



Land and Environment Court
New South Wales

Case Name: JFPG004 Pty Ltd ATF JFPG004 Unit Trust v Bega Valley Shire Council

Medium Neutral Citation: [2024] NSWLEC 1185

Hearing Date(s): Conciliation conference held on 28 September, 23 October, 8 November, 12 December 2023, 19 February, 19 and 27 March 2024

Date of Orders: 16 April 2024

Decision Date: 16 April 2024

Jurisdiction: Class 1

Before: Pullinger AC

Decision: The Court orders that:
(1) Leave is granted to the Applicant to amend Development Application DA2022.335.01 and rely upon the amended plans and documents referred to in Condition 1 at Annexure A.
(2) Pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979, the Applicant is to pay the Respondent's costs thrown away as a result of amending the Development Application, as agreed or assessed.
(3) The Applicant's written request, pursuant to cl 4.6 of the Bega Valley Local Environmental Plan 2013 (BVLEP), seeking to vary the development standard for height of buildings as set out at cl 4.3 of the BVLEP, is upheld.
(4) The appeal is upheld.
(5) Development consent is granted to Development Application DA2022.335.01 (as amended) for a seniors living development and associated works at 83 Lakewood Drive, Merimbula, subject to the conditions

of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – seniors living –
cl 4.6 written request – height of buildings – agreement
between the parties – orders

Legislation Cited: Biodiversity Conservation Act 2016
Environmental Planning and Assessment Act 1979, ss
4.16, 7.4, 8.7, 8.15
Land and Environment Court Act 1979, s 34

Bega Valley Local Environmental Plan 2013, cll 2.3,
4.3, 4.6, 5.10, 6.2, 6.4, 6.5, 6.6, 6.7, 6.8
Environmental Planning and Assessment Regulation
2021, ss 27, 38
State Environmental Planning Policy Amendment
(Housing) 2023, cl 2.3
State Environmental Planning Policy (BASIX
Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Housing) 2021, Pt
5, Sch 4, Div 6, ss 79, 84, 85, 87, 88, 93, 95, 96, 97, 98,
108
State Environmental Planning Policy (Industry and
Employment) 2021, Ch 3
State Environmental Planning Policy (Resilience and
Hazards) 2021, Chs 2, 4, ss 2.10, 2.11, 4.6
State Environmental Planning Policy (Transport and
Infrastructure) 2021, s 2.48

Texts Cited: NSW Department of Planning and Environment,
Planning Circular PS 18-003, February 2018
NSW Department of Planning and Environment,
Seniors Living Policy: Urban Design Guidelines for Infill
Development, March 2004
NSW Rural Fire Service, Planning for Bushfire
Protection, December 2019

Category: Principal judgment

Parties: JFPG004 Pty Ltd (ACN 649 585 035) ATF JFPG004
Unit Trust (Applicant)
Bega Valley Shire Council (Respondent)

Representation: Counsel:
R White (Applicant)
A Menyhart (Solicitor) (Respondent)

Solicitors:

Bick and Steele (Applicant)

Bradley Allen Love Lawyers (Respondent)

File Number(s): 2023/115240

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act), brought by JFPG004 Pty Ltd ATF JFPG004 Unit Trust (the Applicant), against the deemed refusal of Development Application DA2022.335.01 (the DA) by Bega Valley Shire Council (the Respondent). At the time of its lodgement, the DA sought consent for a seniors housing development comprising a five-storey building with 77 independent living units and a four-storey building with twelve independent living units, along with ancillary administrative, communal and recreational facilities, parking and associated landscape works at 83 Lakewood Drive, Merimbula (the site).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 28 September, 23 October, 8 November and 12 December 2023, and 19 February, 19 and 27 March 2024. I presided over the conciliation conference.
- 3 During the conciliation conference, the parties reached agreement as to the terms of a decision in these proceedings that would be acceptable to the parties. The agreement involves the Court upholding the appeal and granting development consent to an amended DA, subject to conditions.
- 4 Of particular note, the proposal has been amended by agreement between the parties to resolve the contentions initially raised by the Respondent, which included issues of owners consent, permissibility, characterisation of the development given a proposed function room, building height exceedance, poor urban design, inconsistency with the desired future character and visual impacts, amongst other contentions.

- 5 Agreed design amendments have been made to reduce the scale of the DA in key areas, improving its relationship to the site and its topography and its relationship to neighbouring properties. Further, the communal and recreational facilities have been reconfigured to reduce potential acoustic impacts upon neighbouring properties. These amendments also have the effect of reducing the total number of independent living units from 89 to 86.
- 6 Similarly, the Applicant has provided additional information to resolve a number of other contentions including visual impacts, acoustic privacy and the biodiversity values of a bushfire Asset Protection Zone (APZ).
- 7 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the amended DA.
- 8 There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 9 In that regard, I am satisfied the DA was made with the consent of the owner of the land, evidenced within the Class 1 Application accompanying this matter.
- 10 The DA was publicly notified from 21 November to 12 December 2022. Fifty-five submissions were received by the Respondent including concerns for excessive building height, bulk and scale along with associated impacts on outlook, access to natural light and views, inconsistency with the existing streetscape and character, bushfire safety, environmental impacts of acidic soils, visual and acoustic privacy, traffic congestion, and parking provision and traffic congestion, amongst other concerns.
- 11 The DA was publicly notified a second time from 16 May to 16 June 2023.
- 12 The DA (as amended during the conciliation conference) was publicly notified a third time from 20 November to 17 December 2023.
- 13 The parties agree, and I am satisfied, that the amended DA and conditions of consent now satisfactorily address the matters raised in public submissions.

- 14 The parties agree, and I am satisfied, that the Bega Valley Local Environmental Plan 2013 (BVLEP) is the relevant local environmental planning instrument. The site is zoned part R3 Medium Density Residential and part C3 Environmental Management. The proposed development - characterised as seniors living development, including associated works and landscaping - is permissible with consent. No development is proposed within the portion of the site zoned C3 Environmental management.
- 15 The parties agree, and I am satisfied, that pursuant to cl 2.3 of the BVLEP, the amended DA is consistent with the R3 Medium Density Residential zone objectives, which include to provide for the housing needs of the community within a medium density residential environment, and to provide a variety of housing types within a medium density residential environment.
- 16 The parties agree, and I am satisfied, that all principal development standards of the BVLEP have been met by the amended DA, with the exception of cl 4.3 - Height of buildings.
- 17 The site is identified within the relevant BVLEP Height of Buildings Map as benefitting from a 10m maximum height of building development standard. Notwithstanding this, State Environmental Planning Policy (Housing) 2021 (SEPP Housing) works alongside the BVLEP to provide for an additional 3.8m in height (under certain conditions) as set out at s 87(2)(c) of SEPP Housing.
- 18 These conditions include that the proposed seniors living development be situated within a land use zone where residential apartment development is permissible, where the site area is greater than 1,500sqm, and where 15% additional floor space is used only for the purposes of independent living units. The parties agree, and I am satisfied that the amended DA meets these conditions and the additional 3.8m of building height is available.
- 19 This results in an aggregated development standard for building height of 13.8m.
- 20 Part of the amended DA exceeds this development standard for building height.

- 21 In such an instance, cl 4.6(3) of the BVLEP requires consideration of a written request from the Applicant demonstrating that compliance with this development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.
- 22 Clause 4.6(4) of the BVLEP requires the consent authority to be satisfied that the Applicant's written request has adequately addressed the matters required by cl 4.6(3), and that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.
- 23 Additionally, cl 4.6(4)(b) of the BVLEP requires the concurrence of the Planning Secretary be obtained, while cl 4.6(5) requires the Planning Secretary to consider whether, in granting this concurrence, the proposed contravention of the development standard raises any matters of significance for State environmental planning, the public benefits of maintaining the standard, and any other matters required to be considered by the Planning Secretary. Given the earlier written advice of the Planning Secretary (in the form of Planning Circular PS 18-003 issued on 21 February 2018), the Court may assume the concurrence of the Planning Secretary in this matter.
- 24 As required by cl 4.6 of the BVLEP, the Applicant has provided a written request seeking to vary the height of buildings development standard, prepared by HDC Planning and dated 28 November 2023.
- 25 The parties agree, and I am satisfied, that the written request adequately justifies the proposed variance to the height of buildings development standard for the following reasons:
- (1) The amended DA proposes a maximum building height of 16.86m in part of the site, exceeding the development standard of 13.8m by 3.06m and representing a maximum localised variation of approximately 22.2%.
 - (2) The amended DA is agreed to be of a form and scale that is compatible with the existing streetscape and desired future character of the locality.

- (3) The area of exceedance to the maximum building height standard generally arises as a result of responding to the site's topography and is situated in a part of the site where it is isolated from lower-scaled neighbouring single detached dwellings.
 - (4) The DA has been amended during the conciliation conference to resolve the Respondent's contentions, such that the non-compliant areas of building are set well back from the site boundary and are less likely to be perceived in the general presentation of the building to the streetscape. This siting mitigates against impacts that typically follow increased building height and is configured in a manner that is generally consistent with the scale of development appropriate to the locality.
 - (5) The proposed height exceedance does not give rise to additional adverse visual impacts, overshadowing, disruption to views or loss of privacy to neighbouring properties that are otherwise created by the remaining portion of the DA that complies with the height of building development standard.
 - (6) The siting, form and scale of the amended DA responds to bush fire affectation and APZs.
 - (7) The DA provides for seniors living, which is an identified social need within the local area.
 - (8) The objectives of the BVLEP Zone R3 Medium Density Residential land use zone include to provide for the housing needs of the community within a medium density residential environment and to provide a variety of housing types within a medium density residential environment. I am satisfied the amended DA meets these objectives.
 - (9) No objective for additional building height is specified at s 87 of SEPP Housing, however the parties agree, and I am satisfied, that the amended DA is consistent with the objectives of SEPP Housing more broadly.
- 26 Consequently, I am satisfied the Applicant's cl 4.6 written request adequately justifies the proposed variation to the height of buildings development standard, and I find to uphold the written request.
- 27 The parties agree, and I am satisfied, that pursuant to cl 5.10 of the BVLEP - Heritage conservation - the site is not a listed heritage item, nor is it located within a Heritage Conservation Area. The site is however identified as being on land which may contain Aboriginal cultural heritage or artefacts. Heritage NSW has been consulted and has issued General Terms of Approval on 5 June 2023. An Aboriginal Heritage Impact Permit 1131988 (AHIP) was issued to a previous owner of the site on 30 November 2012. The AHIP continues to apply to the site and does not expire until 30 November 2027. Consequently, I am

satisfied that cl 5.10 of the BVLEP has been appropriately addressed by the amended DA.

- 28 The parties agree, and I am satisfied, that the DA proposes excavation forming a matter for consideration pursuant to cl 6.2 of the BVLEP - Earthworks. I am satisfied the amended DA, by proposing excavation to an extent which minimises impacts on adjoining residential land, the public road reserve and sensitive riparian land, appropriately considers those matters set out at cl 6.2(3). Agreed conditions of consent reflecting these matters, including water quality, are imposed.
- 29 The parties agree, and I am satisfied, that pursuant to cl 6.4 of the BVLEP - Coastal risk planning - the site is situated in the coastal zone. In such an instance, cl 6.4 sets out a number of matters for consideration. These matters seek to avoid adverse impacts from coastal hazards, allow for the evacuation of land in an emergency and avoid increasing the severity of coastal hazards. Accordingly, the amended DA is located on part of the site that has previously been cleared for subdivision. The site planning locates buildings so as to minimise impacts on the riparian corridor and associated vegetation. The amended DA has been designed to mitigate against run-off which may otherwise be detrimental to the coastal environment.
- 30 The parties agree, and I am satisfied, that pursuant to cl 6.5 of the BVLEP - Terrestrial biodiversity - the site is mapped as "Biodiversity" on the relevant Terrestrial Biodiversity Map. In such an instance, cl 6.5 sets out a number of matters for consideration. The Applicant has prepared a Biodiversity Development Assessment Report (BDAR) to demonstrate that the amended DA has been designed and sited to avoid, minimise or mitigate against impacts on native flora and fauna, their habitat and underlying ecological processes. I am satisfied that cl 6.5 of the BVLEP has been appropriately addressed.
- 31 The parties agree, and I am satisfied, that pursuant to cl 6.6 of the BVLEP - Riparian land and watercourses - the site is mapped as "Watercourse" on the relevant Riparian Lands and Watercourses Map. In such an instance, cl 6.6 sets out a number of matters for consideration. These matters seek to protect water quality within watercourses, the stability of watercourse beds and banks,

aquatic and riparian habitats and underlying ecological processes. The amended DA is situated a significant distance from the riparian corridor and consequently does not present direct impacts upon the riparian land when considered against the matters set out at subcl 6.6(3)(a) to (c). Proposed on-site stormwater detention and water quality management is agreed will ensure that the development retains pre-development ecological processes within the watercourse, which is located further than 40m from the development.

- 32 The parties agree, and I am satisfied, that pursuant to cl 6.7 of the BVLEP - Environmentally sensitive land - a portion of the site is mapped as “Constrained land” on the relevant Natural Resources Land Map. In such an instance, cl 6.7 sets out a number of matters for consideration. These matters seek to protect the diversity and stability of steeply sloping land and land with shallow or erodible soils. The Applicant has provided a Bushfire Protection Report dated 22 September 2023 and an Arboricultural Impact Assessment Report dated 22 September 2023. Together with agreed conditions of consent, I am satisfied these reports appropriately address cl 6.7 of the BVLEP.
- 33 The parties agree, and I am satisfied, that pursuant to cl 6.8 of the BVLEP - Airspace operations - the site is situated within an area with an identified Obstacle Limitation Surface of RL 46m given the proximity of Merimbula Airport. Airservices Australia was consulted and on 30 May 2023 informed the Respondent that the DA (as amended) would not have an impact on any designated instrument procedures. Accordingly, I am satisfied that cl 6.8 of the BVLEP has been appropriately addressed.
- 34 The parties agree, and I am satisfied, that State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards) is an additional relevant environmental planning instrument. Chapter 2 of SEPP Resilience and Hazards deals with coastal management and the site is identified within the relevant Coastal Environment Area Map and the southern portion of the site is mapped within the Coastal Use Area Map.
- 35 Section 2.10 of SEPP Resilience and Hazards requires the consent authority to consider whether the amended DA is likely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and

groundwater) and ecological environment and the coastal environmental values and natural coastal processes. An unnamed first order watercourse is mapped along the site's northern boundary and flows in a southwesterly direction. The amended DA locates proposed buildings away from this first order watercourse and its required Vegetated Riparian Zone is 10m.

- 36 Further, the parties agree, and I am satisfied, parties agree that the amended DA is situated in a part of the site that has already been cleared consistent with an approved subdivision, from which any known heritage was removed and approved by the (former) Office of Environment and Heritage. The amended DA is also sited so as to minimise any potential impact on the riparian corridor and its associated vegetation. The riparian corridor flows into Merimbula Lake. The development is designed with appropriate on-site stormwater detention and water quality management strategies to mitigate against any additional run-off which may have otherwise been generated.
- 37 The area within the site that accommodates building footprints is located about 180m from the foreshore and it is unlikely that the amended DA will impact upon natural coastal process or their existing amenity. I am satisfied that the provisions of s 2.10 of SEPP Resilience and Hazards have been addressed.
- 38 Section 2.11 of SEPP Resilience and Hazards requires the consent authority to consider various matters related to impacts upon the coastal use area. I am satisfied that the amended DA adequately addresses these matters for consideration.
- 39 Similarly, s 2.11 of SEPP Resilience and Hazards requires the consent authority to be satisfied that the amended DA is designed, sited and managed to avoid, minimise or mitigate against these impacts upon the coastal use area. I am satisfied that the amended DA adequately demonstrates its avoidance of these impacts.
- 40 Further, s 2.11 of SEPP Resilience and Hazards requires the consent authority to take into account the surrounding coastal and built environment, and the bulk, scale and size of the amended DA. I am satisfied that the amended DA adequately takes into account these matters.

- 41 Chapter 4 of SEPP Resilience and Hazards deals with the remediation of land. The site forms part of a relatively recent land subdivision, which at the time of its determination, addressed potential contamination and demonstrated the land was not contaminated and did not require remediation. Since this subdivision, the site has not been used for any purpose other than as vacant land and the parties consider it to be unlikely the site has experienced any significant contamination since subdivision. Accordingly, I am satisfied the amended DA addresses those matters outlined in s 4.6 of SEPP Resilience and Hazards.
- 42 The parties agree, and I am satisfied, that the amended DA is subject to the provisions of SEPP Housing. Part 5 of SEPP Housing deals with housing for seniors and people with a disability, and pursuant to s 79, applies to land zoned R3 Medium Density Residential.
- 43 Section 84 of SEPP Housing sets out general development standards for the purposes of seniors living. I am satisfied that these general development standards have all been met by the amended DA.
- 44 Further, s 85 of SEPP Housing, by reference to Sch 4, sets out additional standards applicable to each independent living unit within a seniors living development. I am satisfied that the relevant standards for independent living units have been met by the amended DA.
- 45 Already noted in this judgment, s 87 of SEPP Housing provides for additional floor space ratio (FSR) and additional building height. I am satisfied the amended DA complies with the applicable FSR development standard, and at [16]-[26], find that the Applicant's cl 4.6 written request seeking to vary the applicable height of building development standard is upheld.
- 46 Section 88 of SEPP Housing restricts occupation of accommodation provided by the DA. I am satisfied this restriction on occupation is met.
- 47 Section 93 of SEPP Housing requires the consent authority to be satisfied that residents will have adequate access to facilities and services, either by a transport service or by their provision on-site. The amended DA includes the provision of a private minibus service to take residents to various locations and

facilities. I am satisfied this proposed transport service meets the requirements of s 93(2) of SEPP Housing.

- 48 Section 95 of SEPP Housing requires the consent authority to be satisfied that residents will have adequate access to reticulated water and adequate facilities for the removal of sewage. The amended DA provides for potable water supply and sewerage infrastructure to be extended from the adjacent subdivided residential land. I am satisfied that the amended DA meets the requirements of s 95(1) of SEPP Housing.
- 49 Given that the site is situated on bushfire prone land, s 96 of SEPP Housing requires the consent authority to be satisfied that the amended DA complies with the requirements of Planning for Bushfire Protection. The Applicant has provided a Bushfire Hazard Assessment prepared by Peterson Consulting dated 30 June 2020. The NSW Rural Fire Service has provided General Terms of Approval dated 5 January 2023. Subsequently, the Applicant has provided supplementary details, also prepared by Peterson Bushfire and dated 2 September 2023 addressing compliance with s 96 of SEPP Housing. Accordingly, I am satisfied s 96 of SEPP Housing has been appropriately addressed.
- 50 Section 97 of SEPP Housing (as saved by cl 2.3 of State Environmental Planning Policy Amendment (Housing) 2023) requires the consent authority to consider the Seniors Living Policy: Urban Design Guidelines for Infill Development, March 2004, while s 98 requires the consent authority to be satisfied that the design of the amended DA demonstrates adequate consideration of the design principles set out at Div 6 of SEPP Housing. Each of these matters has been addressed in the Applicant's statement of environmental effects dated 13 September 2022 and by the provision of a Socio-economic Impact Assessment prepared by Judith Stubbs dated September 2023 and an updated waste management report dated 16 October 2023. I am satisfied that each of the design principles has been satisfactorily addressed.
- 51 Section 108 of SEPP Housing sets out further non-discretionary standards relevant to the design of independent living units. I am satisfied that, to the

extent these standards are relevant, the amended DA complies with these standards.

- 52 The parties agree, and I am satisfied, that the amended DA is subject to provisions of the *Biodiversity Conservation Act 2016*. Consequently, a BDAR is required when any one of the Biodiversity Offsets Scheme (BOS) thresholds for local development are triggered, being either:
- An exceedance of the native vegetation clearing threshold (based on minimum lot size).
 - Direct impacts to land included on the Biodiversity Values Map.
 - Significant impact on threatened species, ecological communities (or their habitat).
 - Impact to an Area of Outstanding Biodiversity Value.
- 53 The amended DA directly impacts 2.20 hectares of native vegetation and accordingly a BDAR is required. Additionally, part of the proposed bushfire APZ impacts an area mapped on the Biodiversity Values Map, and regardless of the area clearing threshold, triggers entry into the BOS.
- 54 The Applicant has provided a BDAR, prepared by Ecoplaning dated 15 September 2022. The BDAR records one ecological community on the site - Coast Grey Box - Mountain Grey Gum - stringybark moist shrubby open forest in coastal gullies, southern South East Corner Bioregion. I am satisfied the requirement to prepare a BDAR has been appropriately addressed, and that a biodiversity offset requirement for the impact of the development, including offset credits, has been calculated.
- 55 The parties agree, and I am satisfied, that State Environmental Planning Policy (Industry and Employment) 2021 (SEPP Industry) is an additional relevant environmental planning instrument.
- 56 Pursuant to Ch 3 of SEPP Industry, the amended DA seeks consent for identification signage. I am satisfied the amended DA conforms with the relevant provisions of SEPP Industry such that the proposed signage is compatible with the desired amenity and visual character of the area, provides effective communication in suitable locations and is of a suitable high quality and finish.

- 57 The parties agree, and I am satisfied, that State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Infrastructure) is an additional relevant environmental planning instrument. Pursuant to s 2.48 of SEPP Infrastructure, consultation with Essential Energy was undertaken in order to consider the likely effect on the electricity transmission and distribution network. Essential Energy responded raising no comments or concerns regarding the amended DA. I am satisfied that s 2.48 of SEPP Infrastructure has been appropriately addressed.
- 58 The parties agree, and I am satisfied, that the amended DA continues to be subject to the provisions of State Environmental Planning Policy (BASIX Sustainability Index: BASIX) 2004. Pursuant to s 27 of the Environmental Planning and Assessment Regulation 2021, a BASIX certificate No 1329983M_02, dated 26 March 2024, has been provided with the amended DA. Agreed conditions of consent are imposed to ensure compliance with the BASIX certificate.
- 59 Pursuant to s 7.4 of the EPA Act, on 15 November 2023, the Applicant offered in writing to enter into a Voluntary Planning Agreement (VPA) for the design and construction of a footpath which commences at the street frontage of the site linking to the car park at the western end of the Merimbula Boardwalk. The letter of offer and VPA have been accepted by the Respondent. The draft VPA was placed on public exhibition for 28 days from 17 November 2023.
- 60 The parties agree, and I am satisfied, that the matters set out in s 7.4 of the EPA Act have been appropriately addressed by the letter of offer and the draft VPA.
- 61 Having considered each of the preceding jurisdictional requirements and having formed the necessary view required by s 34(3) of the LEC Act, I find it is appropriate to make the orders agreed to by the parties and now dispose of the matter.
- 62 The Court notes that:
- (1) Pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021, the Applicant has amended the DA with the approval of the Respondent.

- (2) The Applicant has lodged the amended DA with the Court on 28 March 2024.

63 The Court orders that:

- (1) Leave is granted to the Applicant to amend Development Application DA2022.335.01 and rely upon the amended plans and documents referred to in Condition 1 at Annexure A.
- (2) Pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, the Applicant is to pay the Respondent's costs thrown away as a result of amending the Development Application, as agreed or assessed.
- (3) The Applicant's written request, pursuant to cl 4.6 of the Bega Valley Local Environmental Plan 2013 (BVLEP), seeking to vary the development standard for height of buildings as set out at cl 4.3 of the BVLEP, is upheld.
- (4) The appeal is upheld.
- (5) Development consent is granted to Development Application DA2022.335.01 (as amended) for a seniors living development and associated works at 83 Lakewood Drive, Merimbula, subject to the conditions of consent at Annexure A.

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M Pullinger

Acting Commissioner of the Court

115240.23 Annexure A

115240.23 Architectural plans

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