

**PLANNING PANEL (SOUTH)**  
**ASSESSMENT REPORT SUMMARY AND RECOMMENDATION COVER SHEET**

<b>Panel Reference</b>	<b>PPSSTH-223</b>	
<b>DA Number</b>	<b>DA0499/2022</b>	
<b>LGA</b>	<b>Shellharbour City Council</b>	
<b>Proposed Development</b>	Demolition of existing structures and removal of trees, construction of seniors housing, including 118 independent living units, communal facilities, neighbourhood shop, parking and landscape areas.	
<b>Development Characterisation</b>	<b>Seniors Housing – Independent Living Units</b>	
<b>Location</b>	1 Arcadia Street Warilla Lowe Park, George Street, Warilla Lots 200, 201 and 203 DP 786257	
<b>Applicant/Owner</b>	ADM Architects – Applicant Warrigal Care - Owner Shellharbour City Council (owner of Lowe Park)	
<b>Date of DA lodgement</b>	27 October 2022	
<b>Public Notification Period</b> <b>No. of Submissions</b>	Round 1: 11/11/2022 – 12/12/2022 Submissions: Twenty six (26) submissions comprised of eight (8) individual submissions and eighteen (18) pro-forma submissions (five (5) of one format and twelve (12) of another)  Round 2: 24/07/2023 – 07/08/2023 Submissions: Two (2) individual submissions	
<b>Regional Development Criteria – SEPP (Planning Systems) 2021</b>	<b>Schedule 6 Regionally Significant Development – CIV exceeds \$30million</b> The CIV is \$66,376,917 (excluding GST)	
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• <i>Water Management Act 2000</i></li> <li>• <i>Biodiversity Conservation Act 2016</i></li> <li>• <i>SEPP (Planning Systems) 2021</i></li> <li>• <i>SEPP (Resilience and Hazards) 2021</i></li> <li>• <i>SEPP (Transport and Infrastructure) 2021</i></li> <li>• <i>SEPP 65 – Design Quality of Residential Apartment Development.</i></li> <li>• <i>SEPP (Building Sustainability Index – BASIX) 2004</i></li> <li>• <i>SEPP (Housing) 2021</i></li> <li>• <i>Shellharbour Local Environmental Plan 2013</i></li> <li>• <i>Shellharbour Development Control Plan 2013</i></li> <li>• Likely Impacts</li> <li>• Site Suitability</li> <li>• Any Submissions</li> <li>• Public Interest</li> </ul>	
<b>List all documents submitted with this report for the Panel's consideration</b>	<b>Attachment 1</b>	Draft Conditions of Consent
	<b>Attachment 2</b>	Architectural Plans
	<b>Attachment 3</b>	Landscape Plans
	<b>Attachment 4</b>	Civil Plans
	<b>Attachment 5</b>	Clause 4.6 Variation Statement
	<b>Attachment 6</b>	Design Review Panel Comments
	<b>Attachment 7</b>	<i>SEPP (Housing) 2021</i> Compliance Assessment
	<b>Attachment 8</b>	Apartment Design Guidelines Compliance Table
	<b>Attachment 9</b>	Shellharbour Development Control Plan 2013 Compliance Table

<b>Clause 4.6 requests</b>	Yes – Shellharbour Local Environmental Plan 2013 – Clause 4.3 Building Height
<b>Summary of key submissions</b>	<p>Round 1:</p> <ul style="list-style-type: none"> <li>• Three (3) storey height of the proposal along Arcadia Street.</li> <li>• Increase in traffic and provision of one driveway to accommodate the development.</li> <li>• Overshadowing of dwellings on Arcadia Street and Sparta Street.</li> <li>• Provision on-site car parking.</li> <li>• Incompatibility of bulk and scale with the streetscape.</li> <li>• Visual privacy to residents in Arcadia Street and Sparta Street.</li> </ul> <p>Round 2:</p> <ul style="list-style-type: none"> <li>• Building height development standard exceedance.</li> <li>• Location of substation.</li> <li>• Request for dilapidation inspections prior to commencement of works.</li> <li>• Tree removal.</li> <li>• Location of driveway on Arcadia Street.</li> <li>• Residential amenity and overshadowing to residents in Sparta Street.</li> <li>• Construction impacts to residents in Sparta Street.</li> <li>• Impact of the development on the water table level.</li> <li>• Incompatibility of bulk and scale with the streetscape.</li> </ul>
<b>Recommendation of Officer</b>	Approval, subject to the conditions of consent.
<b>Report prepared by</b>	Nicole Doughty – Senior Development Assessment Officer
<b>Report endorsed by</b>	Stacey Houlison – Principal Planner
	Mathew Rawson, Manager – Planning and Urban Release

#### Summary of s4.15 matters

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

Yes

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#### Legislative clauses requiring consent authority satisfaction

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

Yes

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

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#### Clause 4.6 Exceptions to development standards

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

Yes

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#### Special Infrastructure Contributions

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

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

No

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#### Conditions

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

Yes

# ASSESSMENT REPORT AND RECOMMENDATION

## 1. EXECUTIVE SUMMARY

### 1.1 Reason for consideration by the Southern Regional Planning Panel

The application is being referred to the Southern Regional Planning Panel as the Determining Authority in accordance with Clause 2.19 of the *State Environmental Planning Policy (Planning Systems) 2021*. The CIV is more than \$30million.

In this regard, the development is classed as Regionally Significant development under *State Environmental Planning Policy (Planning Systems) 2021*. Under Part 4, Division 4.2, Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979* (the Act hereafter) the Regional Planning Panel for the area (Southern) is designated as the Determining Authority.

### 1.2 Proposal

The proposal seeks consent for the demolition of existing structures, removal of all trees, construction of a seniors housing development comprising of 118 independent living units across six buildings, communal facilities, neighbourhood shop and associated car parking and landscaping. The development application was lodged under the *State Environmental Planning Policy (Housing) 2021*.

### 1.3 The site

The development site comprises of Lots 201 and 203 in DP 786257 and is commonly known as 1 Arcadia Street, Warilla with a total area of 22,020m<sup>2</sup> and is located at the north-eastern corner of the T-intersection of George Street and Arcadia Street. Additionally works-in-kind and vegetation works in the riparian corridor on Lot 200 DP 786257 commonly known as Lowe Park are included in the Development Application.

### 1.4 Exhibition

The proposal was notified in accordance with the Shellharbour Community Participation Plan 2021 and received a total of twenty six (26) submissions comprising of eight (8) individual submissions and eighteen (18) pro-forma submissions. Amended plans and documentation were received during the assessment of the application, which were placed on public notification Two (2) further submissions were received. The matters raised in the submissions are discussed at section 3.11.

### 1.5 Evaluation

S4.15 matters have been considered and the main issues summarised as follows:

- Clause 4.6 variation request for exceeding the building height development standard under the *Shellharbour Local Environmental Plan 2013* is supported.
- The likely impacts of the proposal are considered satisfactory.
- The site is considered suitable for the proposal in its current form.
- The issues raised in the submissions received during the exhibition periods are discussed at section 3.11 of this report. External agency response has been received which provide satisfactory responses as discussed at section 2.5.2 of this report.
- The proposal is considered to be in the public interest.

## **1.6 Concurrence**

The development application is categorised as a Nominated Integrated development under Section 4.46 of the *Environmental Planning and Assessment Act 1979* as the proposal involves works within 40m of a watercourse. Concurrence from the Department of Planning and Environment – Water has been received and the General Terms of Approval issued.

## **1.7 Conclusion**

The proposed development has been assessed in accordance with the relevant prescribed matters for consideration as outlined in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The seniors living development is permissible with consent in the R3 Medium Density Residential zone pursuant to the *Shellharbour Local Environmental Plan 2013*.

Generally, the proposal is consistent with the relevant Environmental Planning Instruments including the *SEPP No. 65 Design Quality of Residential Apartment Development*, *SEPP BASIX 2004*, *SEPP (Resilience and Hazards) 2021*, *SEPP (Transport and Infrastructure) 2021* and *SEPP (Housing) 2021*.

It is unlikely that the proposal would result in an adverse impact in relation to the streetscape character, the amenity of the wider locality or neighbouring properties.

Conditions are recommended to ensure that any potential impacts are appropriately addressed and managed.

## **1.8 Recommendation**

DA0499/2022 is approved, subject to the conditions provided at **Attachment 1**.

Draft conditions have been sent to the applicant prior to the submission of this report. Commentary from the applicant will be considered prior to the Determination Meeting and an addendum report with revised conditions will be prepared if need.

## **2. APPLICATION AND SITE OVERVIEW**

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### **2.1 Planning Controls**

The following planning controls apply to the development:

State Environmental Planning Policies:

- *SEPP (Planning Systems) 2021*
- *SEPP (Housing) 2021*
- *SEPP (Resilience and Hazards) 2021*
- *SEPP (Transport and Infrastructure) 2021*
- *SEPP 65 – Design Quality of Residential Apartment Development.*
- *SEPP (Building Sustainability Index – BASIX) 2004*

Local Environmental Planning Policies:

- *Shellharbour Local Environmental Plan 2013*

Development Control Plans:

- *Shellharbour Development Control Plan 2013*

Other Policies/Legislation:

- *Biodiversity Conservation Act 2016*
- *Water Management Act 2000*
- *Shellharbour Local Infrastructure Contributions Plan 2019*

### **2.2 Proposal Details**

The development application proposes seniors housing in the form of independent living units comprising of the demolition of the existing structures, tree removal and the construction of six (6) residential buildings extending to a maximum three (3) storeys in height, with communal open space, car parking and landscaping. The development will also include a community hall for the use of future residents, a neighbourhood shop and a charity (op) shop

The development will comprise of 118 independent living units consisting of:

- 4 x 1 bedroom units
- 78 x 2 bedroom units
- 36 3 bedroom units

The community hall will provide a social gathering space for future residents, with the types of uses to include:

- Informal get-togethers: morning teas, lunches, afternoon teas, suppers
- Regular village activities including musical performances, games and activities, craft workshops
- Resident committee meetings
- Village management meetings – Budget and annual management meetings
- Counselling and mediation session.

The development application has been lodged as seniors housing under the *State Environmental Planning Policy (Housing) 2021*.



**Figure 1** – Photomontage of proposed development.

## 2.3 Relevant Background

The development history of the site as relevant to the subject application is as follows:

Application Number	Description
BA972-1981	Equity housing
DA463-1983	Nursing Home – Commercial kitchen and laundry
DA156-1985	Two units
DA7-1985	Eight units
DA180-985	14 units
BA296-1987	Nursing home – 50 beds
BA1126-1988	Community Hall
BA1988.224.1	Additions to an existing shop
7.2010.8.1	Alterations and additions to entry of existing aged care facility
7.2014.208.1	Alterations and additions to residential care facility and existing op-shop

The following table outlines the key milestones during the assessment of the subject application.

Date	Action
15 September 2020	A pre-lodgement meeting was held with Council staff to discuss the proposal.

22 October 2021	The proposal was referred to the Design Review Panel (DRP). Refer to <b>Attachment 6</b> for DRP meeting minutes.
18 January 2022	A further pre-lodgement meeting was held with Council staff to discuss the proposal.

## 2.4 Subject Site and Locality

### 2.4.1 Site Description

The subject site is located at 1 Arcadia Street Warilla (Lots 201 and 203 DP 786257), east of the Warilla Town Centre and has a total site area of 22,020m<sup>2</sup>. The site is located at the south-eastern corner of George Street and Arcadia Street and is presently occupied by the Mount Warrigal Nursing Home. George Street intersects with Warilla's main street. To the north-east the site adjoins Lowe Park (Council-owned) Lot 200 DP 786257. The proposed works also include works-in-kind and vegetation works to the northern portion of Lowe Park immediately adjoining 1 Arcadia Street). North to the site is King Mickey Park and to its immediate east is a riparian corridor associated with Bensons Creek. Residential development surrounding the site comprises of low scale medium density development to the south and detached residential dwellings to the west.

The subject site is flood affected, affected by acid sulfate soils and adjoins a riparian corridor with a first order watercourse.





**Figure 2** – Location map. The subject site is outlined in yellow. Council owned Lowe Park outlined in red.

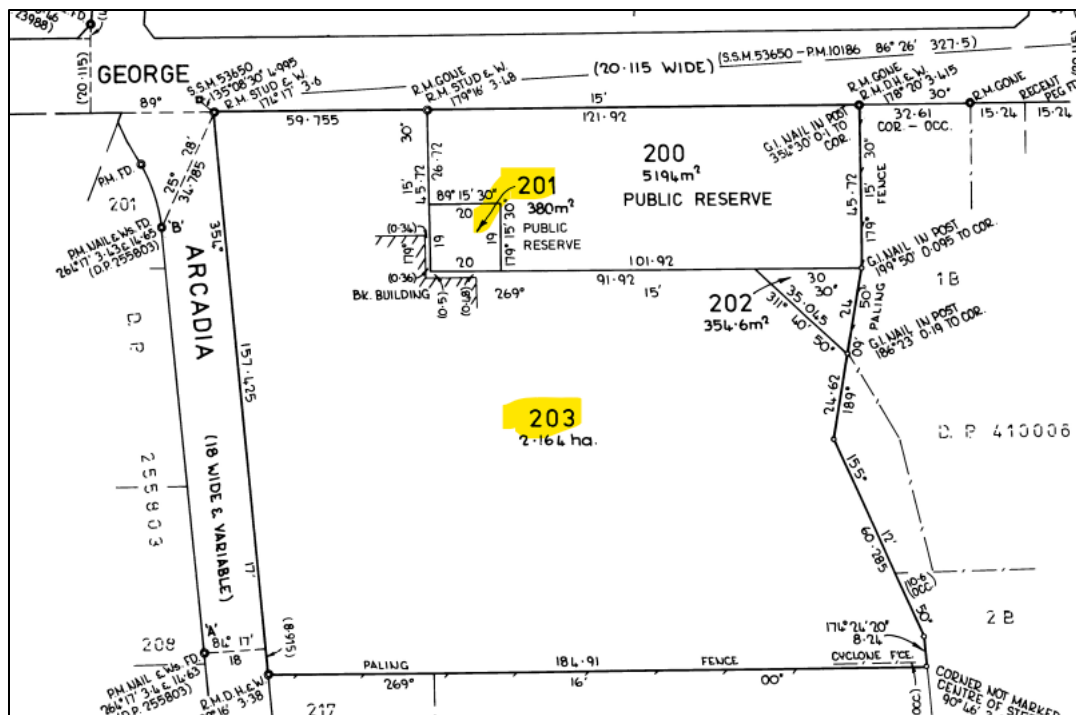
#### **2.4.2 Property Constraints**

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

- Flooding
- Acid Sulfate Soils
- Within 40m of a riparian corridor with a first order watercourse
- Coastal Management – Coastal Use Area and Coastal Environment Area

#### **2.4.3 Restrictions on Title**

There are no restrictions on title.



**Figure 3** – Deposited Plan 238804 extract

## 2.5 Referrals

### 2.5.1 Internal Referrals

#### Engineering Officer

Council's Engineering Team initially identified a number of non-compliances with the proposal, including vehicle manoeuvrability and stormwater drainage design. The applicant subsequently submitted amended plans, satisfactorily addressing the aforementioned non-compliances. Council's Engineering Team support the revised proposal subject to the imposition of a number of recommended conditions.

#### Contributions Officer

Council's Contributions Team has reviewed the proposal and provided a conditionally satisfactory referral response. Contributions for the development apply in accordance with the Local Infrastructure Contributions Plan 2019. As part of the development application, a request was submitted to carry out works-in-kind to the adjacent public park (Lowe Park, as outlined in red in Figure 2 above) to be offset against the section 7.11 contribution payable. The principle of such works is supported by Council staff however the detailed designs and specification of the works are yet to be agreed. A condition is recommended allowing the section 7.11 contributions to be adjusted once a formal works-in-kind agreement has been entered into.

#### Property Management Officer

Council's Property Officer has reviewed the proposal including the partial embellishment of Lowe Park (Council owned), raising no objections with the landscaping works consistent with the Plan of Management for the land.

#### Landscape Officer

Council's Landscape Officer has reviewed the proposal and provided a conditionally satisfactory referral response. This includes the substitution of various plant species suitable to the coastal conditions of the site.

### **Waste Officer**

Councils Waste Officer has reviewed the proposal and provided a conditionally satisfactory referral response. Servicing of the site is to be undertaken by a private contractor using a small rigid vehicle, which can safely manoeuvre within the site. Recommended conditions have been included within the draft consent.

### **GIS Officer**

Councils GIS Officer has reviewed the proposal with regard to road numbering and addressing and provided recommended conditions which have been included within the draft consent.

### **Community Life Officer**

Council's community life team has reviewed the proposal and note that a lighting plan was not provided as part of the development application and insufficient information was provided in relation to fencing along Benson Creek. Conditions of consent are recommended to ensure pedestrian lighting is provided throughout the site and suitable fencing is constructed along the creek.

### **Recreational Planner**

Council's recreational planner has reviewed the proposal in relation to the proposed embellishment works at Lowe Park (to be undertaken as part of the proposed works-in-kind agreement)). Whilst the Recreational Planner does not object to the concept of undertaking embellishment works within Lowe Park, no agreement has been reached in relation to the final specifications (path treatments, furniture, location and types of plantings). Council's Recreational Planner and Contributions Officer have therefore recommended a condition of consent to enable a works-in-kind agreement to be formally entered into after determination.

### **Flooding Officer**

Council's flooding officer has reviewed the proposal and provided a conditionally satisfactory referral response. The Flooding Officer notes that the proposal does not strictly comply with the flood planning requirements prescribed in the SDCP 2013. Several areas of the subject site are identified as being flood affected in the 1% AEP event and the PMF. The flood hydraulic hazard across the site varies to low, medium and high. Under the SDCP 2013, seniors housing falls under the Critical Utilities land category whereby the minimum finished floor levels are to be set at PMF event plus 500mm freeboard and the land use is considered unsuitable in the medium and high flood risk. No residential related buildings are located in the high flood hazard. The proposal is located within the medium floor risk hazard and all apartments comply with the flood planning level (1% AEP flood event level plus 500mm freeboard). However, the areas of the site that are identified as being flood affected have been reviewed in terms of the flood water behaviour, proposal design and the intended residents. In this regard, the site is suitable for the development, given the flood risk category, proposed dwelling finished floor levels, earthworks proposed and the land use (seniors housing - independent living units).

Additionally, the proposed development is seen as a safer outcome than the existing seniors living development on site. The finished floor level of the residential care facility and single storey dwellings are below the PMF level and no refuge areas are provided. As previously discussed, PMF flood refuge areas within all buildings are provided. The higher care residential facility is more difficult to evacuate in the event of a flood in comparison to independent living. The proposed development is considered a superior outcome to the existing development in terms of flood risk and mitigation measures..

### **Traffic Officer**

Council's traffic officer has reviewed the proposal and provided a conditionally satisfactory referral response. Recommended conditions including the provision of pedestrian footpaths along the street perimeter.

## 2.5.2 External Referrals

### Endeavour Energy

The proposal was referred to Endeavour Energy as the subject site is located within 5m of an exposed overhead electricity power line and an existing padmount substation is located on the site. A response was initially received on 6 November 2022 objecting to the proposal on the grounds that insufficient information regarding the existing padmount substation had been provided. Amended plans were submitted and a re-referral to Endeavour Energy was sent. A response was received on 25 July 2023, raising no further objection, subject to compliance with the recommended conditions, including the requirement of a future application for asset removal/replacement of the padmount substation.

### Sydney Water

The proposal was referred to Sydney Water as a wastewater main traverses the site. A response was received on 10 January 2023 raising no objection to the proposal and recommended the imposition of conditions which have been included in the draft consent.

### Department of Planning and Environment - Water

The proposal was referred to the Department of Planning and Environment – Water as the development is classed as Nominated Integrated development pursuant to the *Water Management Act 2000*. A response was received on 10 August 2023 containing General Terms of Approval. The GTAs have been attached to the draft consent.

### Design Review Advisory Panel

In line with the Shellharbour Design Review Advisory Panel Policy and the State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development), the development has been considered by the Shellharbour Design Review Advisory Panel (DRP).

The development application was referred to the DRP prior to lodgement of the subject application. The comments provided following the DRP meeting are provided at **Attachment 5**.

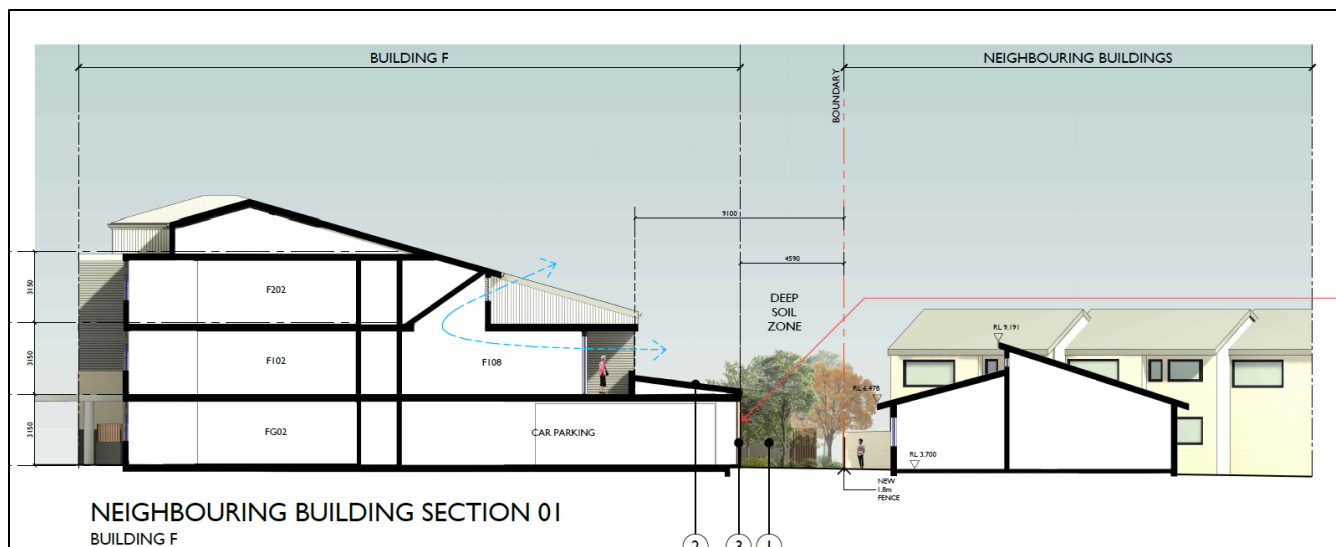
All comments from the DRP are considered to have been suitably addressed by the Applicant either through the submission of amended plans or additional information.

## 2.5.3 Southern Regional Planning Panel Briefing Comments

A Southern Regional Planning Panel Briefing meeting was held on 28 February 2023. The following key issues were identified by the Panel and have been responded to accordingly:

- Clarification of cut and fill and retaining walls required on site

The applicant has provided a bulk earthworks plan and sections which visually illustrate the cut and fill across the entire site. Section plans illustrating how the development relates to the southern adjoining properties have also been submitted which shows there are no significant level changes proposed. The sections include setback distances of the various levels of the development to the southern boundary and fencing (Figure 4).



**Figure 4:** Neighbouring Building Section – Building F

- Development impact on adjoining residential development including privacy

The layout of Buildings D, E and F (adjacent to the residential properties along the southern boundary) have been modified to create separate buildings that are in excess 8 metres apart at Level 1 and 11m at Level 2. The separation of the buildings at Level 1 and 2 reduces the visual bulk of the building as viewed from the adjoining residential properties at No. 3 Arcadia Street and 1 Sparta Street. The depth of the Level 1 balconies of Buildings D, E and F have also been modified, increasing the setback of the balconies to the southern property boundary to 9.1m.

The roof form of the entire development has been amended from a skillion to hipped roof design, to assist in the transition between the two and three storey elements. Solid balcony balustrading for all southern facing balconies has been incorporated. The sections in Figure 4 also highlight how the at grade car parking areas roof will also screen and block downward view lines from the south facing balconies.

The applicant has submitted photomontages of the revised proposal illustrating how the modified Buildings D, E and F will appear from various perspectives within Sparta Street (Figures 5 and 6). Additional shadow diagrams of the development and impact on the southern residential properties has been submitted.





**Figure 5:** Photomontage of Building F southern elevation as amended with additional break in between building.



**Figure 6:** Photomontage of Building D southern elevation as amended.

- Staging of work and options for alternate operations for existing residents during construction phase

The existing Warrigal Care facility comprises of a residential care facility and independent seniors living dwellings. The residential care facility component is not currently operational. The applicant has provided the following information in relation to living arrangements for existing residents during the construction phase of the development.

*“Warrigal Customer Relations team has commenced 1 on 1 case management with existing village residents to assist them in the decision making process with the option being choosing to move to Bradman Avenue, other suitable Warrigal village or other providers.*

*Residents will be assisted with the logistics and cost of the relocation process. Residents will have the opportunity to purchase a dwelling in the newly constructed Warilla village.”*

The development at Bradman Avenue Warilla has now been approved by Council and is subject to far shorter and more simple build time given it is limited to single storey development with at-grade carparking.

- Building A interface with Arcadia Street

The amended proposal has removed the third storey component of Building A orientated to Arcadia Street. This results in an overall reduction of five (5) apartments. A third storey component remains to Building A, however this component is orientated away from the Arcadia Street frontage and is minimally visible through the amended roof form. The roof form of all residential buildings has been amended from skillion to a traditional pitched and hipped roof type which better conceals the transition between two and three storeys (Figures 7 and 8).



**Figure 7:** Arcadia Street elevation as originally submitted



**Figure 8:** Arcadia Street elevation as amended

- Capacity of the facility and impacts on traffic generation

Councils Traffic Engineer has reviewed the proposal and the Traffic Impact Assessment accompanying the development application. Councils Traffic Engineer is satisfied that the provision of one driveway to service the development is sufficient and achieves compliance with the relevant Australian Standards. The traffic generation from the proposed development is within the capacity of the local road network and does not require an additional driveway or reduction in yield.

### **3. SECTION 4.15 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

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In determining a development application, a consent authority is to take into consideration matters referred to in section 4.15(1) of the Act as are of relevance to the development the subject of the application:

#### **3.1 Biodiversity Conservation Act 2016**

Section 1.7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that the Act has effect subject to the provisions of Part 7 of the *Biodiversity Conservation Act 2016* (BC Act).

Part 7 of the BC Act relates to Biodiversity assessment and approvals under the EP&A Act where it contains additional requirements with respect to assessments, consents and approvals under this Act.

For the subject site, entry into an offset scheme would be triggered by the clearing of an area greater than 0.25 hectares based upon the minimum lot size of the *SLEP 2013* (i.e. less than 1-hectare minimum lot size). The proposal seeks the removal of 30 trees due to a combination of factors including poor health and conflict with the building footprint. The area to be cleared is significantly less than the 0.25ha requirement threshold. Therefore, the proposal does not trigger the requirement for a biodiversity offset scheme.

Council staff have considered whether the development site would potentially provide suitable habitat for any threatened species. The test of significance and has concluded that the proposed development is not expected to significantly affect threatened species or ecological communities, or their habitats. Therefore, no further assessment of the proposal is required under the *BC Act*.

#### **3.2 Water Management Act 2000**

The proposed development is located within 40m of the bank of Benson Creek which extends along the eastern boundary of the site. The development is therefore identified as Nominated Integrated Development under section 4.46 of the *Environmental Planning and Assessment Act 1979*, requiring a Controlled Activity Approval under section 91 of the *Water Management Act 2000*. Concurrence from the Department of Planning and Environment – Water was received on 10 August 2023 and the General Terms of Approval issued and included in the draft consent.

#### **3.3 Existing Use Rights – Retail Premises**

The site contains an existing retail premises which operates as an op shop with sales to the general public. The proposed development includes the demolition of the existing premises as part of the wider clearing of the site. The proposed development includes the replacement of this retail component (as an op shop), adjoining the neighbourhood shop and community hall fronting George Street. The subject site is located in the R3 Medium Density Residential zone whereby retail premises are prohibited under the *SLEP 2013*. Accordingly, the application relies on existing use rights to support the inclusion of the use in this proposal.

Thus, assessment is required against Division 4.11 ‘Existing Use’ in the *Environmental Planning and Assessment Act 1979*, and Part 7 ‘Existing uses – the Act, Div 4.11’ of the *Environmental Planning and Assessment Regulations 2021*.

##### **3.3.1 Division 4.11 – Existing Use – EP&A Act 1979**

Section 4.65 of the *EP&A Act 1979* details the definition of ‘existing use’ provided below:

##### **4.65 Definition of “existing use”**

*In this Division, existing use means—*



- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) the use of a building, work or land—*
  - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
  - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

**Comment:** A search of Council's records identify that BA1988.22.1 approved additions to the op-shop and was lawfully approved at the time. As such, the subject site benefits from existing use rights. Retail premises are now prohibited in the R3 Medium Density Residential zone under the provisions of the SLEP 2013.

#### **4.66 Continuance of and limitations on existing use**

- (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) Nothing in subsection (1) authorises—*
  - (a) any alteration or extension to or rebuilding of a building or work, or*
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
  - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or*
  - (e) the continuance of the use therein mentioned where that use is abandoned.*
- (3) Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*
- (4) During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months in subsection (3) is taken to be a reference to 3 years.*

**Comment:** Council records confirm that the use of the premises as an retail premises / op shop has continued and has not been abandoned as described in the above Clause.

#### **4.67 Regulations respecting existing use**

- (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—*
  - (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
  - (b) the change of an existing use to another use, and*
  - (c) the enlargement or expansion or intensification of an existing use.*
  - (d) (Repealed)*
- (2) The provisions (in this section referred to as **the incorporated provisions**) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- (3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*

- (4) *Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.*

**Comment:** The Act expressly provides that the Regulations may make provisions for an existing use to be developed as per section (1) (a) – (c). This is referring to ‘Part 7 Existing Uses’ in the *EP&A Regulations 2021*, specifically section 162 and 163 of the EP&A regulations.

### **3.3.2 Existing Use – the Act, Div 4.11 – EP&A Regulations 2021**

#### **162 Application of Part**

- (1) *The provisions of this Part are provisions in force for the purposes of the Act, section 4.67(1).*

**Note—**

*The Act, section 4.67(2) provides that the provisions in force for the purposes of the Act, section 4.67(1) are taken to be incorporated in every environmental planning instrument.*

#### **163 Certain development allowed**

- (1) *An existing use may, subject to this Part—*
- (a) be enlarged, expanded or intensified, or*
  - (b) be altered or extended, or*
  - (c) be rebuilt, or*
  - (d) be changed to another use, but only if the other use is a use that may be carried out with or without development consent under the Act, or*
  - (e) if it is a commercial use—be changed to another commercial use, including a commercial use that would otherwise be prohibited under the Act, or*
  - (f) if it is a light industrial use—be changed to another light industrial use or a commercial use, including a light industrial use or commercial use that would otherwise be prohibited under the Act.*
- (2) *However, an existing use must not be changed under subsection (1)(e) or (f) unless the change—*
- (a) involves only minor alterations, and*
  - (b) does not involve an increase of more than 10% in the gross floor area of the premises associated with the existing use, and*
  - (c) does not involve the rebuilding of the premises associated with the existing use, and*
  - (d) does not involve a significant intensification of the existing use.*

**Comment:** The existing development contains a retail premises to which existing use rights apply. The floor area of the proposed op-Shop is 171.30m<sup>2</sup> in comparison to the 160m<sup>2</sup> floor area of the existing shop. The proposed development includes the rebuilding of this retail premises, as permitted by Clause 163 (1)(c) above. The increase in the floor area of the proposed premises in comparison to the existing is considered minor and acceptable given the nature of the use. A change of use is not proposed under clause 163(1)(e) and therefore the provisions of subclause (2) do not apply.

### **3.4 Section 4.15 (1) (a)(i) - Environmental Planning Instruments**

#### **3.4.1 State Environmental Planning Policy (Planning Systems) 2021**

##### **Schedule 6 Regionally significant development**

#### **2 General development over \$30 million**

*Development that has a capital investment value of more than \$30 million.*

A quantity surveyors report accompanied the development application with a CIV of \$66,376,917 (excluding GST). Therefore, under Part 4, Division 4.2, Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979*, the Southern Regional Planning Panel is the designated consent authority.

### **3.4.2 State Environmental Planning Policy (Resilience and Hazards) 2021**

#### **Chapter 2 Coastal Management**

*The aim of this section of the Policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:*

- a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

*Section 5 of the Coastal Management Act 2016 provides that the coastal zone means the area of land comprised of the following coastal management areas—*

- a) the coastal wetlands and littoral rainforests area,*
- b) the coastal vulnerability area,*
- c) the coastal environment area,*
- d) the coastal use area.*

**Comment:** The subject site is within the mapped Coastal Use Area and Coastal Environment Areas (Figures 4 and 5).

#### **Division 3 Coastal Environment Area**

##### **2.10 Development on land within the coastal environment area**

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (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.*

**Comment:** The subject site is located within the Coastal Environment area as demonstrated by Figure 4 below. The development is not expected to result in adverse impacts on the integrity and resilience of the ecological environment, the coastal environmental values, natural processes, water quality, marine vegetation, habitats or headlands or rock platforms, public open space and access to that public open space, aboriginal cultural heritage or the use of the surf zone.

*(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is 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.

**Comment:** Generally, the proposal has been designed and sited to avoid potential impacts to the coastal environment. It is considered that the potential impact resulting from the proximity to the coast is able to be managed, subject to conditions which will be included as part of any consent granted.

(3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

**Comment:** The subject site is not located within the Foreshores and Waterways Area.



**Figure 4:** SEPP Mapping – Coastal Environment Area layer

## Division 4 Coastal Use Area

### 2.11 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
- (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.

**Comment:** The development will not result in significant overshadowing of the foreshore area, impacts on the visual amenity of the coast, Aboriginal cultural heritage or cultural or built environmental heritage.



**Figure 5 – SEPP Coastal Management 2018 mapping**

- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

**Comment:** The subject site is not located within the Foreshores and Waterways Area.

## **Division 5 General**

### **2.15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

**Comment:** Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the subject land or any other land.

### **2.13 Development in coastal zone generally—coastal management programs to be considered**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.*

**Comment:** The Shellharbour Coastal Zone Management Plan does not recommend any works that would affect or which relate to the subject site.

### **2.14 Other development controls not affected**

*Subject to clause 7, for the avoidance of doubt, nothing in this Part:*

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

**Comment:** Noted.

### **2.15 Hierarchy of development controls if overlapping**

*If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:*

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

**Comment:** The subject site is located within the overlapping Coastal Use and Coastal Environment areas. There is no inconsistency between the controls as discussed above.

## **Chapter 4 Remediation of Land**

The aim of this Chapter of the SEPP is to provide for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or environment and requiring that any remediation work meet certain standards and notification requirements. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated.

Clause 4.6 requires a consent authority to consider whether the land is contaminated and if it is contaminated it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out.

Council records do not indicate any historic use that would contribute to the contamination of the site and the land is not identified as being contaminated on Council mapping. A Preliminary Site Investigation accompanied the application concluding that some isolated contamination was identified at the site and that the site was suitable for the proposed seniors living development subject to the following recommendations:

- *Conduct a Hazardous Materials Survey (HMS) of current site structures.*
- *A Construction Environmental Management Plan (CEMP) for the excavation, waste classification, and handling of all soils from the site.*
- *As acid sulfate soils were identified at the site, an Acid Sulfate Soil Management Plan (ASSMP) should be prepared, with the objective to aid in the management and removal of acid sulfate soils encountered during the development. It is recommended that further delineation testing be undertaken to confirm the extent of ASS at the site.*
- *A Dewatering Management Plan should be constructed for the site, which outlines proper management procedures relating to the aquifer system and regional groundwater resources. Monitoring procedures regarding groundwater levels, flow and discharge volume, as well as the required measures to minimise risks for exposure of acid sulfate soils and inducing contamination.*

Accordingly, subject to the imposition of the above recommendations contained in the Preliminary Site Investigation, the provisions of Chapter 4 are considered to have been satisfied.

### **3.4.3 State Environmental Planning Policy (Transport and Infrastructure) 2021**

#### **Division 5 Electricity transmission or distribution**

#### **Subdivision 2 Development likely to affect an electricity transmission or distribution network**

##### **2.48 Determination of development applications—other development**

- (1) *This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*
  - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
  - (b) *development carried out—*
    - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
    - (ii) *immediately adjacent to an electricity substation, or*
    - (iii) *within 5m of an exposed overhead electricity power line,*
  - (c) *installation of a swimming pool any part of which is—*
    - (i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
    - (ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
  - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) *Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must—*
  - (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*

- (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

**Comment:** The proposal was referred to Endeavour Energy as the subject site is located within 5m of an exposed overhead electricity power line and an existing padmount substation is on the site. A response was received on 6 November 2022 objecting to the proposal due to lack of information regarding the existing padmount substation. Amended plans were submitted and a re-referral to Endeavour Energy was sent. A response was received on 25 July 2023 raising no further objection, subject to the imposition of the recommended conditions including the requirement of an application for asset removal/replacement of the padmount substation.

#### **3.4.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the *Environmental Planning and Assessment Regulation 2000*, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets. An amended BASIX Certificate has been provided which reflects the amended architectural plans.

The BASIX certificate was issued no earlier than 3 months before the date on which the development application was lodged.

#### **3.4.5 State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development**

This Policy applies to development for the purposes of a residential flat building which has at least 3 storeys and more than 4 dwellings. The proposed development comprises of six buildings all of which have a maximum of three storeys.

Part 4 of the Policy relates to the Application of design principals to development applications.

Clause 28 of the SEPP provides controls for the determination of development applications. Please see below for comments in response to each part of Clause 28.

- (1) *After receipt of a development application for consent to carry out development to which this Policy applies (other than State significant development) and before it determines the application, the consent authority is to refer the application to the relevant design review panel (if any) for advice concerning the design quality of the development.*

**Comment:** Council has formed a Design Review Advisory Panel (DRP) which provides advice on applications.

The proposal was referred to the DRP under Shellharbour Council Policy POL-0129-V01 – Shellharbour Design Review Advisory Panel Policy. This was done at pre lodgement stage as is preferred by Council and the DRP to ensure that any design changes are made early in the design process before developers become wedded to certain design. The decision was taken to not re-refer the proposal to the DRP as the changes made to the design were appropriate.

The DRP is a Shellharbour City Council Panel formed to provide independent design advice to applicants and Council planners to assist with lifting the bar of development within our LGA. The DRP is not constituted by the Minister under SEPP 65 and therefore there is no requirement for to refer the application to the DRP for advice concerning the design quality of the development after lodgement of the application.

The proposal was referred to the DRP on 22 October 2021 as per Council's Policy. The DRP comments are provided in **Attachment 6**.



(2) *In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

(a) *the advice (if any) obtained from the design review panel, and*

**Comment:** All comments from the DRP have been suitably addressed by the Applicant and are discussed in detail in **Attachment 6**.

(b) *the design quality of the development when evaluated in accordance with the design quality principles, and*

**Comment:** The proposal has been assessed against the Design Quality Principles for residential apartment development. The consistency of the proposal against these principles is discussed in **Attachment 8**.

(c) *the Apartment Design Guide.*

**Comment:** An assessment of the proposal against the Apartment Design Guidelines (ADGs) is detailed in the compliance table included as **Attachment 8**. The proposal seeks variations to the following ADG components:

- Objective 4F1 – Common Circulation and Spaces

The following Buildings and levels exceed the number of apartments off on a single level:

Building A – Level 1 – 10 apartments

Building F – Level 1 – 9 apartments

Building D – Level 1 – 9 apartments

Building C – Level 1 – 9 apartments

Building C – Level 2 – 9 apartments

In accordance with the Design Guidance, variations to Design Criteria 4F-1 may be supported where a high level of amenity for common lobbies, corridors and apartments are demonstrated. In relation to the proposal, the lifts on each of these levels are located in the middle of the level for easy access. Each non-compliant level has a designated sitting room within the corridor with floor to ceiling glass for natural light and casual social interaction. The amenity of the common circulation areas is adequate and the variation is supported.

### 3.4.6 State Environmental Planning Policy (Housing) 2021

The *SEPP (Housing) 2021* aims to increase the supply and diversity of housing types including those for seniors and ensure that new housing development provides residents with a reasonable level of amenity. The development application was lodged under this policy and an assessment against the relevant clauses are provided in **Attachment 6**.

### 3.4.7 Shellharbour Local Environmental Plan 2013

Part 1 Preliminary		
1.4	Definitions	<p><b>seniors housing</b> means a building or place that is—</p> <p>(a) a residential care facility, or</p> <p>(b) a hostel within the meaning of State Environmental Planning Policy (Housing) 2021, Chapter 3, Part 5, or</p> <p>(c) a group of independent living units, or</p> <p>(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—</p> <p>(e) seniors or people who have a disability, or</p>

		<p>(f) people who live in the same household with seniors or people who have a disability, or</p> <p>(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.</p> <p><b>neighbourhood shop</b> means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, but does not include neighbourhood supermarkets or restricted premises.</p> <p><b>retail premises</b> means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—</p> <p>(a), (b) (Repealed)</p> <p>(c) food and drink premises,</p> <p>(d) garden centres,</p> <p>(e) hardware and building supplies,</p> <p>(f) kiosks,</p> <p>(g) landscaping material supplies,</p> <p>(h) markets,</p> <p>(i) plant nurseries,</p> <p>(j) roadside stalls,</p> <p>(k) rural supplies,</p> <p>(l) shops,</p> <p>(la) specialised retail premises,</p> <p>(m) timber yards,</p> <p>(n) vehicle sales or hire premises,</p>
1.9A	Suspension of covenants, agreements and instruments	No restrictions are registered on title.
<b>Part 2 Permitted or prohibited development</b>		
2.2 & 2.3	Zoning of land and Zone objectives and land use table	<p>The subject site is located within the subject site is located within the R3 Medium Density Residential zone.</p> <p>The objectives of the zone are as follows:</p> <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul> <p>The proposal comprises of seniors housing development with a neighbourhood shop and an op-shop (existing use within the site). The seniors housing and neighbourhood shop components are permissible in the R3 Medium Density Residential zone with consent. The proposal is consistent with the objectives of the zone that it provides housing for seniors in an appropriate location with access to services.</p> <p>The op-shop is categorised as a retail premises and is prohibited in the zone and relies on existing use rights.</p>

2.6	Subdivision – consent requirements	The development application does not propose subdivision.
2.7	Demolition requires development consent	Consent for the demolition of the existing residential care facility, independent seniors living, retail premises and associated structures are sought as part of the subject proposal. Demolition related conditions are included in the draft consent.
<b>Part 4 Principal development standards</b>		
4.1	Minimum lot size	N/A as the development application does not propose subdivision.
4.3	Height of buildings	<p>The Height of Buildings Map identifies a maximum building height of 9m for the subject site. The maximum building height is as follows:</p> <ul style="list-style-type: none"> <li>• Building A – 12.1m</li> <li>• Building B – 13.5m</li> <li>• Building C – 13.3m</li> <li>• Building D – 12.4m</li> <li>• Building E – 12.2m</li> <li>• Building F – 12.1m</li> </ul> <p>Building B has a maximum building height of 13.5m and therefore exceeds the maximum permitted by 50% (4.5m). See Clause 4.6 variation assessment below.</p>
4.4	Floor Space Ratio	<p>The Floor Space Ratio Map identifies a maximum floor space ratio (FSR) of 0.7:1 (m<sup>2</sup>) for the subject site.</p> <p>The proposed FSR is 0.65:1 (14,519.6m<sup>2</sup>), therefore achieving compliance.</p>
4.5	Calculation of floor space ratio and site area	The FSR and site area have been calculated in accordance with the provisions of this clause.
4.6	Exceptions to development standards	The proposal exceeds the building height development standard. The Applicant has submitted a Clause 4.6 variation statement addressing the requested height variation. See Clause 4.6 variation assessment below.
<b>Part 5 Miscellaneous provisions</b>		
5.4	Miscellaneous permissible uses	<p><i>(7) <b>Neighbourhood shops</b> If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed 80 square metres.</i></p> <p>The proposed retail floor area of the neighbourhood shop is 79.79sqm and therefore complies with this Clause.</p>
5.10	Heritage conservation	The subject site is not identified as a heritage item and is not located within the vicinity of any heritage items.
5.11	Bush fire hazard	The subject site is not located in bushfire prone land.
5.21	Flood Planning	<p>The subject site is identified as being affected by flood hazard within the Elliott Lake – Little Lake Floodplain Risk Management Study and Plan. No residential related buildings are located in the high flood hazard.</p> <p>The proposal does not numerically comply with the flooding planning requirements for the Critical Utilities and Uses land category for a seniors housing development under the</p>

		<p>Shellharbour Development Control Plan 2013. However, all residential apartments have compliant 1% AEP event finished floor levels and PMF refuge areas are proposed in appropriate locations.</p> <p>The proposed design including the finished floor levels of the dwellings and earthworks are compatible with the flood function and behaviour of the subject site and will not adversely impact the flood affection of the surrounding properties. The proposal complies with the objectives of this clause.</p>
<b>Part 6 Additional local provisions</b>		
6.1	Acid sulfate soils	<p>The subject site is mapped as containing Class 2 and 3 acid sulfate soils (ASS). The Preliminary Site Investigation (PSI) accompanying the application confirmed the presence of acid sulfate soils in the underlying natural soils across the site. The PSI recommended the undertaking of further delineation testing prior to the preparation of an Acid Sulfate Soils Management Plan to confirm the extent of ASS at the site. Accordingly, a condition of consent implementing the recommendations of the PSI and a subsequent ASS Management Plan has been recommended.</p>
6.2	Earthworks	<p>A bulk earthworks plan accompanied the development application noting that a mixture of cut and fill is proposed to accommodate the development including the basement under Building A. The site levels have been prepared to ensure that the entire site is capable of achieving the accessibility requirements for seniors housing under the SEPP (Housing) 2021. This includes pedestrian access from the buildings to the community hall and the public domain (Arcadia Street and George Street).</p> <p>The proposal satisfies the objectives of this clause to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p>
6.4	Stormwater management	<p>The application submitted a concept stormwater drainage plan including on-site detention. Councils Development Engineer raised no concerns regarding the proposal subject to the imposition of the recommended conditions of consent.</p> <p>The proposal is considered to be consistent with the objectives of the clause and satisfies the requirements of Part 3. The stormwater design would not be expected to result in adverse runoff impacts to adjoining properties.</p>
6.5	Terrestrial Biodiversity	<p>The subject site is not mapped as being Environmentally Sensitive Land on the Terrestrial Biodiversity Map.</p>
6.7	Airspace operations	<p>The subject site is not located within the Obstacle Limitation Surface Area.</p>
6.8	Development in areas subject to aircraft noise	<p>The subject site is not within the area mapped as being subject to aircraft noise.</p>
6.9	Essential services	<p>The site is serviced by all required essential services.</p>

## Clause 4.6 – Exceptions to Development Standards

Development Departure	SLEP 2013
Is the planning control in question a development standard?	Yes – Clause 4.3 Building Height
<b>4.6(3) Written request submitted by an applicant contains a justification:</b>	
(a) <i>That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i>	<p>The applicant has provided a written statement which asserts that compliance with the development standard is unreasonable or unnecessary in this case. A summary of this statement is as follows:</p> <ul style="list-style-type: none"> <li>• The proposed development provides 3 storey buildings positioned around a central village green and extending along the main driveway and riparian corridor. The use of 2-3 storey buildings, as opposed to single storey development or a greater number of 2 storey buildings allows for the vertical placement of building mass, which minimises the extent of site coverage. This subsequently enables a high proportion of the site to be utilised for open space and landscaping, with the quantity of deep soil planting equating to 33.8% of the site, which significantly exceeds the 15% requirement of <i>SEPP(Housing) 2021</i> and the 7% requirement of the Apartment Design Guide (ADG). The visual and amenity benefits of this extensive area of deep soil planting and landscaping are significant. This is a desirable outcome for a development which provides seniors housing where access and an outlook to high quality outdoor space is essential.</li> <li>• The location of the three storey components are strategically positioned to address overshadowing and streetscape compatibility. The three storey components will be minimally visible from the public domain and are predominantly located within the central portion of the site and to the east along the riparian corridor.</li> <li>• Compliant 9m building heights are provided along the along the southern elevation of Buildings D, E and F where compliance is necessary to minimise amenity impacts on the adjacent residential development to the south. The three storey components of Buildings D, E and F are setback 19.47m of the southern property boundary.</li> <li>• Compliance with the development standard would be contrary to the objective of the height control as the resultant design would not compliment scenic character, due to the likelihood that a redistribution of bulk to the lower levels of the building would reduce landscape opportunities and variety of communal amenities for the residents.</li> </ul> <p><u>Council staff comment:</u></p> <p>Council concurs with the comments raised by the applicant above. The building components that are two storey (Buildings A, D, E and F) comply with the 9m development standard, with the three storey components of these building being adequately setback with minimal openings visible from</p>

	Arcadia Street and the adjoining southern residential properties. The unique site circumstances (adjoining a riparian corridor close proximity to Warilla Town Centre and the large site area) warrants a variation to the building height development standard.
(b) <i>That there are sufficient environmental planning grounds to justify contravening the development standard.</i>	<p>The applicant has provided a written statement which asserts that the contravention of the development standard is justified on several environmental planning grounds. A summary of these ground are as follows:</p> <p><u>Environmental Planning Ground 1 – Unique site characteristics</u></p> <ul style="list-style-type: none"> <li>• The location of the subject and its characteristics are unique. The subject site is located 125m from the Warilla Town Centre in George Street Warilla, where building heights of 12m are permissible, with increased heights of 15m permissible on land at the north-western corner of Lake Entrance Rd and Shellharbour Rd (340m). The proposed development, which has a maximum height of 13.5m (Building B) will not be out of character with the scale of development on such land.</li> <li>• The exceedance of the height limit, which effectively equates to one residential level is reasonable in the context of the site and its surroundings. The distances to neighbouring residential properties reduces the visibility of the height exceedance.</li> <li>• The site, which has a substantial site area of 22,020m<sup>2</sup>, is capable of accommodating a development which exhibits an increased building height, without adversely impacting amenity of surrounding residents.</li> </ul> <p><u>Environmental Planning Ground 2 – Negligible amenity or visual impacts</u></p> <ul style="list-style-type: none"> <li>• Shadow diagrams accompanying the application demonstrate that areas where the building height development standard is exceeded, there are no overshadowing impacts to adjoining residential properties. This is achieved through increased setbacks and compliant building heights near the western and southern property boundaries.</li> <li>• In relation to within the development, the proposal achieves the solar access requirements for independent seniors housing under the <i>SEPP (Housing) 2021</i>.</li> <li>• Photomontages accompanying the application demonstrate that the building height exceedance is not discernible in areas where the proposal has direct interfaces with the public domain (Arcadia Street, George Street, southern residential properties).</li> </ul> <p><u>Environmental Planning Ground 3 – Seniors housing development</u></p> <ul style="list-style-type: none"> <li>• Variation to building height development standards in the R3 zone, where residential flat buildings are permissible, is also supported by the intended outcomes of <i>SEPP (Housing) 2021</i>. Clause 87 of the <i>SEPP (Housing) 2021</i> which applies to sites of over 1500m<sup>2</sup> in zones where</li> </ul>

	<p>residential flat buildings are permissible allow an FSR increase of 15% over the maximum permitted FSR of 0.7:1, subject to the development not exceeding the maximum permitted building height by 3.8m. This would permit a development on the site with an FSR of up to 0.805:1 and a building height of 12.8m. The proposal complies with the FSR development standard under the <i>SLEP 2013</i> and has not sought to utilise the FSR bonus available under Clause 87. The utilisation of Clause 87 would result in the height exceedance reduce from 50% (4.5m) to 5.4% (0.7m). Further only Building B and C would exceed the 12.8m building height.</p> <ul style="list-style-type: none"> <li>It is considered that the proposed FSR and building height would have no greater visual impact than a development with an 0.805 FSR and 12.8m height in compliance with clause 87 of <i>SEPP (Housing) 2021</i>.</li> </ul> <p><u>Council staff comment:</u> The environmental planning grounds provided in the applicant's statement are supported in this instance.</p>
<b>4.6 (4)(a) Consent authority is satisfied that:</b>	
<i>i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i>	<p>The applicant's written request is considered to have adequately addressed the matters required to be demonstrated by (3). In addition to the written statement, photomontages, architectural plans and shadow diagrams have been submitted that visually illustrate the statement made in relation to overshadowing, streetscape and site characteristics.</p>
<i>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</i>	<p><u>Clause 4.3 Height of Building Development Standard</u></p> <p>The objectives of Clause 4.3 Height of Buildings are as follows:</p> <ul style="list-style-type: none"> <li>(a) <i>To ensure the height of buildings complements the streetscape, rural or natural scenic character of the area in which the buildings are located,</i></li> <li>(b) <i>to ensure the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views,</i></li> <li>(c) <i>to protect areas of scenic or visual importance.</i></li> </ul> <p>The submitted clause 4.6 variation statement asserts that the proposal is consistent with the objectives of clause 4.3 as per the following:</p> <ul style="list-style-type: none"> <li>The development will integrate effectively within the locality, where a 12m to 15m maximum height limit is applied to the west of the site within the Warilla Town Centre area extending along George Street.</li> <li>The development is to be located on a substantial sized landholding which is unique in the locality and which affords opportunity for an alternate design solution, focusing on delivery of a building that has a site-specific design that is responds to its site characteristics.</li> <li>The proposal and height variation compliments the scenic character of the Bensons Creek corridor though</li> </ul>

	<p>the provision of a deep soil riparian buffer extending along the creek.</p> <ul style="list-style-type: none"> <li>• The design addresses streetscape integration by providing a single storey design (Op Shop, Neighbourhood Shop and Community Hall on George Street) and modulation of the upper non-compliant level on the Arcadia Street frontage.</li> <li>• The shadow analysis demonstrates that overshadowing of the multi dwelling to the south is comparable under the pre and post development scenarios. This is attributed to the 19.47m setback from the southern boundary to the non-height compliant upper floor level. It is unlikely that the deletion of the upper most level to achieve a compliant height would reduce the shadow cast by the development due to the substantial setback.</li> <li>• The significant setback of Building A to the George Street frontage and the minimisation of site coverage adjacent to this intersection addresses the visual prominence of this corner location. The initial view from this location will be a of landscaped space leading to the central village green, with perimeter buildings.</li> </ul> <p><u>Council Comment:</u></p> <p>The building mass of the proposal and the components exceeding the building height are appropriately positioned that respects the site and surrounding characteristics. Specifically, the non-compliant components are located towards the middle of the site and near the watercourse thereby minimising visibility from the public domain and impacts to surrounding residential properties. The application has adequately demonstrated that the proposed height of the development will not result in adverse amenity impacts on surrounding properties through section and shadow diagrams. As such, the proposal is considered to be consistent with the objectives of clause 4.3</p> <p><u>R3 Medium Density Residential Zone Objectives</u></p> <p>The objectives of the R3 Medium Density Residential zone are as follows:</p> <ul style="list-style-type: none"> <li>• <i>To provide for the housing needs of the community within a medium density residential environment.</i></li> <li>• <i>To provide a variety of housing types within a medium density residential environment.</i></li> <li>• <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> </ul> <p>The submitted Clause 4.6 variation request states that the proposal is consistent with the objectives of the R3 Medium Density Residential zone as follows:</p> <ul style="list-style-type: none"> <li>• Provides a purpose-built senior's living development in an accessible location meeting the housing requirements of seniors in a medium density setting.</li> <li>• In addition to the seniors housing component, the proposal includes a neighbourhood shop which is</li> </ul>
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	<p>permissible in the zone. The inclusion of the neighbourhood shop is appropriate given the road functionality of George Street and proximity to Warilla Town Centre. The neighbourhood shop will serve both the future Warrigal Care residents and the surrounding community.</p> <p><u>Council Staff Comment:</u></p> <p>Council agrees that the proposal would not be inconsistent with the objectives of the R3 Medium Residential zone on the following grounds:</p> <ul style="list-style-type: none"> <li>• The proposal provides independent seniors living in an appropriate built form and in an accessible location to public transport, services and facilities for its future residents. The building form of the development and distribution of building mass is appropriate for a R3 zone. The visual appearance of the development from the public domain is predominantly two storey with the visibility of the three storey component minimal and substantially setback to achieve compatibility.</li> <li>• The proposed neighbourhood shop, rebuilding of the op-shop and community hall will cater for the day to day needs of the site's residents.</li> <li>• The design is considered satisfactory and has mitigated potential unreasonable impacts on surrounding properties, whilst providing a high level of amenity for the future residents.</li> <li>• The development is considered to be in the public interest as it is consistent with the objectives of the building height development standard and the objectives for development in the R3 Medium Density Residential zone.</li> </ul>
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**3.5 Section 4.15 (1) (a)(ii) – any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved).**

None applicable.

**3.6 Section 4.15 (1) (a)(iii) – and development control plan**

**3.6.1 Shellharbour Development Control Plan 2013**

See **Attachment 9** for detailed assessment against the SDCP 2013.

**3.6.2 Variations to DCP**

An assessment of the proposal against the Shellharbour Development Control Plan 2013 is detailed in the compliance table included as **Attachment 9**. The proposal seeks variations to the following controls:

- 13.1.1 - Car parking requirements for neighbourhood shop and op-shop.

In accordance with Table 13.1 of the DCP, the size of the neighbourhood shop and op-shop requires a combined number of 7 car parking spaces excluding staff designated spaces. The applicant has

adequately justified that on-street car parking can accommodate the parking demand of the op-shop and neighbourhood shop. There is no current formal car parking for the existing op shop. Council agrees with the justification and supports the variation.

- 23.1.2 - The maximum depth of filling on any portion of the allotment is 1m

The depth of fill exceeds 1m in isolated areas due to changes in the natural ground level. The subject site is not level and earthworks are required to ensure that access within the site and to the public domain achieves the accessibility requirements under the relevant Australian Standard in accordance with the *SEPP (Housing) 2021*. Overall, the depth of fill is not considered unreasonable and will not result in adverse impacts to the adjoining properties.

- 24.1 - The associated Appendix 9 Floodplain Risk Management provides general provisions for development assessment relating to all of the catchments and specific provisions relating to individual development types

The proposal does not numerically comply with the flooding planning requirements for the Critical Utilities and Uses land category for a seniors housing development. However, as discussed throughout the report all residential apartments have compliant 1% AEP event finished floor levels and PMF refuge areas are proposed in appropriate locations. Overall, it is considered to be appropriately designed in relation to the flood risk, flood water behaviour and intended residents and the variation is supported as it results in a safer outcome than the existing development.

### **3.6.3 Shellharbour Local Infrastructure Contributions Plan 2019**

Development Contributions are applicable to the subject development. It is noted that the applicant has requested to carry out works-in-kind to a portion (an area of 531m<sup>2</sup>) to the adjacent public park (Lowe Park) to be offset against the section 7.11 contribution payable for this development. Council is willing to consider discussions following the determination of this application. As such, a condition is recommended noting that works-in-kind agreement may be considered as a means of offsetting the contribution payable in accordance with Councils Works-in-Kind Policy.

### **3.7 Section 4.15(1)(a)(iiia) Any planning agreement**

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

### **3.8 Section 4.15 (1) (a)(iv) – the regulations (to the extent that they prescribe matters for the purposes of this paragraph)**

#### 61 Additional matters that consent authority must consider

The proposal does involve demolition. Conditions of consent have been recommended in this regard.

The proposal does not relate to land which is the subject of a subdivision order under Schedule 7 of the EP&A Act 1979.

The subject development application does not relate to a manor house or multi dwelling housing (terraces).

#### 62 Consideration of fire safety

The proposal does not relate to a change of use.

#### 63 Considerations for erection of temporary structures

The consent does not relate to a temporary structure.

#### 64 Consent authority may require upgrade of buildings

The proposal relates to a new building and as such, no upgrade works are required.

### **3.9 Section 4.15 (1)(b)- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality;**

#### Built Form

The proposed seniors housing development comprises of six (6) residential buildings, one single storey multi-use building, common open space and revegetation of the riparian corridor. The building setbacks are consistent with the building setbacks for residential apartment buildings under the Apartment Design Guidelines. During the assessment process, amendments to the building form were made, including the deletion of five (5) apartments on the third storey of Building A facing Arcadia Street, separation of Buildings D, E and F and increased setbacks and modification of the roof style across the entire development from a skillion to pitched/hipped design

The buildings are sufficiently setback from boundaries and is site responsive, which assists in minimising any adverse impact to neighbouring properties by either loss of light or overlooking. Shadow diagrams have been submitted that demonstrate that the proposal will not result in adverse overshadowing impacts to the southern residential properties. The overall appearance of the building height and density as modified is considered to be compatible within the context of the site and its surroundings.

#### Tree Removal Retention and Riparian Corridor

The subject site has multiple mature trees scattered amongst the existing buildings and a riparian corridor lining Benson Creek to the east which forms part of the subject site. An Arboricultural Impact Assessment accompanied the proposal, which assessed the potential impact of the development on all of the trees on the site. The proposal seeks to remove thirty (30) trees and re-locate two (2) which range in height from 3m to 13.5m. The removal of the trees is considered acceptable in this instance, given the condition of the trees and replacement planting proposed which consists of 127 trees (excluding revegetation works within the riparian corridor). The tree species proposed for removal are included in the planting schedule including coastal banksia, tallowwood, crepe myrtle and brush box.

To the east within the subject site is Benson Creek, a first order watercourse. The development application was accompanied by a Vegetation Management Plan (VMP) outlining a treatment area of approximately 1850m<sup>2</sup>, including a 10m deep strip along the western side of Bensons creek and the small area east of the creek (refer to Figure 6). Since the planned buildings will likely intrude into the core riparian zone, the rule of averaging states that where there is extra available depth and that land can be used to average out the difference. Due to a variety of factors (accessibility and community benefit) the proposed treatment area of Lot 202 DP 786257 (354.6m<sup>2</sup>) is to be substituted with an area of the same size adjacent to the works-in-kind area in Lot 200 DP 786257. Both areas are owned by Council and are on the banks of the creek, requiring similar treatments. A total of 6,315 ground covers/grasses/edges and 95 shrubs and trees will be planted to revegetate the riparian area of 1850m<sup>2</sup>. The VMP is to apply for a total of 38 months from the date of commencement, inclusive of a 2 month (8-week) construction and revegetation phase, followed by a 36 month maintenance phase. The maintenance period shall commence following completion of all revegetation activities.



**Figure 6:** Landscape Site Plan and area subject to VMP highlighted in blue.

### **3.10 Section 4.15 (1)(c)- the suitability of the site for development;**

#### Flooding

Several areas of the subject site are identified as being flood affected in the 1% AEP event and the PMF. The flood hydraulic hazard across the site varies to low, medium and high. Under the SDCP 2013, seniors housing falls under the Critical Utilities land category whereby the minimum finished floor levels are to be set at PMF event plus 500mm freeboard and the land use is considered unsuitable in the medium and high flood risk. No residential related buildings are located in the high flood hazard. The proposal is located within the medium floor risk hazard and all apartments comply with the flood planning level (1% AEP flood event level plus 500mm freeboard). However, the areas of the site that are identified as being flood affected have been reviewed in terms of the flood water behaviour, proposal design and the intended residents. In this regard, the site is suitable for the development, given the flood risk category, proposed dwelling finished floor levels, earthworks proposed and the land use (seniors housing - independent living units).

Additionally, the proposed development is seen as a safer outcome than the existing seniors living development on site. The finished floor level of the residential care facility and single storey dwellings are below the PMF level and no refuge areas are provided. As previously discussed, PMF flood refuge areas within all buildings are provided. The higher care residential facility is more difficult to evacuate in the event of a flood in comparison to independent living. The proposed development is considered a superior outcome to the existing development in terms of flood risk and mitigation measures.

### Streetscape Compatibility

The subject site is located within the R3 Medium Residential Density zone where residential flat buildings are permitted and is located within close proximity to Warilla Town Centre. It is noted that Warilla Town Centre is undergoing a transition with re-development optimising the 12m building height development standard. The large area of the site enables the buildings to be appropriately located minimising impacts to the surrounding residential properties and accommodating large areas of landscaping. The proposal is considered reasonably compatible with the existing and future surrounding streetscape and would not result in unreasonable adverse impacts on the amenity of nearby properties. Accordingly, the site is considered suitable for the development.

### **3.11 Section 4.15 (1)(d)- any submissions made in accordance with the Act or the Regulations;**

The development application was notified in accordance with the provisions of Council's Community Participation Plan 2021 from 11 November 2022 to 12 December 2022. Modified plans and documentation were submitted and the amended application was put on notification from 14 July 2023 to 7 August 2023.

#### First Round of Notification

During the notification period a total of twenty six (26) submissions were received. The submissions comprised of eight (8) individual submissions and eighteen (18) pro-forma submissions (five (5) of one format and twelve (12) of another).

Issue/Concern		Comments
Building height, bulk and scale	Issue Raised	<p>The proposal is for three (3) storey buildings. There are no buildings in Arcadia Street or George Street over two (2) storeys.</p> <p>The development exceeds the 9m building height development standard. The planning grounds within the Clause 4.6 variation are insufficient.</p>
	Assessment Officer Response	<p>During the assessment process, five (5) apartment units were removed from the upper (third) level of Building A adjacent to the Arcadia Street frontage. The remaining three storey element is confined to that portion of the building which fronts the village green. Additionally, the roof lines of the entire development, including Building A have been amended to better conceal the third storey from Arcadia Street.</p> <p>The greatest building heights are generally positioned in the eastern and central portions of the site away from Arcadia Street and Sparta Street. Thereby minimising the visibility of the third storey components from the public domain.</p> <p>The development application was accompanied with a Clause 4.6 variation request for the building height. The variation has been assessed in accordance with the provisions of Clause 4.6 of the SLEP 2013 and is supported by Council.</p>
Streetscape incompatibility	Issue Raised	<p>The proposed three storey building is not in character with the streetscape and height. The scale and bulk of the development along Arcadia Street is excessive.</p>

		<p>The uncharacteristic materials and colours utilised by the building causes it to become a domain feature within the streetscape, rather than being integrated.</p> <p>The RL of the basement car parks results in an excessive cut and fill which will negatively impact the streetscape and character of the surrounding area.</p>
	Assessment Officer Response	<p>The building height of the development near the northern, western and southern perimeters are lower to assist in the integration of the development with the streetscape.</p> <p>The building elevations are articulated to assist in reducing the visual bulk of the development. The roof forms of the proposal have been amended from skillion to a traditional pitched and hipped roofs to reduce the visual bulk and be more in keeping with the roof styles of the development surroundings.</p> <p>The colour palette and external finishes are consistent with those found within the locality. The neutral colour palette is appropriate.</p> <p>The depth of cut and fill is generally within the confines of 1m. The building footprint of the basement is confined to the building footprint of the building.</p>
Building setbacks	Issue Raised	<p>The length of Building A, being approx. 70m along Arcadia Street, along with the height and current setbacks will have the effect of an over-scaled development along this frontage. The building does not provide an adequate setback in relation to the building height and size, thus creating a greater bulk and scale along the Arcadia Street frontage.</p> <p>The front setback of Building F is less than 6m, which is required for two storey multi dwelling housing.</p>
	Assessment Officer Response	<p>The Building A setbacks follow the angle of the property boundary and substantially exceeds the front setbacks required under the Shellharbour DCP 2013.</p> <p>During the assessment process, the upper storey front setbacks of Building F were increased to 6m thereby achieving compliance with setbacks in the Shellharbour DCP 2013. The setbacks now align with the adjacent development to the south.</p> <p>The articulation of the building elevations and variety of colours and external finishes achieves an appropriate building form.</p>
Visual privacy impacts	Issue Raised	<p>Due to the elevated positions of units in the development, residents will be able to look into existing dwellings' private spaces.</p> <p>Large windows and balconies will overlook the main bedroom, living area and dining room of dwellings to the south and will result in unacceptable overlooking.</p>
	Assessment Officer Response	<p>During the assessment process the setbacks of the private open spaces of Level 1 of Buildings D, E F (facing south) were increased. Sections illustrating that the proposal as modified will not result in adverse overlooking into the adjoining properties have been submitted.</p>

		<p>The ground level of Buildings D, E and F is sited 4.95m from the southern property boundary, with the Level 1 balconies setback from this boundary by 9.24m. At Level 1 those windows closest to the southern boundary are bedroom windows, also with a substantial 9.24m setback. Living rooms are 'inset' providing a further increase in setbacks from the southern property boundary, thereby reducing overlooking from the primary habitable spaces.</p> <p>At Level 2 there will be no interface between Buildings D, E and F and the adjacent buildings to the south as the units at this level are oriented towards the centre of the site (north), with a sloped roofline extending over the 2 storey to the south.</p> <p>The use of solid balcony walls will further reduce overlooking opportunities.</p>
Solar access	Issue Raised	<p>The proposed development results in substantial overshadowing of the adjoining residencies, especially along Arcadia Street, with the shadow diagrams showing that the development doesn't comply with the development controls.</p> <p>The survey plan does not accurately detail the change in levels between the development site and adjacent properties.</p> <p>Overshadowing from the development will impact on the mental health of surrounding residents.</p>
	Assessment Officer Response	<p>Shadow diagrams have been submitted with a comparative analysis of the shadow cast by the existing buildings. The shadow cast by the proposed buildings in the morning period on June 21 (i.e. 9am to 11am) does not extend beyond the Arcadia Street Road reserve and does not impact dwellings sited on the western side of Arcadia Street.</p> <p>The shadow diagrams illustrate that between the hours of 10.30am to 1.30pm on June 21 (the greatest overshadowing impact) there is no discernible overshadowing impact from the proposed development on the adjoining southern multi unit development to the south at No. 3 Arcadia Street and in Sparta Street.</p> <p>Overshadowing onto the southern residential properties and their open spaces is principally a result of shadow cast by the existing common fencing due to the north-south orientation of the site.</p> <p>The adjacent dwellings to the south will maintain a minimum of 3 hours of sunlight midwinter in accordance with the requirements of the <i>SEPP (Housing) 2021</i> and ADG.</p>
Loss of amenity and views	Issue Raised	<p>The proposed development will result in less of the sky being visible and substantial view impacts.</p>
	Assessment Officer Response	<p>There are no significant view lines which are currently available to key features such as the escarpment or the ocean.</p> <p>Buildings D, E and F have been amended to create three separate building with 8m separation at ground level and Level 1 and 11m at Level 2. The separation of the building</p>

		provides visual relief and view corridors that are more compatible with the development surroundings.
Traffic and car parking impacts	Issue Raised	<p>The existing seniors living development created constant traffic flows in the street. The proposed development is larger in scale and will be worse.</p> <p>The development only proposes one driveway along Arcadia Street. A second driveway from George Street should be added.</p> <p>There are not enough parking bays for the number of residents in the complex, resulting in on street parking</p>
	Assessment Officer Response	<p>A Traffic Impact Assessment accompanied the development application and has been reviewed by Council's Traffic Engineer raising no objection.</p> <p>The traffic generation of the development does not require a second driveway to be provided.</p> <p>The proposal exceeds the number of residential and visitor car parking spaces required under the Shellharbour Development Control Plan 2013.</p> <p>A condition of consent has been recommended that a minimum of one car parking space is provided for each apartment.</p>
Construction impacts	Issue Raised	<p>Construction activity, particularly heavy vehicle movements associated with works, shall cause unacceptable amenity impacts, with respect to noise and dust.</p> <p>Demolition equipment and trucks will impact Arcadia Street residents, damage the road and impact the current flow of traffic.</p> <p>Burglary taking place at construction and demolition sites poses a safety and crime risk to the local community.</p>
	Assessment Officer Response	<p>A condition of consent has been recommended requiring a Construction Management Plan be prepared and implemented to mitigate impacts on surrounding residents during the demolition and construction stages.</p> <p>Standard conditions of consent requiring the demolition works to comply with the relevant Australian Standards has been recommended.</p>
Waste collection	Issue Raised	<p>There is not an adequate location for placement of all the bins for the collection to take place resulting in implications during the ongoing operations of the development.</p> <p>Retaining the existing location of the driveway could also create potential traffic and safety impacts during bin collection.</p>
	Assessment Officer Response	<p>All residential waste collection will occur within the subject site. No kerbside collection on Arcadia Street is proposed.</p> <p>A Waste Management Plan accompanied the development application. Council's Waste Officer has reviewed the proposal and raised no objections subject to</p>



		the imposition of the recommended conditions of consent.
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## Second Round of Notification

Amended plans and documentation were submitted and the amended application was put on notification and a total of two (2) individual submissions were received.

Issue/Concern		Comments
Residential amenity impacts	Issue Raised	<p>The height of buildings D, E and F will impact on the solar access, air flow into the courtyards of the townhouses on Sparta Street.</p> <p>The building height of the development is over the 9m development standard.</p> <p>The building setbacks are too close and will cast a shadow onto the courtyard in Sparta Street.</p> <p>The communal swimming pool located at No. 1 Sparta Street will be overshadowed.</p>
	Assessment Officer Response	<p>Shadow diagrams accompanying the development application illustrate that the adjoining properties to the south will receive three hours of solar access in accordance with the requirements of the SEPP (Housing) 2021 and the ADG.</p> <p>Shadow diagrams of the communal swimming pool located at No. 1 Sparta Street demonstrate that during the summer/spring months when the swimming pool is most likely to be used, there will be no overshadowing by the proposed development.</p> <p>The Ground Level of Buildings D, E and F is sited 4.95m from the southern property boundary, with the Level 1 balconies setback from this boundary by 9.24m. At Level 1 those windows closest to the southern boundary are bedroom windows, also with a substantial 9.24m setback. Living rooms are 'inset' providing a further increase in setbacks from the southern property boundary, thereby reducing overlooking from the primary habitable spaces.</p> <p>At Level 2 there will be no interface between Buildings D, E and F and the adjacent buildings to the south as the units at this level are oriented towards the centre of the site (north), with a sloped roofline extending over the 2 storey to the south.</p> <p>The use of solid balcony walls will further reduce overlooking opportunities.</p>
Construction impacts	Issue Raised	<p>Is there asbestos in the existing dwellings?</p> <p>The construction scale of the development will impact on surrounding residents day to day lives and mental health.</p> <p>It is requested that dilapidation inspection of the adjoining residential dwellings be undertaken prior to the commencement of construction. The major excavation works could impact on nearby homes.</p>
	Assessment Officer Response	<p>A Preliminary Site Investigation accompanied the application recommending that a Hazardous Materials</p>

		<p>Survey (HMS) of current site structures be undertaken and a Construction Environmental Management Plan (CEMP) for the excavation, waste classification, and handling of all soils from the site during the demolition and construction phases. A condition requiring the recommendations contained in the Preliminary Site Investigation be implemented has been included in the draft consent.</p> <p>Standard conditions of consent requiring the demolition works to comply with the relevant Australian Standards has been recommended.</p> <p>A dilapidation report will be required for the adjoining properties will also be conditioned.</p>
Water table level impacts	Issue Raised	Will the development impact the existing water table level?
	Assessment Response Officer	A Preliminary Site Investigation and the Flood Impact Assessment accompanying the application, assessing the development in relation to flooding and ground water. The proposal will not adversely impact on the surrounding water table levels.
Streetscape incompatibility	Issue Raised	<p>Warilla is a quiet, low-density suburb which the development is not compatible with.</p> <p>The height of the development will be prominent in the streetscape.</p>
	Assessment Response Officer	<p>The subject site and adjoining allotments are zoned R3 Medium Density Residential whereby residential flat buildings, multi-dwellings and dual occupancies are permitted. The proposal complies with the FSR development standard under the <i>SLEP 2013</i> and the variation to the building height exceedance is supported.</p> <p>The development design is considered an appropriate response to the site characteristics and surrounding context. The proposal complies with the residential and visitor car parking requirements under the <i>SEPP (Housing) 2021</i>.</p>
Traffic impacts	Issue Raised	<p>Traffic into Arcadia Street and Sparta Street will be impacted.</p> <p>The location of the driveway on Arcadia Street and not George Street will increase traffic in the street.</p>
	Assessment Response Officer	The development application was accompanied by a Parking and Traffic Impact Assessment. Council's Engineer has reviewed the proposal and the Impact Assessment and has raised no concerns. Conditions have been recommended in this regard. The potential traffic capacity of the development is satisfactory for Arcadia Street and does not require a second driveway from George Street.
Substation	Issue Raised	It is stated that the existing substation is to be relocated, but it is not shown on the plans where the new location will be.
	Assessment Response Officer	A possible location of the new substation is in the south-western corner of the site near the Arcadia Street

		property boundary. The location of the substation is sufficiently setback from the adjoining residential properties.
Tree removal	Issue Raised	The proposal seeks to remove all of the trees on-site and are in good health.
	Assessment Officer Response	The proposal seeks to remove 30 trees and re-locate two. The tree removal is considered acceptable in the context of the proposal and the significant landscaping and tree replacement plantings proposed. The proposed tree species to be planted include the same species proposed to be removed.

The issues raised in the submissions have been suitably addressed and do not require a re-design or refusal of the proposed development application.

### **3.12 Section 4.15 (1)(e) the public interest.**

The proposal will provide orderly economic development of the land to provide growth in the supply of seniors residential housing in the local government area. The proposed development is consistent with the relevant statutory requirements and planning objectives.

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area. Accordingly, development consent of this proposal will not undermine the public interest subject to appropriate conditions being imposed on any development consent.

## **4. RECOMMENDATION**

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**DA0499/2022 (PPSSTH-223)** be determined by way of approval, subject to the recommended conditions as detailed in **Attachment 1**.