's current character, or*
- (ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area, and*

Comment: The proposed development is in a residential locality which has recently been subdivided and is emerging and the proposed design reinforces this future desired character by provided a contemporary and aesthetically pleasing built form.

- (c) complement heritage conservation areas and heritage items in the area, and*

Comment: There are no known heritage items or conservation areas to respond to.

- (d) maintain reasonable neighbourhood amenity and appropriate residential character by—*

- (i) providing building setbacks to reduce bulk and overshadowing, and*
- (ii) using building form and siting that relates to the site's land form, and*
- (iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and*
- (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*

Comment: The proposed development built form is setback from adjoining boundaries and utilises in responding to the slope towards the front boundary, a siting which addressed the street without resulting in unreasonable bulk and overshadowing.

- (e) set back the front building on the site generally in line with the existing building line, and*

Comment: The proposed development built form is setback from the front boundary consistent with anticipated building lines in the locality.

- (f) *include plants reasonably similar to other plants in the street, and*

Comment: The proposed landscaped areas enhance the streetscape given the lack of any noticeable street trees.

- (g) *retain, wherever reasonable, significant trees, and*

Comment: The significant trees associated with the riparian corridor are to be retained and any incidental removal of vegetation aligns with APZ management, which is considered a reasonable response in undertaking a biodiversity offset scheme to ensure the site can be utilised as per the zone objectives.

- (h) *prevent the construction of a building in a riparian zone.*

Comment: The riparian zone top of bank and buffer has been identified and no construction of any kind is proposed within that part of the site.

100 Visual and acoustic privacy

Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and residents by—

- (a) *using appropriate site planning, including considering the location and design of windows and balconies, the use of screening devices and landscaping, and*
- (b) *ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

Comment: The proposed development built form is setback from adjoining boundaries and can utilise mitigating measures within balustrade and screening materials to mitigate visual privacy impacts. Additionally, the bedrooms of the apartments are generally oriented away from driveways, parking areas and paths.

101 Solar access and design for climate

The design of seniors housing should—

- (a) *for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and*
- (b) *involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.*

Comment: The proposed development has been designed to ensure the majority of overshadowing projects to the front of the site and onto the road reserve, and is designed to comply with BASIX energy efficiency and Apartment Design Guide provisions.

102 Stormwater

The design of seniors housing should aim to—

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and*
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.*

Comment: The proposed development has been designed to Council specifications relating to stormwater management and water-quality as per the civil engineering designs and stormwater management report which accompany this application.

103 Crime prevention

Seniors housing should—

- (a) be designed in accordance with environmental design principles relating to crime prevention, and*
- (b) provide personal property security for residents and visitors, and*
- (c) encourage crime prevention by—*
 - (i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and*
 - (ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and*
 - (iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.*

Comment: The proposed development has been designed in accordance with CPTED principles with appropriate security access and observation opportunities through the buildings and site layout, and it is anticipated that standard security management procedures including installation of CCTV, are to be detailed as required by any conditions of consent.

104 Accessibility

Seniors housing should—

- (a) have obvious and safe pedestrian links from the site that provide access to transport services or local facilities, and*
- (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

Comment: The proposed development incorporates a main entry pick-up and drop-off area for vehicles which is entirely accessible from within the buildings and site layout, as well as providing attractive, safe and accessible outdoor social and recreational facilities.

105 Waste management

Seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.

Comment: The proposed development provides sufficient waste collection facilities and can provide for specific recycled waste receptacles to be serviced by private contractors on the site.

Division 7 Non-discretionary development standards

106 Interrelationship of Division with design principles in Division 6

Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6.

Comment: Noted.

108 Non-discretionary development standards for independent living units—the Act, s 4.15

- (1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
- (2) *The following are non-discretionary development standards in relation to development for the purposes of independent living units—*
 - (a) *no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,*
 - (b) *servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—*
 - (i) *is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
 - (ii) *is limited to an area of no more than 20% of the surface area of the roof, and*
 - (iii) *does not result in the building having a height of more than 11.5m,*

Comment: Not applicable as the proposed development complies with the additional height provisions associated with the additional floor space allowances in Division 3 of this Part.

(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,

Comment: The FSR is greater than 0.5:1.

(d) for a development application made by a social housing provider—at least 35m² of landscaped area per dwelling

Comment: The development is not made on behalf of a social housing provider.

(e) if paragraph (d) does not apply—at least 30% of the site area is landscaped,

Comment: At least 30% of the site is landscaped.

(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,

Comment: The proposed deep soil zone complies.

(g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,

Comment: The proposed solar access complies.

(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—

(i) an area of at least 10m², or

(ii) for each dwelling containing 1 bedroom—an area of at least 6m²,

Comment: The proposed balconies comply.

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

Comment: Paragraph (i) does not apply and the proposed parking complies.

4.2 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021: CHAPTER 2 – COASTAL MANAGEMENT

While not identified on mapping as a coastal wetlands and littoral rainforest area, nor as a coastal vulnerability area (as applied through Divisions 1 & 2), the site is entirely mapped as within a coastal environment area, and partially (southern end) within a coastal use area (see Figures 8 & 9).

Division 3 of *State Environmental Planning Policy (Resilience and Hazards) 2021: Chapter 2 – Coastal management* states that a consent authority must not consent to the carrying out of any development

on land within the coastal environment area unless it has considered whether the proposed development is likely to cause an adverse impact on;

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

and that it must be satisfied that;

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

The proposed development is located in a part of the site already cleared by a previously approved subdivision from which any known heritage was removed and approved by OEH, is located so as to minimise any potential impact on the riparian corridor on-site and its associated vegetation which flows into Merimbula Lake, and is designed with appropriate on-site detention and water quality management strategies to mitigate any additional runoff which may have otherwise been generated from the site.

Division 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021: Chapter 2 – Coastal management* states that a consent authority must not consent to the carrying out of any development on land within the coastal use area unless it;

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*

- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and

(b) is satisfied that—

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

Although only part of the site is identified within a coastal use area, it is located (180m from the foreshore) such that it is considered unlikely the development would impact upon any natural coastal process or existing amenity. Additionally, it is located in a part of the site already cleared by a previously approved subdivision from which any known heritage was removed and approved by OEH. It is considered the consent authority can be satisfied that the proposed development is designed as coastal living residential accommodation which is consistent with both Council's desired development typology and is of a bulk and scale in keeping with the allowances made for Seniors Housing.



Figure 8: Coastal Environmental Area Map



Figure 9: Coastal Use Area Map

4.3 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021: CHAPTER 4 - REMEDIATION OF LAND

Clause 4.6(1)(a) of *State Environmental Planning Policy (Resilience and Hazards) 2021: Chapter 4 – Remediation of Land* states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. Based on available information from the Department of Planning website, the pre-existing publication “*Managing Land Contamination – Planning Guidelines SEPP 55 – Remediation of Land*” remains the current guide document providing advice on the process of determination as to whether a site is contaminated (the *Contaminated Land Planning Guidelines* remain in draft form). In this regard, Section 2.2 of the Guidelines states:

When carrying out planning functions under the EP & A Act, a planning authority must consider the possibility that a previous land use has caused contamination of the site as well as the potential risk to health or the environment from that contamination.

When an authority carries out a planning function, the history of the land use needs to be considered as an indicator of potential contamination. Where there is no reason to suspect contamination after acting substantially in accordance with these Guidelines, the proposal may be processed in the usual way.

The Guidelines continue at Section 3.2.1 by stating that:

The potential for contamination is often linked to past uses of land and a good early indicator of possible uses is land zoning. Contamination is more likely to have occurred if the land is currently, or was previously, zoned for industrial, agricultural or defence purposes.

The proposed development seeks to retain the use of the land as it was created for residential purposes coinciding with the recent subdivision, but has remained a vacant allotment with no evidence of contaminating activities having taken place. As such it is considered the site is suitable for a residential use and that any previous contamination had been identified and has since been remediated through the processes required within the previous development. The works to be carried out as identified in any approval will ensure consistency with the SEPP, as well as ensuring that controls be in place prior to any works commencing requiring appropriate waste classification guidelines to be followed, and that unexpected finds protocols be applied during construction.

Reference should be made to the contamination documentation submitted with the application.

4.4 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the development. A BASIX Certificate Number 1329983M, dated 12 September 2022 has been prepared and is submitted with this application, consistent with the proposed architectural plans and demonstrate that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

4.5 STATE ENVIRONMENTAL PLANNING POLICY (INDUSTRY AND EMPLOYMENT) 2021: CHAPTER 3 - ADVERTISING AND SIGNAGE

Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021—Advertising and Signage 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.

As detailed in the accompanying architectural plans, the site has nominal signage location and dimensions which are appropriate to both height and the building siting and achieves compliance with the provisions of SEPP 64 (where relevant). The content of the signage will be consistent with the definition of business identification signs (not advertisements). The proposed signage is considered to be consistent with the SEPP 64 provisions.

Reference should be made to Appendix 4 of this statement.

4.6 BEGA VALLEY LOCAL ENVIRONMENTAL PLAN 2013

The relevant clauses of the Bega Valley Local Environmental Plan 2013 are addressed below.

4.6.1 Zoning

The subject site is zoned R3 Medium Density Residential and C3 Environmental Management pursuant to the Bega Valley Local Environmental Plan 2013.

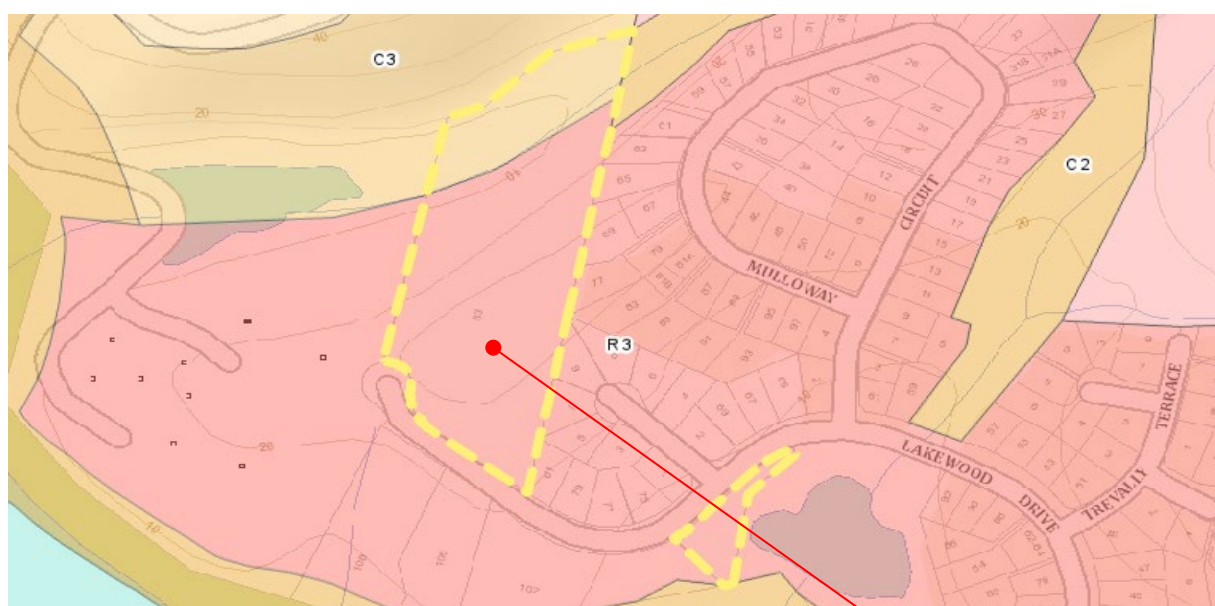


Figure 10: Subject site zoning map

Subject site

4.6.1.1 Satisfying zone objectives

The objectives of the R3 Medium Density Residential zone are:

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

It is considered that this proposal will satisfy the relevant zone objectives. That is, this proposal will provide new and desired residential accommodation in the form of seniors housing development in a location where a variety of residential accommodation is permitted including, seniors housing, residential flat buildings and boarding houses.

There is no doubt that development of the subject site as proposed would satisfy the relevant R3 zone objectives.

Note: there is no proposed development in the C3 zone, which shall be retained as vegetated in keeping with the existing bushland setting.

4.6.2 Permissibility

Land uses permissibility within the R3 Zone is:

2 Permitted without consent

Environmental protection works; Home businesses; Home industries; Home occupations

3 Permitted with consent

*Attached dwellings; Boarding houses; Child care centres; Community facilities; Group homes; Multi dwelling housing; Neighbourhood shops; Places of public worship; Respite day care centres; Roads; **Seniors housing**; Any other development not specified in item 2 or 4*

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Extractive industries; Forestry; Freight transport facilities; Function centres; Funeral homes; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities;

Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Service stations; Sewage treatment plants; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

seniors housing means a building or place that is:

- (a) a residential care facility, or
- (b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or
- (c) a group of self-contained dwellings, 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.

This proposal will:

- be a group of self-contained dwellings, that is intended to be used permanently for;
- seniors or people who have a disability.

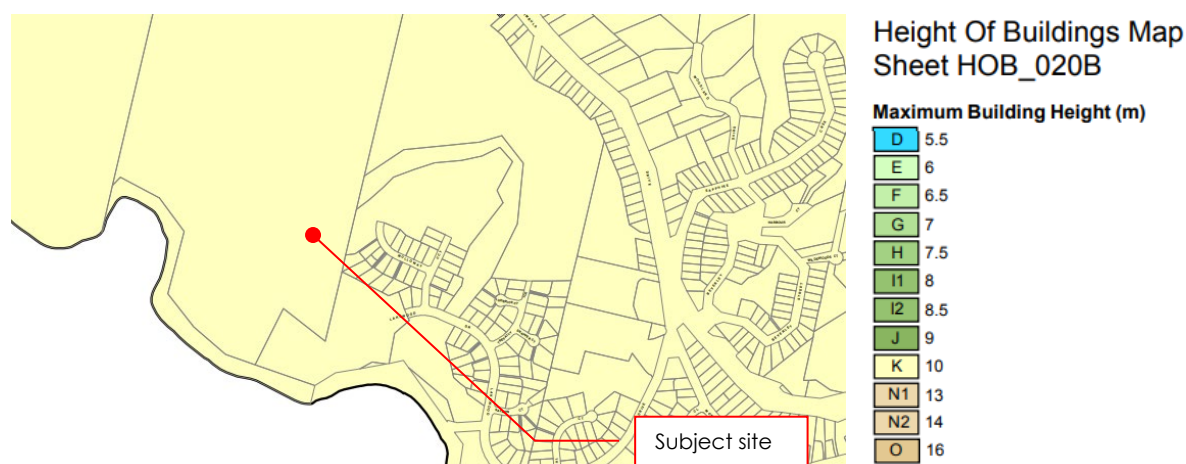
This proposal is a seniors housing development.

Hence it is argued that the development as proposed meets the relevant land use definitions and is permitted within the R3 zone.

4.6.3 Principal Development Standards

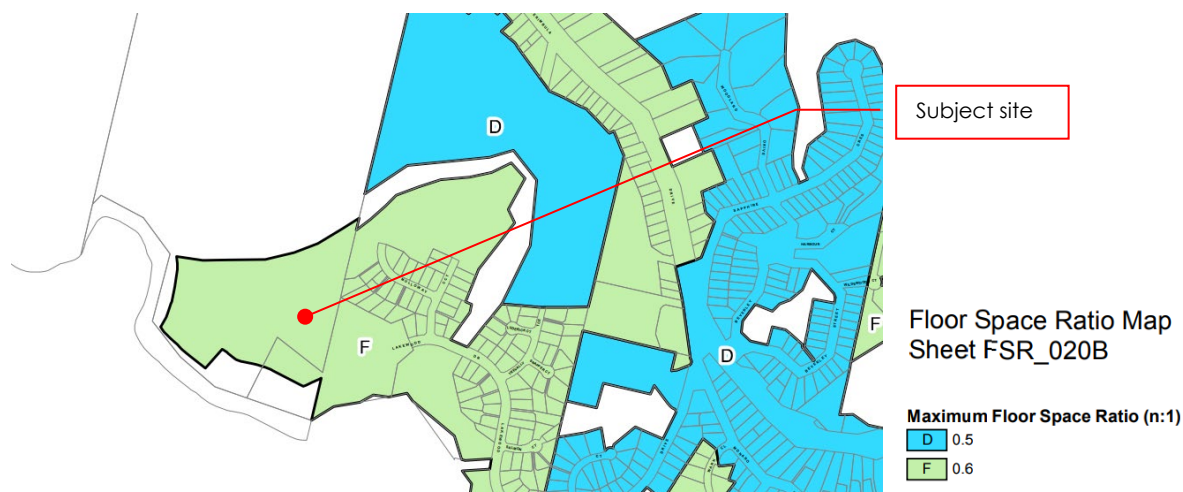
The Bega Valley Local Environmental Plan 2013 sets a number of development standards relevant to this proposal as summarised below.

4.6.3.1 Height of Buildings



Maximum Building Height applied to the subject site is K - 10m. The project architect has provided plans and details showing the maximum height as being over 10m. In this instance the State Environmental Planning Policy (Housing) 2021 provides for an additional 3.8m height bonus above the maximum possible height. As per the provisions of the Housing SEPP the applicable HOB standard for the subject site for this development proposal is 13.8m. Even so, the maximum proposed building height is 15.8m. A variation is sought and an application to exceed the development standard pursuant to clause 4.6 of the Standard Instrument Local Environmental Plan 2013 has been prepared and accompanies this application, in **Appendix 2 of this report**.

4.6.3.2 Floor Space Ratio



The Maximum Floor Space Ratio applied to the subject site is F-0.6:1. The project architect has provided development data and the FSR for this proposal is 0.61:1 exceeding this standard by 0.01:1. An application to exceed the development standard pursuant to clause 4.6 of the Bega Valley Local Environmental Plan 2013 is not required in this instance as the State Environmental Planning Policy (Housing) 2021 provides for up to an additional 15% of the permissible floor space ratio, as per the provisions of **Part 5 Division 3 clause 87 Additional floor space ratios**. That is, the applicable FSR standard for the subject site for this development proposal is 0.69:1 with which the proposed floor area complies.

4.6.4 Miscellaneous provisions

The Bega Valley Local Environmental Plan 2013 sets a number of miscellaneous provisions relevant to this proposal as summarised below.

4.6.4.1 *Preservations of trees or vegetation*

The proposed development seeks consent for the managing of some vegetation within an area identified on Biodiversity Values Mapping, for the purposes of accommodating the objectives of the zone and in achieving a viable development with appropriate APZs to buffer riparian corridor vegetation which cannot be removed. The proposed development will be supported by a BDAR which is currently being prepared, which will identify the appropriate required offsets to enable this, and will enable Council to support the development with the limited removal of vegetation.

4.6.4.2 *Heritage Conservation*

The proposed development is identified as being on land which may contain aboriginal cultural heritage. Even so, the proposed development is identified as being on land which has previously contained aboriginal cultural heritage as part of the previous subdivision of land. As part of that assessment and development process, an Aboriginal Heritage Impact Permit (AHIP) was issued and has been carried out and executed with the Office of Environment and Heritage approval.

A search was undertaken by consultant Extent Heritage and an AHIP Number: 1131988 has been sourced. Extent Heritage has been engaged with Heritage NSW since May 2022 in identifying that in fact all previously identified artefacts and objects have been removed from the site and are no longer considered a site constraint to the proposed development, as required prior to works in the creation of the allotment. Additionally, as the proposed development does not result in an impact upon the riparian corridor, it is anticipated that upon confirmation with Heritage NSW, evidence will be provided by Extent Heritage with respect to the suitability of development for the site.

4.6.5 Additional local provisions

4.6.5.1 *Earthworks*

The proposed development earthworks have been designed to ensure minimal impact on adjoining residential land, Council's road reserve and the environmentally sensitive riparian corridor. Apart from excavation required for basement within the building footprint, there is minimal proposed excavation with respect to the extent of built form in the front part of the site. The proposed engineering details ensure environmental process including water-quality can be maintained during a controlled construction of the site, and ongoing.

4.6.5.2 *Terrestrial biodiversity*

The proposed is supported by a BDAR which is currently being prepared, which identifies and recognises that some existing on-site terrestrial biodiversity will be affected by the proposed development, and that offsets in accordance with the BC NSW are required to be obtained through the process of making this application. Otherwise, the proposed development will not impact upon the riparian corridor and associated vegetation buffer zone.

4.6.5.3 *Riparian land and watercourses*

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.

4.6.5.4 *Environmentally sensitive land*

The proposed development is located a sufficient distance from the riparian corridor and any steep slopes associated with environmentally sensitive land on-site to pose any direct developmental impacts. The proposed development is located on the part of the site previously cleared and prepared for subsequent development.

4.6.5.5 *Airspace operations*

The proposed development is located in an 'obstacle limitation surface' area of RL 46m, due to operations of Merimbula Airport. The maximum height obstacle the proposed development could pose is limited below this height at a maximum ridge of RL 43.9m

5 s.4.15 Planning Assessment

In determining the environmental effects of a development proposal' the consent authority, is required to consider those matters relevant as listed in section 4.15 of the Environmental Planning and Assessment Act, 1979. These matters are listed below with commentary where required.

5.1 ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 4.15(1)(A)(I)

The relevant environmental planning instruments have been identified and discussed in section 4 of this statement. This proposal is permissible subject to the provisions of the Bega Valley Shire Local Environmental Plan 2013 and it is considered that the provisions of all relevant environmental planning instruments have been satisfactorily addressed within Section 4 of this statement.

5.2 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 4.15(1)(A)(II)

At the time of preparing this application there were no draft planning instruments which would affect this site.

5.3 DEVELOPMENT CONTROL PLANS - SECTION 4.15(1)(A)(III)

The Bega Valley Development Control Plan 2013 applies to this proposal and it is argued that the proposal is consistent with the aims and objectives of the DCP and generally compliant with the specific controls applicable to the site and the type of development proposed. A summary of the relevant controls prescribed by the DCP and commentary is provided at appendix 2.

While the DCP is a relevant consideration when making a determination of this proposal, Council is reminded that the proclamation of the Environmental Planning and Assessment Amendment Act 2012 on 1 March 2013 confirmed the status and weight that should be placed on development control plans when making a determination of a development application. The amendments to the Environmental Planning and Assessment Act 1979 clarified the purpose, status and content of development control plans (DCPs), and how they are to be taken into account during the development assessment process.

The Amendment Act makes it clear that the **principal purpose of a DCP is to provide guidance to a consent authority** on land to which the DCP applies.¹

The Amendment Act reinforces that the **provisions contained in a DCP are not statutory requirements and are for guidance purposes only**. Furthermore, it should be noted that the weight a consent authority gives to a DCP in assessing a development application will depend on a number of factors, including whether the DCP provides a sensible planning outcome.

The Amendment Act confirms that Council can confidently apply development control plans **flexibly** and if a development application does not comply with provisions in a DCP, a consent authority **must be flexible** in the way it applies the controls and also allow for reasonable alternative solutions to achieve the objectives of those standards.

Reference should be made to Appendix 3 of this statement.

5.4 ANY PLANNING AGREEMENT - SECTION 4.15(1)(A)(IIIA)

This proposal is not subject to any planning agreement.

5.5 THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH) - SECTION 4.15(1)(A)(IV)

Clause 62 and 69 requires consideration of compliance with the provisions of the Building Code of Australia (BCA), which can be applied to demonstrate compliance prior to the issue of a Construction Certificate. The provisions of Clause 41 apply in identifying that the proposed development is integrated development, requiring approval from Rural Fire Service NSW pursuant to the Rural Fires Act 1997, by Heritage NSW pursuant to the National Parks and Wildlife Act 1974, and by the NSW Office of Environment and Heritage pursuant to the Biodiversity Conservation Act 2016.

5.6 ENVIRONMENTAL AND SOCIAL IMPACTS - SECTION 4.15(1)(B)

Section 4.15(1)(b) requires the consent authority to consider:-

“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”

¹ State of New South Wales through the Department of Planning & Infrastructure, 18 March 2013, Planning System Circular, PS 13-003.

The relevant matters are addressed below.

5.6.1 Impacts on The Natural Environment

Development of the site as detailed in this proposal is appropriate with regard to its impact on the natural environment, being located in the part of site which is newly urbanised and zoned for medium density residential development. In that context the proposed development is consistent with the long-term strategic planning framework for the locality, while responding to the environmentally sensitive site constraints. Through the rigorous ecological assessment undertaken and confirmed by a qualified ecologist, it is considered the proposal is unlikely to create a significant detrimental impact on the natural environment surrounding the subject site, or to any endangered and non-endangered species of flora and fauna, consistent with the processes enshrined in the Biodiversity Conservation Act 2016. Otherwise, the development strategy, quality landscaping, and proposed engineering design including stormwater and water quality solutions will ensure negligible impact upon the hydrology and ecology within the nearby riparian corridor and coastal land within Merimbula Lake, to ensure any impact is consistent with pre-development levels, upon any existing ecological values within the immediate locality.

5.6.2 Impacts on The Built Environment

Bulk and scale

The proposed design is of a scale which is consistent with the intent of the development standards contained within the State Environmental Planning Policy (Housing) 2021 which permits development at the scale proposed for the proposed land use in this location, being Seniors Housing (independent living units) on R3 zoned land upon which are permitted Residential Flat Buildings. The additional floor space ratio provisions which the proposed development employs, enables an increase of 3.8m to the maximum permissible height of 13.8m Through these provisions the maximum permissible floor space The majority of the proposed design is fully compliant with these bulk, scale and density standards, and a request to vary the maximum building height is included as part of this application.

It is argued that the proposed bulk and scale results in negligible to minor impact on adjoining sites and the public domain than would a fully compliant design.

Overshadowing

Solar access diagrams provided with the application demonstrate that the extent of shadow cast by the proposed development is consistent with anticipated impacts on adjoining residential land.

Privacy and visual impacts

The proposed building is appropriately setback from adjoining sites and can otherwise provide standard privacy impact mitigating measures including a quality landscaping regime to ensure it will not give rise to privacy impacts and visual impacts. Additionally, the site orientation and topography in relation to adjoining land (in conjunction with the proposed design), ensures visual impacts are reasonable, given the development as proposed has been established with respect to the relevant development standards within the Housing SEPP, and through the application of good design principles.

Acoustic

The residential land use proposed is not likely to give rise to adverse acoustic impact.

Traffic and parking

A traffic and parking report accompanies this application in support of the proposal. Parking with satisfactory access is proposed. Accessible parking is available, and parking is adequately secure.

Social and economic impacts

It is to the benefit of the local government area to develop the currently underdeveloped site. Improved residential floor space will provide much needed seniors housing in perpetuity, and enhance the local economy. The additional downsized residential accommodation will likely free up larger dwellings for younger families throughout the locality.

5.7 THE SUITABILITY OF THE SITE - SECTION 4.15(C)

Section 4.15(c) requires the consent authority to consider:

“(c) the suitability of the site for the development.”

The existing development site and the adjacent sites do not provide any unresolvable constraints which would render the site unsuitable for development as proposed.

5.8 SUBMISSIONS - SECTION 4.15(D)

Section 4.15(d) requires the consent authority to consider:

“(d) any submissions made in accordance with this Act or the regulations”.

Any relevant submissions will require consideration by the consent authority in the determination of this proposal. The applicant will also seek the opportunity to respond to submissions if received after exhibition of this proposal.

5.9 PUBLIC INTEREST - SECTION 4.15(E)

Section 4.15(e) requires the consent authority to consider:

“(e) the public interest”.

The public interest is best achieved by the orderly and economic use of land for permissible purposes that do not impact unreasonably on development and/or enjoyment of surrounding land. In this

case, it is considered that this proposal represents an efficient, orderly and economic use of land while also satisfying a market demand for affordable rental accommodation.

The proposal is in the public interest as it will:

- allow for the redevelopment of an underutilised site;
- be an aesthetically pleasing addition to the precinct; and,
- provide seniors housing within a location of excellent natural amenity and surrounds.

5.10 DEVELOPMENT CONTROL PLANS- SECTION 4.15(3A)

Section 4.15(3A) of the Act the Environmental Planning and Assessment Act, 1979 requires Councils to be flexible in applying any provisions that apply to a proposal and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

As stated in this statement, the proposed development warrants a flexible application of the DCP as the proposal meets the applicable objectives of the controls and will provide a high level of amenity for future residents, without adversely impacting on the natural, social and built environments.

6 Conclusion

This proposal relates to the provision of a seniors housing development. The proposed land use is permissible within the R3 zone. This proposal is to occur upon a site surrounded by excellent natural amenity and which is large enough to support the scale of the development.

It is considered that the proposed development satisfies the relevant zone objectives and satisfies the provisions in the State Environmental Planning Policy Housing 2021. In particular, this proposal relates to development of land for residential purposes for which access to local services will be made exclusive.

The building designs are considered contemporary and desirable with respect to development character statements for the locality. The overall amenity within the development is considered exceptional, being entirely accessible, with opportunities for social and recreational interaction as well facilities promoting health and wellbeing.

The proposed development as submitted has the potential to deliver an attractive and needed seniors housing development to the locality and is deserving a positive determination from the consent authority.

Appendix 1 – Housing SEPP Schedule 4 Consistency Table

The following table summarises the **Housing SEPP – Schedule 4** compliance requirements for independent living units.

Clause	Guidance	Comment	Consistency
Schedule 4: Standards concerning accessibility and usability for hostels and independent living units			
Part 1 Standards applying to hostels and independent living units			
1 Application of standards in this Part	The standards set out in this Part apply to any seniors housing that consists of hostels or independent living units.	Noted. Accompanying this application is the architects SEPP 65 Design Verification Statement which underscores the following comments in relation to compliance.	
2 Siting standards	<p>(1) Wheelchair access If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.</p> <p>(2) If the whole of the site does not have a gradient of less than 1:10—</p> <p>(a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and</p> <p>(b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.</p> <p>Note— For example, if 70% of the site has a gradient of less than 1:10, then 70% of the dwellings must have wheelchair access as required by this subsection. If more than 50% of the site has a gradient greater than 1:10, development for the purposes of seniors housing is likely to be unable to meet these requirements.</p> <p>(3) Common areas Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and</p>	An accessibility report accompanies this application identifying that the development in whole is accessible across all the facilities for future residents and visitors.	YES

Clause	Guidance	Comment	Consistency
	common facilities associated with the development.		
3 Security	<p>Pathway lighting—</p> <p>(a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and</p> <p>(b) must provide at least 20 lux at ground level.</p>	Lighting design to meet these standards can be provided and insisted upon by conditions of any consent.	Able to comply (by condition)
4 Letterboxes	<p>Letterboxes—</p> <p>(a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and</p> <p>(b) must be lockable, and</p> <p>(c) must be located together in a central location adjacent to the street entry or, in the case of independent living units, must be located together in one or more central locations adjacent to the street entry.</p>	The Letterbox room is accessible and is located adjacent the main entry lobby of the development. Otherwise the requirements to ensure compliance with the provisions can be insisted upon by conditions of any consent.	Able to comply (by condition)
5 Private car accommodation	<p>If car parking (not being car parking for employees) is provided—</p> <p>(a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890.6, and</p> <p>(b) 10% of the total number of car parking spaces (or at least one space if there are fewer than 10 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and</p> <p>(c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.</p>		
6 Accessible entry	Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.	An accessibility report accompanies this application identifying that the development in whole is accessible across all the facilities	YES

Clause	Guidance	Comment	Consistency
		for future residents and visitors.	
7 Interior: general	<p>(1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.</p> <p>(2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres.</p> <p>(3) Circulation space at approaches to internal doorways must comply with AS 1428.1.</p>	An accessibility report accompanies this application identifying that the development in whole is accessible across all the facilities for future residents and visitors.	YES
8 Bedroom	<p>At least one bedroom within each dwelling must have—</p> <p>(a) an area sufficient to accommodate a wardrobe and a bed sized as follows—</p> <p>(i) in the case of a dwelling in a hostel—a single-size bed,</p> <p>(ii) in the case of an independent living unit—a queen-size bed, and</p> <p>(b) a clear area for the bed of at least—</p> <p>(i) 1,200 millimetres wide at the foot of the bed, and</p> <p>(ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and</p> <p>(c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</p> <p>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</p> <p>(e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and</p> <p>(f) wiring to allow a potential illumination level of at least 300 lux.</p>	The architectural plans indicate that in all instances, the bedroom facilities enable the appropriate amount of amenity as required by the provisions for each bedroom.	YES (able to comply)
9 Bathroom	<p>(1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1—</p> <p>(a) a slip-resistant floor surface,</p> <p>(b) a washbasin with plumbing that would allow, either immediately or in the</p>	All independent living unit bathrooms comply and/or can be conditioned to comply as required by the provisions for each bathroom.	YES (able to comply)

Clause	Guidance	Comment	Consistency
	<p>future, clearances that comply with AS 1428.1,</p> <p>(c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future—</p> <p>(i) a grab rail,</p> <p>(ii) portable shower head,</p> <p>(iii) folding seat,</p> <p>(d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,</p> <p>(e) a double general power outlet beside the mirror.</p> <p>(2) Subsection (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.</p>		
10 Toilet	A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.	All independent living unit bathrooms comply and/or can be conditioned to comply as required by the provisions for each bathroom.	YES (able to comply)
11 Surface finishes	Balconies and external paved areas must have slip-resistant surfaces. <i>Note— Advise regarding finishes may be obtained from AS 1428.1.</i>	All independent living unit balconies comply and/or can be conditioned to comply as required by the provisions for each balcony.	YES (able to comply)
12 Door hardware	Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance with AS 4299.	All independent living unit door handles comply and/or can be conditioned to comply as required by the provisions for each unit.	YES (able to comply)
13 Ancillary items	Switches and power points must be provided in accordance with AS 4299.	All independent living unit switches and power points comply and/or can be conditioned to comply as required by the provisions for each unit.	YES (able to comply)
Part 2 Additional standards for independent living units			
14 Application of standards in this Part	The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of independent living units.	Noted. Accompanying this application is the architects SEPP 65 Design Verification Statement which underscores the following comments in relation to compliance.	

Clause	Guidance	Comment	Consistency
15 Living room and dining room	<p>(1) A living room in an independent living unit must have—</p> <p>(a) a circulation space in accordance with clause 4.7.1 of AS 4299, and</p> <p>(b) a telephone adjacent to a general power outlet.</p> <p>(2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.</p>	The architectural plans indicate that in all instances, the living and dining room facilities enable the appropriate amount of amenity as required by the provisions for each living and dining room, and can otherwise be conditioned to comply.	YES (able to comply)
16 Kitchen	<p>A kitchen in an independent living unit must have—</p> <p>(a) a circulation space in accordance with clause 4.5.2 of AS 4299, and</p> <p>(b) a circulation space at door approaches that complies with AS 1428.1, and</p> <p>(c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299—</p> <p>(i) benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5(a),</p> <p>(ii) a tap set (see clause 4.5.6),</p> <p>(iii) cooktops (see clause 4.5.7), except that an isolating switch must be included,</p> <p>(iv) an oven (see clause 4.5.8), and</p> <p>(d) “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and</p> <p>(e) general power outlets—</p> <p>(i) at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and</p> <p>(ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.</p>	The architectural plans indicate that in all instances, the living and dining room facilities enable the appropriate amount of amenity as required by the provisions for each living and dining room, and can otherwise be conditioned to comply.	YES (able to comply)
17 Access to kitchen, main bedroom, bathroom and toilet	In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	The architectural plans indicate that in all instances, the living and dining room facilities enable the appropriate amount of amenity as required by the provisions for each living and dining room, and can otherwise be conditioned to comply.	YES (able to comply)
18 Lifts in multi-storey buildings	In a multi-storey building containing separate independent living units on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the Building Code of Australia.	Lifts are provided within the multi-storey development in compliance with the BCA.	YES

Clause	Guidance	Comment	Consistency
19 Laundry	An independent living unit must have a laundry that has— (a) a circulation space at door approaches that complies with AS 1428.1, and (b) provision for the installation of an automatic washing machine and a clothes dryer, and (c) a clear space in front of appliances of at least 1,300 millimetres, and (d) a slip-resistant floor surface, and (e) an accessible path of travel to any clothes line provided in relation to the dwelling.	A laundry is provided within each unit in accordance with the provisions and /or can be conditioned to comply.	YES (able to comply)
20 Storage for linen	An independent living unit must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.	Linen storage is provided within each unit in accordance with the provisions and /or can be conditioned to comply.	YES (able to comply)
21 Garbage	A garbage storage area must be provided in an accessible location.	The garbage storage Ground level room and upper level shutes are accessible to all future residents within the development.	YES

Appendix 2 - Clause 4.6 Request for Variation – Height of Buildings

1 Introduction

This request has been prepared as the Applicant's Written Request for Variation to a Development Standard and is made in accordance with the provisions of clause 4.6 of the *Standard Instrument – Principal Local Environmental Plan 2006, as amended (LEP)*.

The Request for Variation is made in respect of a Development Application for a Seniors Housing development located across two (2) distinct buildings, one of four (4) levels and the other being the main building with five (5) levels over a basement.

The development is proposed over the subject land known as 83 Lakewood Drive, Merimbula, and legally described as Lot 602 DP1277714.

The site of the development is shown in figure 1. The site area is 28,678sqm.

The total gross floor area of the proposed development is 13,622sqm, which is below maximum allowable gross floor area when applying the additional floor space ratios of State Environmental Planning Policy (Housing) 2021 (Housing SEPP). That is, the proposed development provides for 0.61:1 floor space ratio which complies with the additional floor space ratio of up to 15% of the permissible floor space ratio of 0.6:1. That is, the applicable floor space ratio is 0.69:1.

The development will read as a well-designed, contemporary residential flat building with curved awning and balcony elements across the built form facades. The building's design and orientation is responsive to the primary street frontage and views to Merimbula Lake. The design is also responsive to this site's bushfire hazard and ecological value development constraints, and is located on the site and to not be affected by the vegetation hazard, and to not affect the environmentally sensitive aspects of the land,

The Request for Variation relates to **clause 84 Development standards – general** as applied through **clause 87(c) additional floor space ratios** of the Housing SEPP, which sets a maximum building height of 13.8 metres, being an additional 3.8m above the maximum permitted building height of 10m set by Bega Valley Local Environment Plan 2013 (BVLEP). The roof and lift overruns of both buildings exceed the height limit, with maximum height associated with the top floor of the western building and the top floor of the eastern building at 15.8 metres. This is an exceedance and non-compliance of 2 metres or 14.49 per cent. The exceedance of the height limit is demonstrated in figure 2.

The proposed non-compliance arises as a consequence of the significant slope beneath the footprint of the buildings, the need to retain level floors for accessibility within a rationally designed built form, and through site constraints relating to a bushfire hazard asset protection zone.

The roof, and lift overrun exceedances will not be easily perceptible from ground level or the public domain, nor will they cause any additional, noticeable overshadowing than a fully compliant design. In preparing this Request for Variation, the requirements of clause 4.6 of the LEP have been strictly met. The

Request for Variation has been generally set out in accordance with the structure recommended by the Department of Planning in its publication entitled Varying Development Standards – A Guide.

In very brief terms, this variation request says that:

- The intensity of the proposed development accords with the planned intensity in the existing Bega Valley Local Environmental Plan 2013 (BVLEP) with built-form concessions applied through the Housing SEPP. This planned intensity forms part of a considered approach to enable the provision of quality seniors housing development, to support a cohort of the community requiring such residential accommodation.
- The height of the proposed development is consistent with the desired future character of the area as applied through the Housing SEPP – contributing to the desired medium density environment in providing a permissible residential flat building typology.
- The setbacks and design characteristics of the proposal are aligned to manage bulk, scale and other visual impacts.
- Any minor additions to the shadowing arising from the building height exceedance will not cause an additional material impact in contravention of any solar access controls.
- There are no adverse impacts to the public domain as a result of the non-compliance with the height of buildings development standard.
- The proposed development is in the public interest because it is consistent with:
 - the objectives of the height control standard; and
 - the objectives for development within the zone in which the development is proposed to be carried out.
- Requiring strict compliance with the height control is unreasonable in the circumstances of the case. This because:
 - requiring such compliance will thwart or undermine key principles of the Housing SEPP within which built-form concessions are intended be applied in achieving those same principles, being incentivisation for developers to provide socially beneficial housing.
- Requiring strict compliance with the height control is unnecessary in the circumstances of the case. The land zoning, permissible forms of development and development standards as provided for, articulate the desired future character of the locality and anticipated development bulk and scale, combined with the Housing SEPP's need to secure good design outcomes with measures. The increased height as proposed has no discernible effect on the bulk of the buildings. The proposed development remains consistent with the desired future character of the locality
- There are sufficient environmental planning grounds to justify contravening the height control. This is because, if the variation is not approved there will be an adverse environmental planning consequence. That being, the height of the buildings would need to be reduced by one story, which would exclude the development in benefitting from the available concessions to enable

more seniors housing. The grant of development consent with the variation to the height of buildings development standard will avoid that outcome.

- The contravention of the development standard does not raise any matter of significance for State or regional environmental planning.
- There is no public benefit of maintaining the development standard in the present circumstances (and there is public benefit in varying the standard). This is because there are site specific circumstances to which the proposed building height responds. The proposed variation will not set an undesirable precedent for sites not sharing those same site-specific characteristics. The absence of public benefit from strict application of the standard in this instance is also because the height of buildings as proposed is consistent with the objectives of the standard and the zone and therefore consistent with the public interest.



Figure 1: Aerial Photograph (Detailed Site View)

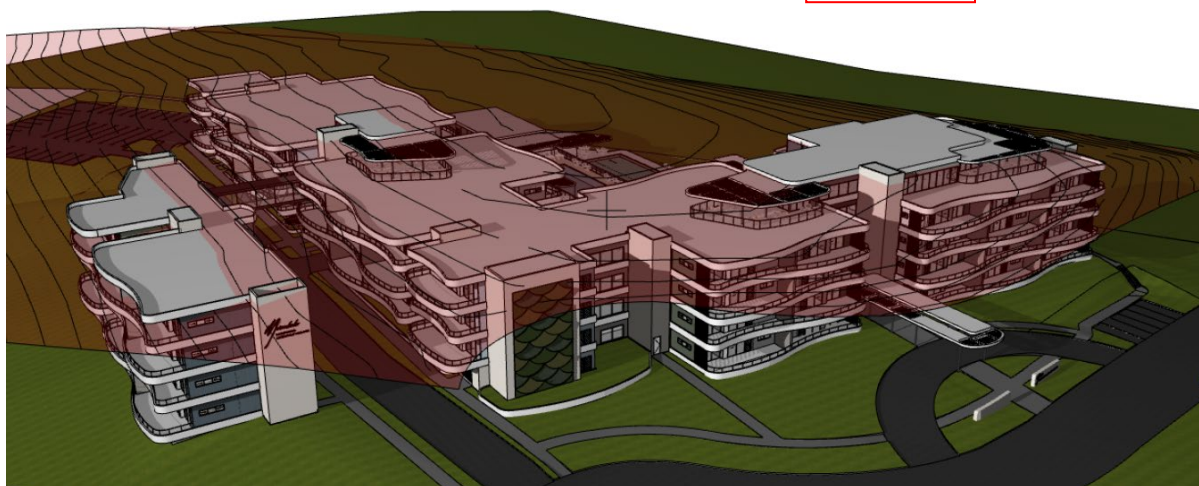


Figure 2: Extract of Height Plane Diagram

2 Background and Development Description (including development and site analysis)

2.1 Development Description

This Development Application seeks development consent for:

Construction

A Seniors Housing development located across two (2) distinct buildings, one of four (4) levels and the other being the main building with five (5) levels over a basement, consisting of;

Main Building (consisting of 77 independent living units across 4 levels)

Basement Level of the Main Building

- 30 car-spaces for residents (including 20 accessible) accessed from the internal driveway which accesses Lakewood Drive via the cul-de-sac,
- a turning area,
- ramp up to ground floor,
- three (3) carpark foyers, two (2) with access to two (2) lifts each to access the upper floors,
- electrical services room, and
- an accessible WC.

Ground Floor of the Main Building

- front main pedestrian entry from Lakewood Drive which accesses Lakewood Drive,
- main entry foyer,
- 2 x lifts to access the basement and upper floors,
- letterboxes room,
- services cabinet, and
- accessible WC
- corridor accessing ground floor apartments and garbage store,
- eight (8) x 2 bedroom independent living units, each with a courtyard, and
- garbage store with internal corridor access and external driveway access for servicing.
- corridor accessing the administration/staff quarters,
- administration entry/waiting area, reception, meeting room, offices, lunchroom WCs, storage/print room, and
- greens keeper maintenance room and storage room, and swimming pool pump room and chemical store.

Ground Floor of the Main Building associated site layout

- covered external pathway accessing external social and recreation amenities,
- 2 x bowling greens and seating area with associated tables and chairs with awning over,
- bowling club house with kitchen and bar, sanitary facilities, and storage rooms, and
- a lift up to the Level 1 swimming pool level.
- corridor accessing the under-croft car park,
- 61 car-spaces in the under-croft car park for residents (including 43 accessible) accessed from the internal driveway which accesses Lakewood Drive via the cul-de-sac,
- ramp down to basement, and
- two (2) carpark foyers, one (1) with access to two (2) lifts to access the basement and upper floors,
- a men's shed with sanitary facilities, storage, workshop, accessible WC and external

courtyard.

- six (6) times fire stairs,
- landscaping and garden beds along the buildings.
- external visitor and staff car park with 45 car-spaces (including one accessible), and
- 5 visitor car-spaces located partially within the road reserve along the primary road frontage in Lakewood Drive (including one accessible).

Level 1 of the Main Building

- 2 x lift foyers,
- 2 x lifts per each foyer to access the lower and upper floors, and
- accessible WC.
- corridor accessing Level 1 apartments, and social and recreational amenities,
- twenty-three (23) x 2 bedroom independent living units, each with a balcony,
- a games/pool room,
- a beauty/hair salon,
- 2 x sitting rooms,
- waste shute room, and
- 6 x fire stairs,

Level 1 of the Main Building associated site layout

- access to external social and recreation amenities,
- swimming pool and spa and associated seating areas and garden terrace with awnings over,
- pool house with sanitary facilities, sauna, kitchenette, external and internal shower, and
- associated gardens and landscaped areas.

Level 2 of the Main Building

- 2 x lift foyers,
- 2 x lifts per each foyer to access the lower and upper floors, and
- accessible WC.
- corridor accessing Level 2 apartments, and social and recreational amenities,
- twenty-three (23) x 2 bedroom independent living units, each with a balcony,
- a library and lounge,
- a craft area,
- a sitting room,
- waste shute room,
- 6 x fire stairs, and
- an air-bridge over the internal driveway linking this building to the main building.

Level 3 of the Main Building

- 2 x lift foyers,
- 2 x lifts per each foyer to access the lower and upper floors, and
- accessible WC.
- corridor accessing Level 3 apartments, and social and recreational amenities,
- twenty-three (23) x 2 bedroom independent living units, each with a balcony,
- a gym,
- a consult room,
- 2 x sitting rooms,
- waste shute room, and
- 6 x fire stairs,

Level 4 of the Main Building

- 2 x lifts per each lift lobby to access the lower floors, and
- 2 x accessible WC.
- A function/multi-use room with kitchen and bar areas and associated seating,
- sanitary facilities, and
- 2 x outdoor (rooftop) terraces, and a fire stair
- a separate internal and outdoor rooftop terrace, and
- a fire stair

Minor Building (consisting of 12 independent living units across 4 levels)

Ground Floor of the four (4) level Building

- front entry from internal driveway which accesses Lakewood Drive via the cul-de-sac,
- an entry and lift foyer,
- 2 x lifts to the upper floors,
- corridor accessing ground floor apartments,
- 3 x two (2) bedroom independent living units, each with a courtyard,
- a communal sitting room with access to an external communal courtyard, and
- 2 x fire stairs and exits.

Level 1 of the four (4) level Building

- lift foyer,
- 2 x lifts to the lower and upper floors,
- corridor accessing Level 1 apartments,
- 3 x two (2) bedroom independent living units, each with a balcony,
- a communal sitting room with access to an external communal balcony, and
- 2 x fire stairs and exits.

Level 2 of the four (4) level Building

- lift foyer,
- 2 x lifts to the lower and upper floors,
- corridor accessing Level 2 apartments,
- 3 x two (2) bedroom independent living units, each with a balcony,
- a communal sitting room with access to an external communal balcony,
- 2 x fire stairs and exits, and
- an air-bridge over the internal driveway linking this building to the main building.

Level 3 of the four (4) level Building

- lift foyer,
- 2 x lifts to the lower floors,
- corridor accessing Level 3 apartments,
- 3 x two (2) bedroom independent living units, each with a balcony,
- a communal sitting room with access to an external communal balcony, and
- 2 x fire stairs and exits.

Roofs of both buildings

- all roofs are flat to minimise any unnecessary visual impacts, and the main building roof incorporates lift overruns.

Building Identification Signage

- 2 x signs are proposed, with one located at the front boundary on low-fencing and the other on the western most building front facing façade. The signs in stylistic black writing on the rendered fence and building façade read with lettering: "Merimbula Lakewood Lifestyle Village".

2.2 The Site

The subject development site is identified as an existing allotment located in Merimbula, on the north side of Lakewood Drive. In entirety the subject site 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 subject land is known as 83 Lakewood Drive, Merimbula, and is legally described as Lot 602 DP1277714.

The development 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 28,678sqm. The C3 Environmental Management zoned part of the site is 6,310sqm in area. The part lot is 2048sqm in area. A creek traverses the site near to 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 subject allotment is best described as vacant land with a watercourse containing significant vegetation in the northern periphery.

2.3 The Variation

The subject site is zoned R3, the proposed development is a seniors housing development with two buildings, with the maximum building height being 15.8m. This represents a maximum exceedance in height of 2m above the 13.8m maximum as per the development standard as applied through the Housing SEPP.

2.4 Proposed Development Context

This request seeks to establish the particulars of the height exceedance by providing an overview of the proposed development outcome in the context of;

- a) the design response to the site topography and identified bushfire hazard affectation, and
- b) the adjoining site existing developments,
 - a) Design Response
 - The proposed development provides a building form which;
 - i) is located towards the front of the site oriented towards the primary road frontage,
 - ii) provides equitable access across the site and building despite the topography,
 - iii) provides an appropriate and complying setback to the bushfire hazard by respecting the asset protection zone identified in the Bushfire Hazard assessment.

- b) Adjoining site existing developments,
- i) the nine (9) allotments to the east of the subject site, over which the proposed development contributes a shadow projection impact within the reasonably anticipated extent of overshadowing, as identified in the relevant development controls, despite the height exceedance.
 - ii) The three (3) allotments to the south and west of the subject site, over which the proposed development contributes a shadow projection impact within the reasonably anticipated extent of overshadowing, as identified in the relevant development controls, despite the height exceedance.

The proposed development has been designed to facilitate a complementary and modern addition to the locality in which it sits. Setbacks of the proposed development are generally compliant with the applicable development controls, and provide for an appropriate response to site constraints by providing a building envelope that responds to the existing adjoining development in being appropriately setback, while also ensuring that any prospects for adjoining development potential is not impacted upon.



Figure 3: Proposed Building West and South Elevations

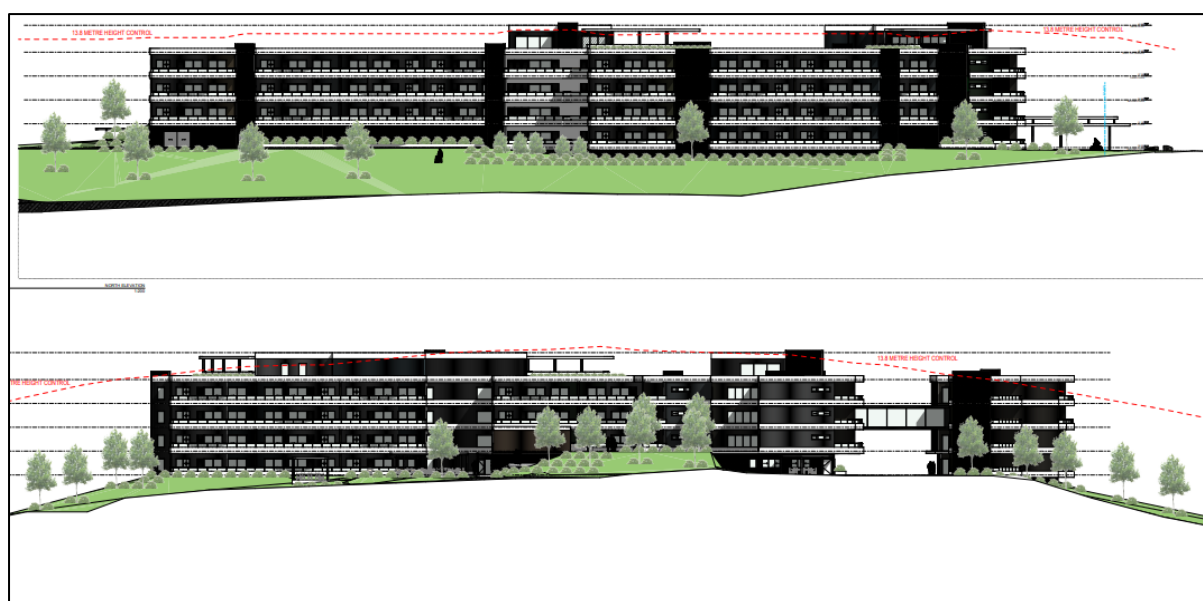
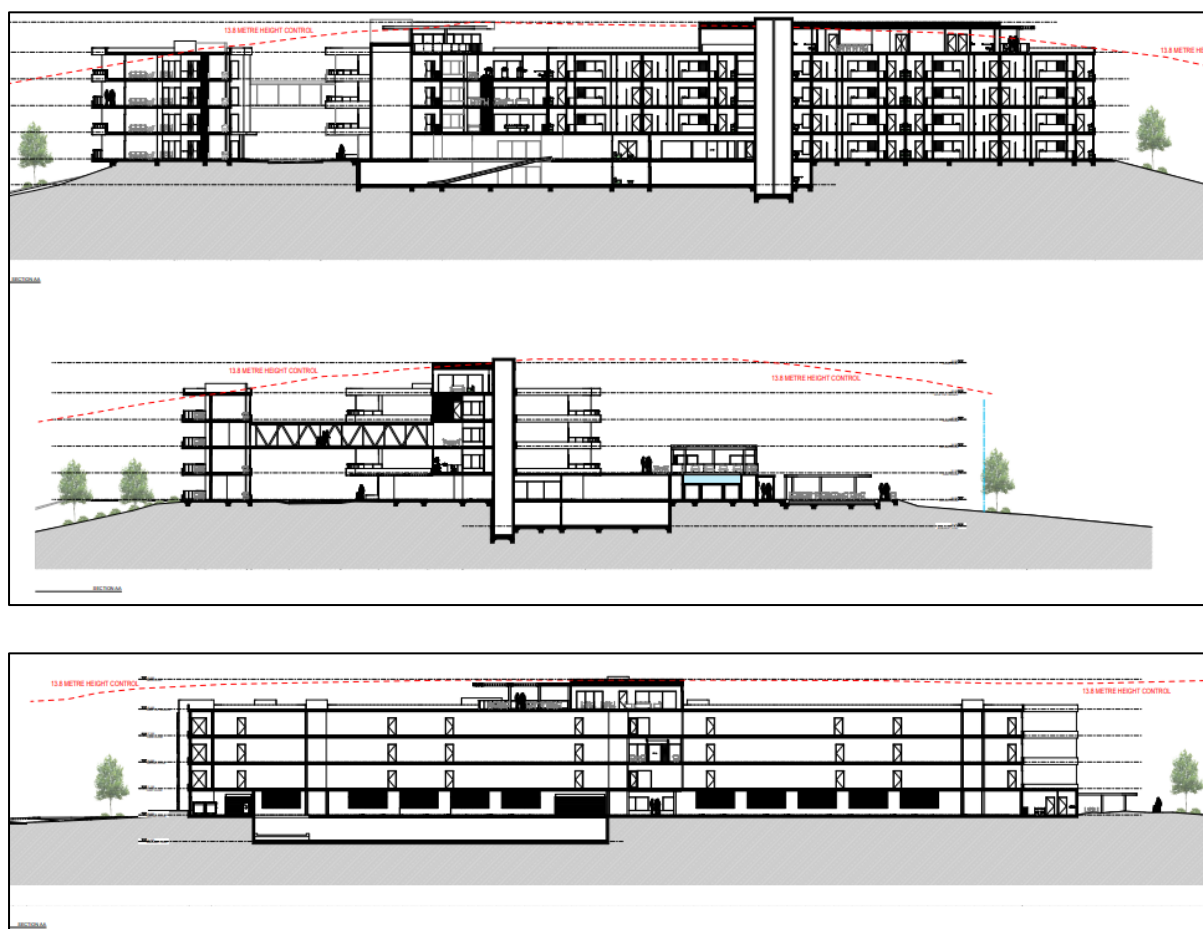


Figure 4: Proposed Building North and East Elevations



Figures 5 & 6: Proposed Building Sections

3 Clause 4.6 Request for Variation

Clause 4.6 of the Standard Instrument LEP allows for variation to development standards.

Components of Clause 4.6 relevant to the preparation of a Request for Variation are:

4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows—*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5.

Housing SEPP clause 87 is not identified as being excluded from the operation of clause 4.6. Therefore, a request to vary the development standard may be made by the applicant.

3.1 What is the name of the environmental Planning instrument that applies to the land?

State Environmental Planning Policy (Housing) 2021.

3.2 What is the zoning of the Land?

The subject site is zoned R3 Medium Density Residential.

3.3 What are the objectives of the zone?

The objectives of the R3 Medium Density Residential zone are:

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

It is considered that this proposal will satisfy the relevant zone objectives. That is, this proposal will provide new and desired residential accommodation in the form of seniors housing development in a location where a variety of residential accommodation is permitted including, residential flat buildings and boarding houses.

3.4 What is the Development Standard being varied?

The subject Request for Variation relates to the maximum height of building standard pursuant to clause 87(c) of the Housing SEPP. Therefore, the proposed development seeks exception to the 13.8m HOB standard.

3.5 What are the objectives of the Development Standard?

There are no obvious objectives of the Clause 84 and Clause 87 development standard in the Housing SEPP other than to provide a context for where heights are appropriate in context for the purpose of seniors housing. In lieu of any specific objectives it can be construed that the direct intent of this is to enable concessions to be applied where appropriate to incentivise the development community in delivering such housing. As such, consideration should be given to whether the proposed development addresses the key principles of the Housing SEPP as itemised in Clause 3 as follows;

The principles of this Policy are as follows—

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

With respect to the principles of the Housing SEPP which makes provisions for the development standard, it is argued that this proposal satisfies the principles. That is, the proposal:

- enables the development of a variety of housing which is purpose-built rental in nature, to accommodate and meet the needs of a vulnerable cohort of the community including seniors and people with a disability, within a development which delivers a high level of residential amenity and potential for social interaction.
- is located on the site to ensure it responds to the present ecological values thereby minimising environmental impact.
- is proposed to be serviced by a daily private mini-bus service to and from the site, transporting future residents to local commercial and service operations.
- reinforces the desired coastal residential built form and design as expressed for the locality, including ensuring site-wide accessibility, appropriate solar access and ventilation of all living units.
- supports short-term rental accommodation and in proposing two-bedroom independent living units encourages co-living with family members and carers, while not impacting on any existing affordable housing, being development on an existing vacant lot.

3.6 What Is the Numeric Value of the Development Standard in the Environmental Planning Instrument?

Clause 87 prescribes a maximum height of building of 3.8m, by reference to Clause 87(c) of the Housing SEPP.

3.7 What Is The Numeric Value Of The Exceedance to the Development Standard In The Development Application?

The maximum building height proposed is 15.8m. This exceeds the maximum permitted building height by 2m. The variation of exceedance is principally due to significant slope of land at the peripheries of the development footprint.

3.8 What is the percentage variation between the proposal and the environmental planning instrument?

The proposed maximum building height exceedance is 2m above the 13.8m development standard. This represents a per cent exceedance of 14.49%.

Whilst the NSW Department of Planning and Environment includes a requirement to identify the percentage variation in its *Guide to Varying Development Standards* there are a number of case law examples that demonstrate that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

The following examples relate to Floor Space Ratio and Height of Buildings development standards and assist in demonstrating that the degree of exceedance alone is not determinative in assessment of a Request for Variation to a development standard.

Clause 4.6 of the Standard Instrument LEP is in similar terms to SEPP 1. Relevantly, like SEPP 1, there are no provisions that make necessary for a consent authority to decide whether the variation is minor. This makes the Court of Appeal's decision in *Legal and General Life* equally applicable to clause 4.6. This means that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

Some examples that illustrate the wide range of commonplace numerical variations to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- (a) In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a **floor space ratio variation of 187 per cent**.
- (b) In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed use development on the basis of a clause 4.6 request that sought a **38 per cent height exceedance over a 15-metre building height standard**.
- (c) In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed use development on the basis

of a clause 4.6 request that sought a **28 per cent height exceedance over a 22-metre building height standard.**

- (d) In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **21 per cent height exceedance over a 18-metre building height standard.**

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

Even so, the actual per cent exceedance in this instance is considered minor given it is slightly greater than 10% of the development standard, and only occurs on the periphery of the proposed built form which otherwise overwhelmingly complies, as quantified through the figures within this request for a variation.

3.9 How is strict compliance with the development unreasonable or unnecessary in this particular case?

The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) sets out five ways in which strict compliance with a development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of the case.

The 5 ways are:

1. *if the proposed development proffers an alternative means of achieving the [development standard] objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served);*
2. *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary*
3. *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *"the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Compliance with a development standard might be shown as unreasonable or unnecessary in circumstances where the development achieves the objectives of the development standard, notwithstanding non-compliance with the development standard. Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved.

Reference should be made to figures 2, 3, 4, 5, and 6 above of this document, for a clear understanding of site topography and limited extent of height exceedance.

Strict compliance with the HOB development standard is considered to be unreasonable and unnecessary in the circumstances of the case for the following reasons:

The proposal achieves the objectives of the Zone.

As detailed above, this proposal achieves the objectives of the zone. That is, this proposal will make viable, new seniors housing residential accommodation in a local community in which such a form of housing is needed, in a medium density residential built form, which will not affect the viability of adjoining land to develop for the purposes of the zone, and is unlikely to detract from the viability of other uses within the zone.

The proposal achieves the objectives of the development standard

As detailed above, this proposal satisfies the principles of the Housing SEPP in lieu of development standard objectives.

Sufficient environmental planning grounds to justify contravening the development standard

The term "environmental planning grounds" is not defined in any environmental planning instrument. It is also not defined in the Department of Planning's Guide to Varying Development Standards

Nevertheless, given that demonstration of sufficient environmental planning grounds is a separate test under clause 4.6(3) to the test of "unreasonable or unnecessary in the circumstances of the case"; and that case law relevant to SEPP 1 such as *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) and *Winten Property v North Sydney* (2001) 130 LGERA 79 deal with demonstration of "unreasonable and unnecessary in the circumstances of the case", it must therefore be concluded that "environmental planning grounds" are a different test which cannot necessarily rely on the same methodology as laid down in SEPP 1 relevant Court decisions.

The matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (30 January 2015) provides some helpful guidance on the subject of "environmental planning grounds", however it is in fact limited to defining some factors which are not environmental planning grounds. Paragraph 60 of Commissioner Pearson's decision states:

*The environmental planning grounds identified in the written request are the public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre; access to areas of employment, educational facilities, entertainment and open space; provision of increased employment opportunities through the ground floor retail/business space; and an increase in the available housing stock. I accept that the proposed development would provide those public benefits, however any development for a mixed use development on this site would provide those benefits, as would any similar development on any of the sites on Liverpool Road in the vicinity of the subject site that are also in the B4 zone. **These grounds are not particular to the circumstances of this proposed development on this site.** To accept a departure from the development standard in that context would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land, which is an objective of the Act (s 5(a)(iii)) and which it can be assumed*

is within the scope of the “environmental planning grounds” referred to in cl 4.6(4)(a)(i) of the LEP. (emphasis added)

30. On Appeal in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (3 June 2015), the Court considered whether the Commissioner had erred in law in confining environmental planning grounds to those particular to a site or proposed development. The Court held at [29] and [30] that this was a matter which the Commissioner was entitled to consider in her exercising of discretion:

Turning to the first ground of appeal, it refers to a finding of the Commissioner at [60] in relation to the environmental planning grounds identified in the written request, as required by cl 4.6(3)(b). The Commissioner concluded that the grounds referred to were not particular to the circumstances of the proposed development on the particular site. Firstly, it is debatable that this ground of appeal couched as the misconstruction of subclause (4)(a)(i) does identify a question of law. The Commissioner's finding, that the grounds relied on in the written report were not particular to the circumstances of the proposed development on this particular site, is one of fact. That informed her finding of whether the grounds put forward were sufficient environmental planning grounds.

To the extent the issue raised can be described as a question of mixed fact and law, the Commissioner is exercising a discretion under subclause (4)(a)(i) in relation to the written report where the terms in subclause (3)(b) of sufficient environmental planning grounds are not defined and have wide import,

From this we interpret that particular circumstances of the site or development is an appropriate (although not exclusive) filter through which to view the sufficiency of environmental planning grounds.

In the absence of a legislative or other definition we adopt a definition for “environmental planning grounds” as ‘any matter arising from consideration of either Section 4.15 of the EP&A Act 1979 or its Objectives which in the circumstances of the particular development on the particular site, warrants variation from the development standard’.

Based on that methodology, the environmental planning grounds which support variation to the HOB standard in this instance are:

Environmental Planning Ground 1 – Negligible amenity or visual impacts

Numerically, the HOB for maximum building height exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given that the overall scheme provides an appropriately sized building complying with the bonus FSR concessions, which are utilised along with the HOB standard to restrict a development's bulk, form and scale.

It is argued that the exceedance in height does not cause unreasonable impact and satisfies the objectives of the standard, and any additional impact on the adjoining land to the west, south, and east will be minimal. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional HOB, which is proposed.

Environmental Planning Ground 2 – Street Character

The proposed development represents an excellent design outcome. The particular design, in the context of this particular site means that the excess HOB is not easily perceived from the public domain given that the building is well setback from all boundaries while being oriented to address the street.

Furthermore, the environmental planning grounds which support variation to the standard in this instance are that the particular design in the context of this particular site means that the non-complying building height is not obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls. The HOB exceedance allows for the achievement of each of the zone objectives and the Housing SEPP principles.

Environmental Planning Ground 3 – Site topography and bushfire hazard affectation

The proposed development is viable despite the significant slopes towards the north-west and south-east of the site, falling from a ridge which traverses the site, and despite the bushfire hazard associated primarily with the creek in the north-west of the site.

The Bushfire affectation as identified in a Bushfire Hazard Assessment Report requires that the proposed buildings are located towards the south of the site outside of an asset protection zone, rather than across the site. This restricts the built form to that part of the site most affected by the site topography. That is, although complying in the majority with the bonus height concessions in being able to provide additional floor space, the upper levels exceed this along their periphery primarily to the west and south-east of the site. A combination of the site topography and bushfire hazard affecting the development are the major contributing factors in the development standard exceedance, of what would otherwise be an entirely compliant building height. In this instance, the design response to the site constraint although resulting in minor non-compliance, positively resolves the consideration of those site affectations.

It is argued that to not respond in this manner would either undermine the intent of the key principles of the Housing SEPP and would result in a more impoverished built form from that proposed. The outcome would result in adverse environmental planning consequences, being that of less seniors housing development yield, where the Housing SEPP (through application of the additional floor space ratio provisions) seeks instead more opportunities for that form of development. The grant of development consent to the proposed design delivers sufficient environmental planning grounds to support the additional HOB.

Public Interest

The proposed development will be in the public interest because it is consistent with the key principles of the Housing SEPP for seniors housing, and the objectives of the zone. As the Court recently reminded in *Initial Action* (2018) at [26] – [27], this is what is required, rather than broad statements about general 'public interest' considerations at large.

The arguments outlined earlier in relation to consistency with Housing SEPP principles and R3 zone objectives of the BVLEP 2013 are relied upon as detailed above, and it is considered that the provision of additional seniors housing as intended in the Housing SEPP for this site, is definitely in the public's interest.

Secretary's Concurrence

It is understood that the Secretary's concurrence under clause 4.6(4) of CLEP 2010 has been delegated to Council. Nevertheless, Council may wish to consider the concurrence requirements, being:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

In this matter, for the reasons outlined above – and particularly having regard to the minimal adverse amenity impacts stemming from the non-compliance – there is nothing about this proposed variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters required to be taken into consideration before granting concurrence.

Conclusion

For the reasons outlined above, the objection to Clause 87(c) of Housing SEPP is considered well-founded on the basis that the development in fact demonstrates achievement of the principles of the policy and the objectives of the R3 zone. In this regard, strict compliance with the development standard is considered unreasonable or unnecessary, particularly noting the following:

- there are no unreasonable impacts associated with the proposed development with respect to overshadowing, amenity and privacy concerns;
- the proposed development is consistent with the desired future character of the area in relation to the building bulk, form and scale (with bonus' applied); and,
- the proposed development is not an overdevelopment, and would otherwise be entirely compliant were it not required to respond to the bushfire affectation and site topography.

As demonstrated within this submission and the Architectural plans, the overall massing, scale, bulk and height of the proposed development is considered appropriate to the locality.

Council can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standards.

It is therefore requested that the Council not withhold development consent for the proposed development due to a noncompliance with the HOB development standard.

Appendix 3 – Development Control Consistency Summary Table

The following table summarises the most relevant (not all) development controls and compliance with such controls.

Clause	Guidance	Comment	Consistency
Part 1: Preliminary			
Sections 1.1 to 1.10	These sections provide information regarding the name, adoption, purpose, application, structure of the DCP, as well as guidance for the making DAs and proposing variations, DCP amendments, and definitions.	Noted	
Part 2: Commercial and Industrial Development			
Sections 2.1 to 2.8	These sections contain provisions for development in Bega, Bermagui, Eden, Merimbula, and Pambula Town Centres, as well as general and specific requirements for commercial, retail and industrial development.	This section of the DCP does not apply to this development which proposed Seniors Housing, and it not located within a town centre.	N/A
Part 3: Residential Development			
Section 3.1 Residential Character Statements (only relevant being) 3.1.10 Merimbula	3.1.10.2 Desired Future Character <ul style="list-style-type: none"> - Retain "coastal village charm". - New development to be responsive to ocean or lakes, site orientation and solar access, available view, climate, prevailing winds and topography. - Development designs to incorporate elements suitable for and typical of "beach" or "coastal" homes, therefore historical style are not desirable. - Non-oceanfront parts of Merimbula are set more in a "bushland" environment and subtly different architectural themes and colours may be more appropriate. 	<p>The subject site not located within view of the Merimbula Town Centre nor the oceanfront, but has views of Merimbula Lake.</p> <p>While the character statement for the desired future is primarily focused on houses, it is argued that the proposed Seniors Housing development is consistent with it as follows:</p> <ul style="list-style-type: none"> - it adds another form of housing to the existing, established eclectic variety and manner of housing in the locality. - it is responsive to Merimbula Lake views, directly addressing through the use of site topography a suitably located built form. - it is designed to ensure appropriate 	YES

Clause	Guidance	Comment	Consistency
		<p>solar access and ventilation.</p> <ul style="list-style-type: none"> - it is a design suitable for contemporary coastal living and does not seek to mimic any form of undesirable historical residential design styles. 	
Section 3.2 General Requirements	<p><u>3.2.1 Design</u></p> <p>3.2.1.1 Building Footprint - <i>The bulk and scale of the development must be in keeping with the size and shape of the allotment.</i></p>	<p>The proposed built form bulk and scale is considered to appropriately respond to the size, shape and irregular dimensions of the allotment, and utilises available floor space and height concessions available to this needed form of housing within the community.</p>	YES
	<p>3.2.1.2 Streetscape – <i>The development must be well proportioned when viewed from neighbouring properties and the street.</i></p>	<p>The site is generally isolated from other development within the street and is located at the end of a cul-de-sac. The proposed development takes advantage of its aspect and topography without negatively affecting visual amenity of the public domain within the locality, generally.</p>	YES
	<p>3.2.1.3 Character and Form –</p> <ul style="list-style-type: none"> • <i>The design will use a variety of building materials and colours that take into account the appearance of the development and the reflectivity of the finish.</i> 	<p>A variety of building materials and colours are provided for and are presented in the architectural package accompanying this application.</p>	YES
	<ul style="list-style-type: none"> • <i>The predominate 'base' colours must be light, natural and earthy. Highlight colours must be considered on features such as window frames, doors, letterboxes, feature walls and down pipes to create contrast.</i> • <i>The roof profile and design of a development will be appropriately detailed. The pitch of the roof in terms of height or flatness will be in keeping with the proportions of the building and be able to accommodate solar panels</i> • <i>The use of hard surface materials will be minimised through the design and use materials other than plain concrete or bitumen. Long gun-barrelled driveways must be avoided.</i> 	<p>The predominant base colours are light, natural and earthy, utilising, white and grey, with contrasts in a coastal colour palate with timber screening.</p> <p>The roof forms are essentially flat due to the broad nature of the building footprints, and are profiled through curvature along their edges in unity with the balcony edges below. The roof will be able to accommodate solar panels.</p> <p>Hard surface materials are used, but within the setting of the development contributing generous open space and landscaped areas. The proposed long and</p>	

Clause	Guidance	Comment	Consistency
	<p>•The mirror imaging of facades is not acceptable.</p> <p>•The design of windows and decks will be integrated into the overall architectural form and provide for the casual surveillance of the street.</p> <p>3.2.1.4 Context and Articulation</p> <p>These controls relate to individual dwellings on small allotments and are not translatable to anticipated built form outcomes as proposed.</p> <p>3.2.2 Amenity 3.2.2.1 Privacy</p> <p>•Buildings will be designed and orientated to minimise overlooking of adjoining development and private recreation areas. Roof top terraces are not an acceptable design solution due to the visual and acoustic impact.</p> <p>•The placement of windows, decks and external recreation space, including pools, will have regard to the visual and acoustic privacy needs of the future occupants and neighbouring development.</p> <p>•Design elements such as obscure glass will be incorporated where openings required for light and ventilation overlook or intrude upon adjoining residences. Privacy</p>	<p>straight driveway is located at the end of the cul-de-sac to not unreasonably impact on the streetscape, is provided with landscaping along both edges, and is considered the most efficient design for an otherwise topographically challenging allotment.</p> <p>The front façade is well articulated and modulated to ensure visual interest in the design.</p> <p>The proposed windows and balconies are integrated into the architectural form of the building and provide appropriate casual surveillance of the street.</p> <p>The development proposal is for a Seniors Housing complex and not individual dwellings.</p> <p>The majority of the proposed development results in minimal privacy impact, generally with views obtained from the development focused towards the south and west, away from adjoining sites. Inadvertent privacy impacts into the rear yards of adjoining low density lots, which could be obtained from a seated position on proposed balconies can be mitigated through the installation of translucent/obscure/opaque balustrades. Additionally, the upper floor terraces are screened from viewing into adjoining sites.</p> <p>The elevated pool and pool deck are provided with screening along its entire south-eastern edge to ensure privacy to future occupants and adjoining allotments.</p> <p>The proposed development includes opportunities to provide translucent/obscure/opaque finishes to windows, balconies</p>	N/A

Clause	Guidance	Comment	Consistency
	<p>screens may also be required in certain circumstances or additional landscaping provided.</p> <ul style="list-style-type: none"> • Driveways and parking areas will be located and designed to minimise noise disturbance and visual intrusion upon neighbours. 	<p>and screens to mitigate privacy impact.</p> <p>The driveway is located away from adjoining lots, and the rear at-grade visitor/staff car-park is located setback off an adjoining site boundary, with a deep-soil buffer in which an effective landscaped screen can be established and managed to reduce noise disturbance and visual intrusion.</p>	YES
	<p>3.2.2.2 Open Space</p> <ul style="list-style-type: none"> • Private open space will be enhanced by landscaping, screening, walls and fences to minimise overlooking and must be accessible from the main habitable rooms of the development. • It may only be located within the front setback if it can be demonstrated that no other site option exists. In this instance the private open space must be landscaped and screened to provide privacy. • Each dwelling at ground level must provide a minimum area of 50m² with a minimum dimension of no less than 2.5m. • For developments with 2 or more dwellings entirely above ground level, each occupancy entirely above ground level must contain a balcony with a minimum area of 15m² and dimension of no less than 2.5m. They must also contribute towards an area of communal open space at a rate of 20m² per occupancy. This communal open space will have a minimum dimension of 2.5m and must be provided at ground level. 	<p>The proposed development has incorporated appropriately designed landscaping which provide a quality landscaping scheme to minimise overlooking, and an access report accompanying this application demonstrated access to the private open spaces throughout the site.</p> <p>Not private open space is proposed in the front setback.</p> <p>The proposed development consists of independent living units for the purposes of Seniors Housing, and Housing SEPP prescribes non-discretionary standards which apply in relation to design of the units.</p>	
	<p>3.2.2.3 Overshadowing</p> <ul style="list-style-type: none"> • Living areas and principal open space areas of adjoining dwellings must not be overshadowed for more than 3 hours between 9am and 3pm on June 21. 	<p>The proposed development complies and does not result in unreasonable overshadowing of adjoining properties, primarily due to the site orientation and</p>	YES

Clause	Guidance	Comment	Consistency
	<ul style="list-style-type: none"> • A design will be amended where a minor change would significantly reduce the impact on overshadowing and an alternative design is practical. 	location of proposed buildings. Shadow projection diagrams accompany this application demonstrating compliance.	
	<p>3.2.2.4 Facilities</p> <ul style="list-style-type: none"> • At least 5m² of storage space will be provided for each dwelling. • An adequate waste and recycling area will be provided for each development that is easily accessible and visually screened from the street. • Open air and secure clothes drying facilities will be provided for each dwelling. They will have good solar access and be visually screened from the street and recreation areas. • Letterboxes will be provided on-site and must not detract from the development. 	<p>The proposed development consists of independent living units for the purposes of Seniors Housing, and Housing SEPP prescribes non-discretionary standards which apply in relation to design of the units.</p>	YES
	<p>3.2.2.5 Accessibility</p> <ul style="list-style-type: none"> • Residential flat buildings and Multi dwelling housing living developments containing five or more dwellings must provide a minimum of one adaptable dwelling for every five dwellings or part thereof designed in accordance with the Australian Standard (AS) 4299 – Adaptable Housing. The adaptable dwelling/s will be detailed on the plan. One accessible parking space will be provided for the adaptable dwelling/s with a safe and accessible path of travel from the parking space to the dwelling/s. Refer to Section 5.3 for further information. 	<p>The proposed development consists of independent living units for the purposes of Seniors Housing, and Housing SEPP prescribes non-discretionary standards which apply in relation to design of the units.</p> <p>An Access Report supporting the proposal accompanies this application.</p>	YES
	<p>3.2.2.6 Views</p> <ul style="list-style-type: none"> • The principles of view sharing will be used in the assessment of the proposed development application. 	<p>The proposed development has been appropriately designed with respect to ensuring adjoining sites do not lose views of any significance, primarily due to the prevailing subdivision pattern and topography, as confirmed by the designers who are currently preparing a view loss assessment report demonstrating this.</p>	YES

Clause	Guidance	Comment	Consistency
	<p>3.2.2.7 Setbacks</p> <p>R3 Zoned Seniors Housing (RFB) controls for 3 storeys or higher</p> <p>Front Setback = 6m Side Setback = 2.5m Rear Setback = 3m</p>	<p>Front setback is achieved Side Setback is achieved Rear Setback is achieved</p>	YES
	<p><u>3.2.3 Environment</u></p> <p>3.2.3.1 Energy Conservation and Solar Access</p> <p>• Building design and site layout will ensure adequate sunlight and solar access for the proposed development and adjoining properties.</p> <p>• Ensure the size, proportion and orientation of windows and decks are responsive to climatic conditions, such as wind and sunlight without having a detrimental impact on neighbouring properties.</p>	<p>Appropriate building design and site layout responds to the site orientation to ensure adequate solar access and ventilation to the proposed units.</p> <p>The proposed windows are oriented to be responsive to prevailing climatic conditions and mitigation measures in the design can reduce inadvertent detrimental privacy impact upon adjoining allotments.</p>	YES
	<p>3.2.3.2 Landscaping</p> <p>• A minimum of 35% of the total site will be landscaped. Landscaping must be designed to enhance the natural features of the site and compliment the development.</p> <p>• Existing vegetation and landscape elements, such as significant trees, rock formations and watercourses must be considered and integrated with the landscape design where possible.</p> <p>• Landscape design will assist in microclimate management through the location and selection of trees to permit winter sunlight access to living areas and summer shade to north facing exposed dwelling walls and windows.</p> <p>• The landscape plan will incorporate native plant species and ensure that any existing vegetation, particularly significant flora species or habitat trees are retained where practical.</p> <p>• The reuse and recycling of vegetation is encouraged and may be incorporated into the soil and water management of the land.</p>	<p>The proposed development achieves the minimum required landscaped area and incorporates landscaping in the design to enhance the existing natural features on-site.</p> <p>The riparian corridor and associated vegetation and topography is being retained on-site, with the development focused on a previously cleared part of the site.</p> <p>The proposed landscaping is designed to contribute to microclimate management, through the location of selected vegetation throughout the development site.</p> <p>The proposed landscaping incorporates native plant species and retains the existing biodiversity on-site, apart from where managing the asset protection zone for bushfire protection purposes.</p> <p>Minimal existing vegetation is being removed due to the cleared nature of the majority of the site.</p>	YES

Clause	Guidance	Comment	Consistency
	<p>3.2.3.3 Excavation</p> <ul style="list-style-type: none"> • To achieve a satisfactory design outcome split level development is encouraged. Split level design solutions may include slab on ground or elevated lightweight solutions. Excessive void areas beneath a building should be avoided or treated with appropriate screening or landscaping. 	Where required, split levels have been provided within the open space parts of the site, however, the development otherwise requires minimal excavation other than that for basement car-park in comparison to its footprint across the site.	YES
	<p>3.2.3.4 Waste Management</p> <ul style="list-style-type: none"> • The demolition of any existing structure will not have a detrimental impact on neighbouring properties or Council infrastructure • The storage, handling and collection of waste will be undertaken in a safe and efficient manner. 	<p>There is no existing structure to be demolished on-site to accommodate the development, and any removal of excavated soil shall be done in accordance with the relevant requirements.</p> <p>The proposed development design includes a waste storage room on the main building ground floor, and upper-level waste shutes. Refuse storage and collection facilities have been designed to comply with the requirements of Council and industry best practice, and the site will be serviced by a private contractor, on-site.</p>	YES
Section 3.3 Specific Requirements – Mixed Use Development	This section contains provisions for mixed use development, including shop-top housing.	This section of the DCP does not apply to this development which proposed Seniors Housing.	N/A
Part 4: Rural Development			
Sections 4.1 to 4.6 (only relevant being) 4.4 Conservation Zones	<p>This section provides general requirements for consideration where a development incorporates or may impact upon a C3 Conservation Management Zone</p> <p>4.4.1 General Requirements</p> <ul style="list-style-type: none"> • Identify and protect any sensitive or significant vegetation present on the site. • Locate development outside environmentally sensitive areas. • Choose a building site that has been cleared or disturbed, wherever possible. 	<p>As per Biodiversity Values Mapping, sensitive vegetation is located on-site.</p> <p>The proposed development is located outside of environmentally sensitive areas.</p> <p>Proposed buildings are located on parts of the site already cleared by an earlier subdivision approval.</p>	<p>N/A</p> <p>YES</p>

Clause	Guidance	Comment	Consistency
	<ul style="list-style-type: none"> • Maintain habitat and habitat corridors and avoid fragmentation of such. • Retain as much native vegetation as possible. View the uncleared areas as a resource to be conserved. • Maintain links between adjacent bush and the garden to provide a corridor for fauna movement. Do not fence wildlife corridors. If this is not possible, then design fences so that they facilitate effective fauna movement. • Rehabilitate disturbed areas with indigenous plants. • Salvage plants and bush rock where possible for onsite landscape works that contribute to the streetscape character of the locality. • Use indigenous species in landscape design, where possible. • Place fences to stop the introduction of domestic pets or livestock to parts of the site where they may impact on the survival, movement or habitat of native fauna and flora. 	<p>The existing riparian corridor is being retained to top of bank including a 10m buffer.</p> <p>Only existing vegetation to be maintained for the purpose of an asset protection zone to comply with bushfire protection, is proposed to be managed.</p> <p>A significant area of open space is to be managed adjacent to the riparian corridor and can be fenced and gated from the developed part of the site.</p> <p>The development incorporates landscaping consistent with endemic species.</p> <p>Minimal existing vegetation or rock is being removed or managed.</p> <p>The development incorporates landscaping consistent with endemic species.</p> <p>Fencing and gating off of the open space adjacent to riparian corridor can be made a requirement of any consent.</p>	
Part 5: General Development			
Section 5.1 Aboriginal Heritage	<p>This section provides the guidance for the procedures to be followed on land identified as potentially containing aboriginal cultural heritage.</p> <p>The relevant pathway in this instance (given the history of development at the site), is:</p> <p><i><u>Aboriginal Heritage Impact Permit</u></i> <i>Where a proposal seeks to destroy, remove or impact on an Aboriginal object, any development will be Integrated Development for the purposes of the Environmental Planning and Assessment Act 1979 as approval is required under the National Parks and Wildlife Act 1974.</i></p>	<p>The proposed development is identified as being on land which has previously contained aboriginal cultural heritage as part of the previous subdivision of land. As part of that assessment and development process, an Aboriginal Heritage Impact Permit (AHIP) was issued and has been carried out and executed with the Office of Environment and Heritage approval. A search was undertaken by consultant Extent Heritage and an AHIP Number: 1131988 has been sourced. Extent Heritage has been engaged with Heritage NSW since May 2022 in identifying that in fact all previously identified artefacts and</p>	N/A

Clause	Guidance	Comment	Consistency
		objects have been removed from the site and are no longer considered a site constraint to the proposed development, as required prior to works in the creation of the allotment. Additionally, as the proposed development does not result in an impact upon the riparian corridor, it is considered that upon confirmation with Heritage NSW, evidence will be provided by Extent Heritage with respect to the suitability of development for the site.	
Section 5.2 Non-aboriginal Heritage	This section provides the guidance for the procedures to be followed on land identified as containing or being in the proximity of land containing non-aboriginal heritage.	There are no non-aboriginal heritage items identified as located on or in proximity of the subject site.	N/A
Section 5.3 Access and Mobility	This section provides the guidance for development required to provide accessibility consistent with the Disability Discrimination Act and Disability Standards.	The proposed development is supported by an Access Report prepared by a suitably qualified consultant which accompanies this application.	YES
Section 5.4 Social and Economic Impacts	This section provides the guidance for when a Socio-economic Impact Assessment (SIA) is required to support a development application, and the detail required to be presented in support of the proposal.	The development proposed is Seniors Housing which is identified as development requiring a Socio-economic Impact Assessment. Even so, as previously advised by Council, the proposed land use for seniors housing in perpetuity is desirable in the LGA with respect to population forecast modelling and in relation to the downscaled nature of the independent living unit in comparison to predominantly existing three-bedroom dwellings on their own allotments. In comparison to what could be proposed at the site (RFB and multi-dwelling developments) for private purchase in the market, it is considered the proposed development's benefits to the social fabric of the local community greatly outweighs the alternative residential development planning outcomes. An such, an SIA is considered unnecessary in this instance.	YES
5.5 Sustainable Design Principles	This section provides the guidance for when a Sustainable Design Management Plan (SDMP) is required to support a development application, and the detail required to be presented in support of the proposal.	The development proposed is identified as development requiring an SDMP. Even so, the development is designed and certified by qualified engineers with respect to water management, is certified for sustainability in	YES (able to comply by condition)

Clause	Guidance	Comment	Consistency
		accordance with BASIX, meets minimum ADG required solar access and ventilation, is supported by a BDAR with respect to the retention of the ecology within the riparian corridor buffer zone, and ensures car-dependency is reduced through the provision of a exclusive mini-bus service for residents, it is considered additional operational level detail relating to ongoing sustainability can be requested as part of any condition of consent.	
5.6 Tree and Vegetation Preservation	This section provides the guidance for the procedures to be followed on land identified as containing trees and vegetation for which removal is proposed.	The site contains existing trees and vegetation associated with the riparian corridor, and apart from some management of existing vegetation in creating an asset protection zone, the trees and vegetation are to be retained. It is considered that as identified in the BDAR under preparation for this application, that Council can issue a Vegetation Permit consistent with its policy.	YES
5.7 On-site sewerage management	This section provides the guidance for the procedures to be followed on land requiring on-site sewerage management.	The subject site (and therefore development) can be serviced by reticulated trunk infrastructure sewerage.	N/A
5.8 Planning for Hazards	<p><i>This section provides the guidance for the procedures to be followed on land which may be affected by hazards.</i></p> <p><u>5.8.1 Flood Planning</u></p> <p><i>Applies to development on land which is flood prone and/or</i> – is within 40m of a creek – is within 10m of a major drainage system, local overland flood path or drainage easement – has a history of flooding – is considered to be flood prone by Council's Development Engineer</p> <p><u>5.8.2 Coastal Hazards</u></p> <p><i>This Section of the Plan provides information and requirements to prepare and assess development applications on areas at risk of coastal erosion, oceanic inundation, cliff or slope instability or wave overtopping.</i></p> <p><u>5.8.3 Contaminated Land</u></p> <p>• Development will only be approved on land where Council has made an assessment of any</p>	<p>The land is not flood-prone, and although a creek traverses the site, the development is located more than 40m from the creek.</p> <p>The subject land is not identified as being at risk of coastal hazards.</p> <p>The proposed development seeks to retain the use of the land as it was created for</p>	<p>N/A</p> <p>N/A</p> <p>YES</p>

Clause	Guidance	Comment	Consistency
	<p>land contamination that may have resulted from a previous use.</p> <ul style="list-style-type: none"> Where contamination is identified, remediation will be undertaken in accordance with the Managing Land Contamination Planning Guidelines, SEPP55 – Remediation of Land and the Contaminated Land Management Act 1997 and a Verification Report provided to Council. <p><u>5.8.4 Bushfire Prone Land</u></p> <ul style="list-style-type: none"> Consent will not be granted to the subdivision of land or the erection of a building on land which is subject to bushfire hazards unless Council is satisfied that the requirements of NSW Rural Fire Service's Planning for Bushfire Protection 2006 and the provisions of the Building Code of Australia AS3959 Construction of Buildings in Bushfire Prone Areas have been addressed. Additional requirements for asset protection zones are outlined in Section 5.10.1.4. <p><u>5.8.5 Climate Change</u></p> <p>Council recognises the likely impacts of climate change including; increased hot days, increased severe weather, more extreme droughts and floods and storm surges. Council is not yet in a position to determine what land may be impacted by sea level rise, coastal processes, flooding and rising water table, or impacts of higher temperatures, possibility of bushfire events. Until the required investigations and studies are completed, this Plan recommends that people building new homes in any low lying area near the coast or a waterway, or in the more remote and vegetated areas should exercise caution and discretion in commissioning designs for new homes and design and construct development to ensure environmentally sustainable</p>	<p>residential purposes coinciding with the recent subdivision, but has remained a vacant allotment. As such it is considered the site is suitable for a residential use and that any previous contamination had been identified and has since been remediated through the processes required within the previous development.</p> <p>The subject site is Bushfire prone. A Bushfire Hazard Assessment has been prepared by Peterson Bushfire identifying that an APZ can be managed on-site and on the adjoining land to the west via a maintenance easement, provided any proposed buildings are located clear of the extent of the APZ affecting the subject site. The proposed development has responded to the Bushfire affectation of the land in accordance with the assessment report and an adjoining owner's consent for an easement is currently being sought to ensure the grassland on the adjoining site to the west can be maintained ongoing.</p> <p>Noted</p>	<p>YES</p>

Clause	Guidance	Comment	Consistency
	<i>buildings that can more easily cope with climate change over time.</i>		
5.9 Off-street Car and Bicycle Parking	<p><u>5.9.2 Specific requirements – development types</u></p> <p>5.9.2.1 Residential development</p> <ul style="list-style-type: none"> • All parking will be provided on-site. • The design of driveways and parking areas will minimise the visual impact of hard paved areas when viewed from public streets and places. 	The proposed development consists of independent living units for the purposes of Seniors Housing, and Housing SEPP prescribes non-discretionary standards which apply in relation to design of the car-parking.	YES
5.10 Subdivision Standards	This section contains provisions and specifications for development involving subdivision of land.	This section of the DCP does not apply to this development which proposes Seniors Housing, and it not located within a town centre.	N/A
5.11 Advertising and Signage (where relevant)	This section contains provisions and specifications for differing forms of signage on a variety of developments.	The two proposed wall signs are defined as business identification signs, are prominently located at the front of the property to enable identification of the seniors housing complex, will be able to be externally illuminated appropriately to reduce glare and light spill disturbance, fit into the envelope of the front fence and front building façade, will be professionally installed with contrasting dark lettering upon white rendered walls, and will not impact upon any areas of visual, cultural or heritage significance. Otherwise, the signage complies with the provisions of SEPP 64 as assessed in Appendix 4 of this report.	YES
Part 6: Engineering Requirements			
Section 6.1 Roads and Easements	This section contains provisions for the construction of roads to be dedicated to Council primarily through subdivision development.	This section of the DCP does not apply to this development which proposes Seniors Housing, and no road construction for dedication to Council.	N/A
Section 6.2 Parking and Driveways	<p><u>6.2.1 General Requirements</u></p> <ul style="list-style-type: none"> • Access to parking areas will be designed to minimise conflict between pedestrians, cyclists and traffic. Council may require road and traffic management works to ensure safe access to parking areas. Where developments front a busy road, access to rear lanes (if available) must be provided. • Driveways will be located to the street with the lowest traffic volume. In particular, driveways will not be located opposite a 'T' intersection or closer than 6m to an intersecting street as measured from the 	<p>The proposed development is accompanied by a Traffic and Parking Assessment Report demonstrating the manageable interaction between pedestrians and vehicular traffic.</p> <p>The subject site is isolated located at the end of a cul-de-sac and essentially at the end of the street network in the locality, not within</p>	YES

Clause	Guidance	Comment	Consistency
	<p>property boundary, but preferably 9m to an intersecting street as measured from the property boundary.</p> <ul style="list-style-type: none"> • Parking areas and driveways are to be designed, surfaced and graded to reduce run off and allow stormwater to be controlled on site or disposed of to the Council controlled drainage system. • Driveway design will make provision for service vehicles where applicable. 	<p>proximity of any intersecting street.</p> <p>The proposed development has been prepared through close consideration of Council's drainage specifications as is demonstrated in Civil Engineering plans and details accompanying this application.</p> <p>The proposed driveway can accommodate service vehicles.</p>	
Section 6.3 Soil and Stormwater Management (not including subdivision development or Wonboyn Village Development)	<p><u>6.3.1 General Requirements (where relevant)</u></p> <ul style="list-style-type: none"> • The development will incorporate the principles of water sensitive urban design. These include minimisation of impervious surfaces and provision for the collection, reuse and management of stormwater to reduce reliance on potable water and ensure that predevelopment water quality is maintained or enhanced in post-development runoff. • The management of water must address cumulative environmental impacts and be carried out in accordance with the objectives of integrated water cycle management. • In order to minimise land degradation, water pollution and damage to infrastructure from accumulated sediment, development must be constructed in a manner which minimises erosion and sedimentation to current best practice. 	<p>The proposed development has been prepared through close consideration of Council's drainage specifications, principles of WSUD, objectives of integrated water cycle management, and as is demonstrated in Civil Engineering plans and details accompanying this application, erosion and sedimentation control is proposed consistent with current best practice.</p>	YES
Section 6.4 Utility Services	<p>This section contains provisions for the delivery of public utility infrastructure to service new developments.</p>	<p>Although technically required to be confirmed with respect to any required amplification of existing service, it was confirmed in the Pre-DA with Council that existing services have been provided for through the road network in conjunction with the recently approved and executed subdivision works which created the subject site.</p>	YES
Part 7: Site Specific Requirements			
Sections 7.1 to 7.9	<p>These sections contain provisions for development in Arthur Kane Drive, Beare's Beach, Bermagui Country</p>	<p>This section of the DCP does not apply to this development as it is not</p>	N/A

Clause	Guidance	Comment	Consistency
	Club Estate, Eden Cove, Sapphire Coast Turf Club, Snug Cove, Wonboyn, Wolumla, and Tura Beach, only.	located in any of the listed specific sites.	

Appendix 4 – Consistency State Environmental Planning Policy (Industry and Employment) 2021: Chapter 3 – Advertising and signage

Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021—Advertising and Signage 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.

As detailed in the accompanying architectural plans and figures below, the site has nominal signage location and dimensions which are appropriate to both height and the building siting and achieves compliance with the provisions of the Industry and Employment SEPP (where relevant). The content of the signage will be consistent with the definition of business identification signs (not advertisements). The proposed signage is considered to be consistent with the Industry and Employment SEPP provisions.

Clause	Guidance	Comment	Status
State Environmental Planning Policy No 64—Advertising and Signage			
Part 3.1 Preliminary			
	<p>3.1 Aims, objectives etc.</p> <p>(1) This Policy aims:</p> <ul style="list-style-type: none"> (a) to ensure that signage (including advertising): <ul style="list-style-type: none"> (i) is compatible with the desired amenity and visual character of an area, and (ii) provides effective communication in suitable locations, and (iii) is of high quality design and finish, and (b) to regulate signage (but not content) under Part 4 of the Act, and (c) to provide time-limited consents for the display of certain advertisements, and (d) to regulate the display of advertisements in transport corridors, and (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors. <p>(2) This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.</p> <p>3.2 Definitions</p> <p>(1) In this Policy:</p> <p>advertisement means signage to which Part 3 applies and includes any advertising structure for the advertisement.</p> <p>business identification sign has the same meaning as in the Standard Instrument.</p>	<p>The signage is compatible with the desired amenity and visual character of the locality.</p> <p>The signage provides effective communication of the development located at the front of the site.</p> <p>The signage is of high quality design, materials and finishes.</p> <p>The signage is business identification signage to identify the business name.</p> <p>Noted, the proposed signage meets the definition of <i>business identification signage</i>.</p>	Noted

Clause	Guidance	Comment	Status
	<p>3.3 Area of application of this Policy</p> <p>(1) This Policy applies to the whole of the State.</p> <p>(2) Without limiting subclause (1), this Policy applies to all land and structures within the State and all vessels on navigable waters.</p> <p>(3) Despite subclause (1), this Policy does not apply to the following land: Land to which <i>State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007</i> applies</p> <p>Land to which <i>State Environmental Planning Policy (Western Sydney Parklands) 2009</i> applies</p> <p>6 Signage to which this Chapter applies</p> <p>(1) This Policy applies to all signage that:</p> <p>(a) can be displayed with or without development consent under another environmental planning instrument that applies to the signage, and</p> <p>(b) is visible from any public place or public reserve, except as provided by this Policy.</p> <p>Note. Public place and public reserve are defined in section 4 (1) of the Act to have the same meanings as in the <i>Local Government Act 1993</i>.</p> <p>(2) This Policy does not apply to signage that, or the display of which, is exempt development under an environmental planning instrument that applies to it, or that is exempt development under this Policy.</p>	<p>Bega Valley Shire Council is the consent authority.</p> <p>Noted, the definition for signage is consistent with the BVLEP2013 definition.</p> <p>Noted, the definition for signage is consistent with the BVLEP 2013 definition.</p>	
Part 3.2 Signage generally			
	<p>3.6 Granting of consent to signage</p> <p>A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:</p> <p>(a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and</p>	<p>The proposal is generally consistent with the objectives of this policy.</p>	

Clause	Guidance	Comment	Status
	(b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.	Noted, complies.	
Part 3.3 Advertisements			
Division 1 General	<p>3.7 Advertisements to which this Part applies</p> <p>(1) This Part applies to all signage to which this Policy applies, other than the following:</p> <ul style="list-style-type: none"> (a) business identification signs, (b) building identification signs, (c) signage that, or the display of which, is exempt development under an environmental planning instrument that applies to it, (d) signage on vehicles. <p>(2) Despite subclause (1) (d), clause 27A applies to signage on a trailer (within the meaning of the <u>Road Transport Act 2013</u>).</p> <p>3.8 Prohibited advertisements</p> <p>(1) Despite the provisions of any other environmental planning instrument, the display of an advertisement is prohibited on land that, under an environmental planning instrument, is within any of the following zones or descriptions:</p> <p style="padding-left: 40px;">environmentally sensitive area</p>	The proposed signage is not <i>advertisement</i> .	

Clause	Guidance	Comment	Status
	<p>heritage area (excluding railway stations)</p> <p>natural or other conservation area</p> <p>open space</p> <p>waterway</p> <p>residential (but not including a mixed residential and business zone, or similar zones)</p> <p>scenic protection area</p> <p>national park</p> <p>nature reserve</p> <p>(2) This clause does not apply to the following:</p> <p>(a) the Mount Panorama Precinct,</p> <p>(b) the display of an advertisement at a public sporting facility situated on land zoned public recreation under an environmental planning instrument, being an advertisement that provides information about the sponsors of the teams or organisations using the sporting facility or about the products of those sponsors.</p>		
Division 2 Control of advertisements	<p>3.9 Requirement for consent</p> <p>A person must not display an advertisement, except with the consent of the consent authority or except as otherwise provided by this Policy.</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>3.10 Consent authority</p> <p>For the purposes of this Policy, the consent authority is:</p> <ul style="list-style-type: none"> (a) the council of a local government area in the case of an advertisement displayed in the local government area (unless paragraph (c), (d) or (e) applies), or (b) RMS in the case of an advertisement displayed on a vessel, or (c) the Minister for Planning in the case of an advertisement displayed by or on behalf of RailCorp, NSW Trains, Sydney Trains or TfNSW on a railway corridor, or (d) the Minister for Planning in the case of an advertisement displayed by or on behalf of RMS on: <ul style="list-style-type: none"> (i) a road that is a freeway or tollway (under the <u>Roads Act 1993</u>) or associated road use land that is adjacent to such a road, or (ii) a bridge constructed by or on behalf of RMS on any road corridor, or (iii) land that is owned, occupied or managed by RMS, or (e) the Minister for Planning in the case of an advertisement displayed on transport corridor land comprising a road known as the Sydney Harbour Tunnel, the Eastern Distributor, the M2 Motorway, the M4 Motorway, the M5 Motorway, the M7 Motorway, the Cross City Tunnel or the Lane Cove Tunnel, or associated road use land that is adjacent to such a road. 	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>3.11 Matters for consideration</p> <p>(1) A consent authority (other than in a case to which subclause (2) applies) must not grant consent to an application to display an advertisement to which this Policy applies unless the advertisement or the advertising structure, as the case requires:</p> <ul style="list-style-type: none"> (a) is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and (b) has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and (c) satisfies any other relevant requirements of this Policy. <p>(2) If the Minister for Planning is the consent authority or clause 18 or 24 applies to the case, the consent authority must not grant consent to an application to display an advertisement to which this Policy applies unless the advertisement or the advertising structure, as the case requires:</p> <ul style="list-style-type: none"> (a) is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and (b) has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and in the Guidelines and the consent authority is satisfied that the proposal is acceptable in terms of: <ul style="list-style-type: none"> (i) design, and (ii) road safety, and 	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>(iii) the public benefits to be provided in connection with the display of the advertisement, and</p> <p>(c) satisfies any other relevant requirements of this Policy.</p> <p>(3) In addition, if clause 18 or 24 applies to the case, the consent authority must not grant consent unless arrangements that are consistent with the Guidelines have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.</p> <p>3.12 Duration of consents</p> <p>(1) A consent granted under this Part ceases to be in force:</p> <p>(a) on the expiration of 15 years after the date on which the consent becomes effective and operates in accordance with section 83 of the Act, or</p> <p>(b) if a lesser period is specified by the consent authority, on the expiration of the lesser period.</p> <p>(2) The consent authority may specify a period of less than 15 years only if:</p> <p>(a) before the commencement of this Part, the consent authority had adopted a policy of granting consents in relation to applications to display advertisements for a lesser period and the duration of the consent specified by the consent authority is consistent with that policy, or</p> <p>(b) the area in which the advertisement is to be displayed is undergoing change in accordance with an environmental</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>planning instrument that aims to change the nature and character of development and, in the opinion of the consent authority, the proposed advertisement would be inconsistent with that change, or</p> <p>(c) the specification of a lesser period is required by another provision of this Policy.</p>		
Division 3 Particular advertisements	<p>3.13 Advertisements on rural or non-urban land</p> <p>(1) This clause applies to land that, under an environmental planning instrument, is within a rural or non-urban zone and on which an advertisement may be displayed with the consent of the consent authority.</p> <p>(2) Except in a case to which subclause (3) applies, the consent authority must not grant consent to display an advertisement on land to which this clause applies:</p> <p>(a) unless a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct in consultation with:</p> <ul style="list-style-type: none"> i. the advertising industry and any body that is representative of local businesses, such as a chamber of commerce, and ii. if the land to which the development control plan relates is within 250 metres of a classified road, the Roads and Traffic Authority, <p>and the display of the advertisement is consistent with the development control plan, or</p> <p>(b) if no such development control plan is in force, unless:</p>	<p>Not applicable to proposal as the signage is not defined as an advertisement.</p>	

Clause	Guidance	Comment	Status
	<ul style="list-style-type: none"> i. the advertisement relates to the land on which the advertisement is to be displayed, or to premises situated on that land or adjacent land, and ii. specifies one or more of the following particulars: <ul style="list-style-type: none"> a. the purpose for which the land or premises is or are used, b. the identification of a person residing or carrying on an occupation or business on the land or premises, c. a description of an occupation or business referred to in sub-subparagraph (B), d. particulars of the goods or services dealt with or provided on the land or premises, or e. (Repealed) (c) if no such development control plan is in force, unless the advertisement is a notice directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest. (3) In the case of an application to display an advertisement on transport corridor land when the Minister is the consent authority, the consent authority must not grant consent to display an advertisement on land to which this clause applies unless the consent authority is satisfied that the advertisement is consistent with the Guidelines. <p>3.14 Transport corridor land</p> <ul style="list-style-type: none"> (1) Despite clause 10 (1) and the provisions of any other environmental planning instrument, the display of an advertisement on transport 		

Clause	Guidance	Comment	Status
	<p>corridor land is permissible with development consent in the following cases:</p> <p>(a) the display of an advertisement by or on behalf of RailCorp, NSW Trains, Sydney Trains or TfNSW on a railway corridor,</p> <p>(b) the display of an advertisement by or on behalf of RMS on:</p> <ul style="list-style-type: none"> (i) a road that is a freeway or tollway (under the <u>Roads Act 1993</u>) or associated road use land that is adjacent to such a road, or (ii) a bridge constructed by or on behalf of RMS on any road corridor, or (iii) land that is owned, occupied or managed by RMS and that is within 250 metres of a classified road, <p>(c) the display of an advertisement on transport corridor land comprising a road known as the Sydney Harbour Tunnel, the Eastern Distributor, the M2 Motorway, the M4 Motorway, the M5 Motorway, the M7 Motorway, the Cross City Tunnel or the Lane Cove Tunnel, or associated road use land that is adjacent to such a road.</p> <p>(2) Before determining an application for consent to the display of an advertisement in such a case, the Minister for Planning may appoint a design review panel to provide advice to the Minister concerning the design quality of the proposed advertisement.</p> <p>(3) The Minister must not grant consent to the display of an advertisement in such a case unless:</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>(a) the relevant local council has been notified of the development application in writing and any comments received by the Minister from the local council within 28 days have been considered by the Minister, and</p> <p>(b) the advice of any design review panel appointed by the Minister has been considered by the Minister, and</p> <p>(c) the Minister is satisfied that the advertisement is consistent with the Guidelines.</p> <p>(4) This clause does not apply to the display of an advertisement if the Minister determines that display of the advertisement is not compatible with surrounding land use, taking into consideration any relevant provisions of the Guidelines.</p> <p>3.15 Advertisements with display area greater than 20 square metres or higher than 8 metres above ground</p> <p>(1) This clause applies to an advertisement:</p> <p>(a) that has a display area greater than 20 square metres, or</p> <p>(b) that is higher than 8 metres above the ground.</p> <p>(2) The display of an advertisement to which this clause applies is advertised development for the purposes of the Act.</p> <p>(3) The consent authority must not grant consent to an application to display an advertisement to which this clause applies unless:</p> <p>(a) the applicant has provided the consent authority with an impact statement that addresses the assessment criteria in</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and</p> <p>(b) the application has been advertised in accordance with section 79A of the Act, and</p> <p>(c) the consent authority gave a copy of the application to RMS at the same time as the application was advertised in accordance with section 79A of the Act if the application is an application for the display of an advertisement to which clause 18 applies.</p> <p>3.16 Advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road</p> <p>(1) This clause applies to the display of an advertisement to which clause 17 applies, that is within 250 metres of a classified road any part of which is visible from the classified road.</p> <p>(2) The consent authority must not grant development consent to the display of an advertisement to which this clause applies without the concurrence of RMS.</p> <p>(3) In deciding whether or not concurrence should be granted, RMS must take into consideration:</p> <p>(a) the impact of the display of the advertisement on traffic safety, and</p> <p>(b) the Guidelines.</p> <p>(c) (Repealed)</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>(4) If RMS has not informed the consent authority within 21 days after the copy of the application is given to it under clause 17 (3) (c) (ii) that it has granted, or has declined to grant, its concurrence, RMS is taken to have granted its concurrence.</p> <p>(5) Nothing in this clause affects clause 16.</p> <p>(6) This clause does not apply when the Minister for Planning is the consent authority.</p> <p>3.17 Advertising display area greater than 45 square metres</p> <p>The consent authority must not grant consent to the display of an advertisement with an advertising display area greater than 45 square metres unless:</p> <p>(a) a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct, or</p> <p>(b) in the case of the display of an advertisement on transport corridor land, the consent authority is satisfied that the advertisement is consistent with the Guidelines.</p> <p>3.18 Location of certain names and logos</p> <p>(1) The name or logo of the person who owns or leases an advertisement or advertising structure may appear only within the advertising display area.</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>(2) If the advertising display area has no border or surrounds, any such name or logo is to be located:</p> <ul style="list-style-type: none"> (a) within the advertisement, or (b) within a strip below the advertisement that extends for the full width of the advertisement. <p>(3) The area of any such name or logo must not be greater than 0.25 square metres.</p> <p>(4) The area of any such strip is to be included in calculating the size of the advertising display area.</p> <p>3.19 Roof or sky advertisements</p> <p>(1) The consent authority may grant consent to a roof or sky advertisement only if:</p> <ul style="list-style-type: none"> (a) the consent authority is satisfied: <ul style="list-style-type: none"> i. that the advertisement replaces one or more existing roof or sky advertisements and that the advertisement improves the visual amenity of the locality in which it is displayed, or ii. that the advertisement improves the finish and appearance of the building and the streetscape, and (b) the advertisement: <ul style="list-style-type: none"> (i) is no higher than the highest point of any part of the building that is above the building parapet (including that part of the building (if any) that houses any plant 	<p>Not applicable to proposal.</p> <p>Not applicable to proposal.</p>	

Clause	Guidance	Comment	Status
	<p>but excluding flag poles, aerials, masts and the like), and</p> <p>(ii) is no wider than any such part, and</p> <p>(c) a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct and the display of the advertisement is consistent with the development control plan.</p> <p>(2) A consent granted under this clause ceases to be in force:</p> <p>(a) on the expiration of 10 years after the date on which the consent becomes effective and operates in accordance with section 83 of the Act, or</p> <p>(b) if a lesser period is specified by the consent authority, on the expiration of the lesser period.</p> <p>(3) The consent authority may specify a period of less than 10 years only if:</p> <p>(a) before the commencement of this Part, the consent authority had adopted a policy of granting consents in relation to applications to display advertisements for a lesser period and the duration of the consent specified by the consent authority is consistent with that policy, or</p> <p>(b) the area is undergoing change in accordance with an environmental planning instrument that aims to change the nature and character of development and, in the opinion of the consent authority, the proposed roof or sky advertisement would be inconsistent with that change.</p>		

Clause	Guidance	Comment	Status
	<p>3.20 Wall advertisements</p> <p>(1) Only one wall advertisement may be displayed per building elevation.</p> <p>(2) The consent authority may grant consent to a wall advertisement only if:</p> <p>(a) the consent authority is satisfied that the advertisement is integrated with the design of the building on which it is to be displayed, and</p> <p>(b) for a building having:</p> <ul style="list-style-type: none"> i. an above ground elevation of 200 square metres or more—the advertisement does not exceed 10% of the above ground elevation, and ii. an above ground elevation of more than 100 square metres but less than 200 square metres—the advertisement does not exceed 20 square metres, and iii. an above ground elevation of 100 square metres or less—the advertisement does not exceed 20% of the above ground elevation, and <p>(c) the advertisement does not protrude more than 300 millimetres from the wall, unless occupational health and safety standards require a greater protrusion, and</p> <p>(d) the advertisement does not protrude above the parapet or eaves, and</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>(e) the advertisement does not extend over a window or other opening, and</p> <p>(f) the advertisement does not obscure significant architectural elements of the building, and</p> <p>(g) a building identification sign or business identification sign is not displayed on the building elevation.</p> <p>(2A) In the case of the display of a wall advertisement on transport corridor land, subclause (2) does not apply and the consent authority may grant consent only if satisfied that the advertisement is consistent with the Guidelines.</p> <p>(3) In this clause, building elevation means an elevation of a building as commonly shown on building plans.</p> <p>3.21 Freestanding advertisements</p> <p>(1) The consent authority may grant consent to the display of a freestanding advertisement only if the advertising structure on which the advertisement is displayed does not protrude above the dominant skyline, including any buildings, structures or tree canopies, when viewed from ground level within a visual catchment of 1 kilometre.</p> <p>(2) This clause does not prevent the consent authority, in the case of a freestanding advertisement on land within a rural or non-urban zone,</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>from granting consent to the display of the advertisement under clause 15.</p> <p>3.22 Advertisements on bridges</p> <p>(1) A person may, with the consent of the consent authority, display an advertisement on a bridge.</p> <p>(2) The consent authority may grant consent only if the consent authority is satisfied that the advertisement is consistent with the Guidelines.</p> <p>(3) (Repealed)</p> <p>3.23 Special promotional advertisements</p> <p>(1) A person may, with the consent of the consent authority, display a special promotional advertisement on land zoned for business, commercial or industrial purposes.</p> <p>(2) The consent authority may grant consent only if:</p> <p>(a) a development control plan applies to the land on which the special promotional advertisement is to be displayed that has been made having regard to a public art policy of the consent authority and the display of the advertisement is consistent with the development control plan, and</p> <p>(b) the display of the advertisement is limited in time to a total of 3 months in any 12-month period, and</p>	<p>Not applicable to proposal.</p> <p>Not applicable to proposal.</p>	

Clause	Guidance	Comment	Status
	<p>(c) any product image or corporate branding does not occupy more than 5% of the advertising display area and accords with the public art policy of the consent authority.</p> <p>(3) A special promotional advertisement may cover the entire facade or hoarding of a building or site, subject to this clause.</p> <p>3.24 Building wrap advertisements</p> <p>(1) A person may, with the consent of the consent authority, display a building wrap advertisement on land zoned for business, commercial or industrial purposes.</p> <p>(2) The consent authority may grant consent only if:</p> <p>(a) a development control plan applies to the land on which the building wrap advertisement is to be displayed that has been made having regard to a public art policy of the consent authority and the display of the advertisement is consistent with the development control plan, and</p> <p>(b) the display of the advertisement is limited in time to a maximum of 12 months, and</p> <p>(c) any product image or corporate branding does not occupy more than 5% of the advertising display area and accords with the public art policy of the consent authority.</p> <p>(2A) In the case of the display of a building wrap advertisement on transport corridor land, subclause (2) does not apply and the consent authority may grant consent only if satisfied that the advertisement is consistent with the Guidelines.</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>(3) A building wrap advertisement may cover the entire facade or hoarding of a building or site, subject to this clause.</p> <p>3.25 Advertisements within navigable waters</p> <p>(1) An advertisement within any navigable waters is prohibited, except an advertisement on a vessel that is ancillary to the dominant purpose of the vessel.</p> <p>(2) A person may, with the consent of the consent authority, display an advertisement on a vessel that is ancillary to the dominant purpose of the vessel.</p> <p>(3) In this clause, vessel means any ship, lighter, barge, boat, raft or craft, and any floating object or apparatus used wholly or in part for the conveyance of persons or things by water, of whatever description and however navigated, and includes amphibious vessels, seaplanes, hydroplanes, hydrofoils, hovercraft, sunken or stranded vessels, and the wreck or remains of any vessel.</p> <p>3.26 Advertisements on trailers parked on (or visible from) roads or road related areas</p> <p>(1) A person must not display an advertisement on a trailer parked on a road or road related area.</p> <p>(2) A person must not display an advertisement on a trailer parked on land other than a road or road related area, but visible from a road or road related area, except with the consent of the consent authority.</p> <p>(3) Subclauses (1) and (2) do not apply to:</p>	<p>Not applicable to proposal.</p> <p>Not applicable to proposal.</p>	

Clause	Guidance	Comment	Status
	<p>(a) an advertisement that is ancillary to the dominant purpose of the trailer, or</p> <p>(b) an advertisement on a trailer parked by or on behalf of a public authority in the exercise of its functions.</p> <p>(4) In this clause, road, road related area and trailer have the same meanings as in the <u>Road Transport Act 2013</u>.</p> <p>3.27 Application of provisions of this Division</p> <p>If more than one provision of this Division is capable of applying to the display of an advertisement, each such provision applies.</p> <p>Note.</p> <p>It may be, for example, that clause 19 will apply to the display of an advertisement in addition to clauses 17 and 18, or that clause 23 will apply in addition to clause 17, 18 or 19.</p>	Not applicable to proposal.	
Part 3.4 Miscellaneous			
	<p>3.28 Advertising design analysis</p> <p>(1) A council, in preparing an advertising design analysis for an area or locality for the purposes of clause 15, 19 or 21, is to include an analysis of the following:</p> <p>(a) the existing character of the area or locality, including built forms and landscapes,</p>	Not applicable to proposal.	

Clause	Guidance	Comment	Status
	<p>(b) the key positive features of the existing character of the area or locality,</p> <p>(c) the desired future character of the area or locality,</p> <p>(d) the role of outdoor advertising.</p> <p>(3) In undertaking an advertising design analysis (not being an advertising design analysis referred to in clause 15 (2) (a)), the council must consult with the advertising industry and local businesses.</p> <p>3.29 Consultation with TfNSW</p> <p>In the preparation of a draft local environmental plan under Division 4 of Part 3 of the Act that makes provision for or with respect to signage or advertising to which this Policy applies within 250 metres of a classified road, a council should consult with TfNSW.</p> <p>3.30 Exempt development</p> <p>(1) Advertisements on transport corridor land The following development on transport corridor land is exempt development when carried out by or on behalf of RMS, RailCorp, NSW Trains, Sydney Trains or TfNSW:</p> <p>(a) display of an advertisement in an underground railway station or railway tunnel,</p> <p>(b) display of an advertisement at a railway station or bus station if the advertisement is visible primarily from within the railway corridor or bus station,</p>	<p>Not applicable to proposal.</p> <p>Not applicable to proposal.</p>	

Clause	Guidance	Comment	Status
	<p>(c) removal of existing signage,</p> <p>(d) modifications to existing signage on transport corridor land carried out to meet occupational health and safety requirements and that do not increase the advertising display area of the signage.</p> <p>3.31 Review of Policy</p> <p>The Minister must ensure that the provisions of this Policy are reviewed:</p> <p>(a) as soon as practicable after the first anniversary of the commencement of <u>State Environmental Planning Policy No 64—Advertising and Signage (Amendment No 2)</u>, and</p> <p>(b) at least every 5 years thereafter.</p> <p>3.32 Savings for draft local environmental plans not yet completed by 30 June 2023</p> <p>Section 3.29, as in force at the beginning of 30 June 2023, continues to apply to a draft local environmental plan started but not completed by that date.</p>	Not applicable to proposal.	
Schedule 1 Assessment criteria			
	<p>1 Character of the area</p> <ul style="list-style-type: none"> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	The proposed signage elements are compatible and consistent with the character of the built form of the subject building.	YES

Clause	Guidance	Comment	Status
	<p>2 Special areas</p> <p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	The proposed signage does not detract from the amenity or visual quality of the locality.	YES
	<p>3 Views and vistas</p> <ul style="list-style-type: none"> Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers? 	The proposed signage does not alter, obscure, compromise any important views. The proposed signage does not dominate the skyline and reduce the quality of vistas.	N/A
	<p>4 Streetscape, setting or landscape</p> <ul style="list-style-type: none"> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? 	The scale, proportion and form of the signage elements is in keeping with, and appropriate for, the streetscape, setting and locality. The signage dimensions, areas, siting, heights and relative contribution to the proposed building facades is appropriate and in balance with the building elevations such as not to dominate the	YES

Clause	Guidance	Comment	Status
	<ul style="list-style-type: none"> Does the proposal require ongoing vegetation management? <p>5 Site and building</p> <ul style="list-style-type: none"> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both? <p>6 Associated devices and logos with advertisements and advertising structures</p> <ul style="list-style-type: none"> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? <p>7 Illumination</p> <ul style="list-style-type: none"> Would illumination result in unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation? 	<p>streetscape appearance and result in visual clutter.</p> <p>The signage is design to be compatible with and to not dominate important features of the building design.</p> <p>The signage elements are to be premanufactured off-site and will meet all relevant structural and safety requirements.</p> <p>The signage will be illuminated, but will not result in glare or impact the safety of pedestrians, vehicles or aircraft.</p>	<p>YES</p> <p>YES</p> <p>YES</p>

Clause	Guidance	Comment	Status
	<ul style="list-style-type: none"> Can the intensity of the illumination be adjusted, if necessary? Is the illumination subject to a curfew? <p>8 Safety</p> <ul style="list-style-type: none"> Would the proposal reduce the safety for any public road? Would the proposal reduce the safety for pedestrians or bicyclists? Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	The signage elements are considered to be suitable and not inappropriate.	YES