

COUNCIL ASSESSMENT REPORT

SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSTH-247 – DA0593/23
PROPOSAL	Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 x 2 bed; 42 x 3 bed and 4 x 4 bed) including basement car parking for 88 vehicles (plus 3 car wash bays)
ADDRESS	Lot 1 DP 1135117 [20 Heradale Parade Batemans Bay]
APPLICANT	M Alexander-Hatziplis
OWNER	Edam Properties Pty Ltd
DA LODGEMENT DATE	17/5/23
APPLICATION TYPE (DA, Concept DA, CROWN DA, INTEGRATED, DESIGNATED)	Nominated Integrated (Water NSW)
REGIONALLY SIGNIFICANT CRITERIA	Clause 4, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Regionally significant development – General development where the CIV exceeds \$30,000,000
CIV	\$37,267,709 (incl. GST); \$33,879,736 (excl. GST)
CLAUSE 4.6 REQUESTS	<u>Cl.4.3. Height of Buildings</u> The proposal has building heights varying between 12.18m – 14.141m (Building A); 13.2m – 13.88m (Building B); 11.92m – 14.6m (Building C) on a site with a height limit of between 11.5m and 12.5m.
KEY SEPP/LEP	SEPP No 65 (Design Quality of Residential Apartment Development), Infrastructure SEPP, Biodiversity and Conservation SEPP, Resilience and Hazards SEPP, Planning Systems SEPP; Sustainable Buildings SEPP; Eurobodalla LEP 2012
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	First submission period - 3 submissions Second submission period – 1 submissions
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Statement of Environmental Effects Clause 4.6 Variation to development standard

	<ul style="list-style-type: none"> • Aboriginal Heritage report • Archaeological Technical report • BASIX Certificate • Nathers Certificate and summary • (incl. Links to each Unit number certificate) • Statement of Compliance • Access for People with a Disability (Access report) • Acid sulphate soil (ASS) investigation and management plan report • DA Noise Assessment (acoustic report) • Apartment design guide compliance table • Design Verification Certificate • Arboriculture Impact Assessment report (Arborist report) • Building Code of Australia (2022) Assessment Report • Report • Fire Engineering Statement • Flood Impact Assessment • Hydrogeological (groundwater) assessment • Geotechnical Investigation report • Preliminary site investigation (PSI) report • Revised Traffic and Parking assessment report • Site waste minimisation and management plan • Visual Impact assessment
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	\$ -
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	28 January 2025
PLAN VERSION	-
PREPARED BY	Catherine Watkins, Senior Development Assessment Planner
DATE OF REPORT	21 January 2025

EXECUTIVE SUMMARY

The proposed development (DA0593/23) seeks consent for Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 x 2 bed; 42 x 3 bed and 4 x 4 bed) including basement car parking for 88 vehicles (plus 3 car wash bays) and has been assessed in accordance with the requirements of the EP&A Act and other relevant planning controls.

Pursuant to Section 2.19(1) and Clause 4 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* the proposal is declared to be regionally significant development on the basis that the application involves general development with a capital investment value of the development of more than \$30 million. Accordingly, the consent authority for the application is the Southern Regional Planning Panel.

The proposed works include demolition, the construction of a single level of basement, three residential flat buildings (Buildings A, B and C) each containing 4 storeys, associated basement car parking (91 vehicles) associated landscaping, tree removal, acoustic treatment, stormwater infrastructure and water management works.

The subject site is known as Lot 1 DP 1135117, 20 Heradale Parade Batemans Bay ('the site') and comprises a single allotment with two (2) road frontages including a primary road frontage to the south (Bavarde Avenue) which provides the main pedestrian access to the site, and a secondary access to Heradale Parade which provides the main vehicular access to the site (basement access). The site occupies an irregularly shaped area of 8409m².

Existing development on the site consists of two single storey buildings and ancillary structures located within the southern area of the site fronting Bavarde Avenue. The northern part of the site contains cleared areas and areas of vegetation.

The site is located within a developed residential area of Batemans Bay that contains a mix of established residential uses (1-2 storey) dwellings and developing medium density housing. The site adjoins Bavarde Avenue to the south, existing residential dwellings to the south-west and north-east, and Batemans Bay Hospital to the west (upslope).

The site is zoned R3 Medium Density Residential and pursuant to Clause 2.2 of the *Eurobodalla Local Environmental Plan 2012* ('LEP 2012') and development for the purpose of residential flat buildings is permissible with development consent.

The principal planning controls relevant to the proposal include *State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)* and *Eurobodalla Local Environmental Plan 2012* associated State Planning Policies and Batemans Bay Regional Centre Development Control Plan.

The proposal seeks a variation to a development standard including:

- Height of Buildings

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') under s.90 *Water Management Act 2000*. General Terms of Approval have been issued by Water NSW. A referral to Essential Energy pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') raised no objections subject to imposition of conditions. A referral to Heritage NSW was undertaken in response to the Aboriginal Heritage Report findings, who advised the proposal was not integrated development in relation to heritage, and provided recommended conditions.

The application was placed on public exhibition from 19/5/23 to 6/6/23 and 18/12/23 – 5/2/24, with three (3) submissions being received in the first notification period (2 objections and 1 in support) and one (1) submission was received in the second notification period (objection). These submissions which raised issues relating to building height, visual impacts, waste collection, footpath provision, visitor parking and stormwater management have been considered further in this report.

A briefing was held with the Panel on 21 June 2023 where key issues were discussed, including the exceedance of the ELEP 2012 development standards of height, built form, potential engineering stormwater and flood issues, impacts on neighbouring development, traffic and waste management. A second briefing was held on 16 October 2024 for a revised design proposal.

The proposal was amended during the assessment process in response to concerns raised including to reduce the bulk and scale of the development, provide increased building setbacks to site boundaries and building separation, reduce overlooking to neighbours and amending the car parking layout and overall configuration of buildings to orient the buildings to the Bavarde Avenue frontage including the main pedestrian entry.

The key issues associated with the proposal include:

1. *Geotechnical constraints* – the proposal involves excavation of a single level of basement below the water table – potential impacts on ground water; acid sulphate soils and earthworks. Water NSW provided General Terms of Approval (GTAs) for the proposal.
2. *Heritage* – the Aboriginal Heritage Report and Archaeological Technical report identify that the site is suitable for the proposal subject to conditions. Heritage NSW provided recommended conditions.
3. *Flooding and Stormwater* – the site is flood prone land. The proposal involves development within a site identified as containing flood prone land and subject to stormwater overland flows. The proposal has considered the potential impacts, proposing finished floor levels and a car park access ramp above the flood planning level and is considered suitable subject to conditions.
4. *Height of Buildings* – the proposal involves a Clause 4.6 Variation to Height of Buildings (Clause 4.3 of *Eurobodalla Local Environmental Plan 2012*).
5. *Building design / Bulk and Scale* - The bulk and scale of the proposal has been considered in the context of existing and developing future character of the area. It is considered compatible with the developing future character of the area that allows for residential development of increased density. The potential impacts on the amenity or residents and neighbours has been considered including the extent of overshadowing on site and for neighbouring sites.
6. *Other matters included for discussion include:* vegetation/biodiversity; acoustic; building code compliance.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, and applicable environmental planning instruments the proposal is recommended for approval.

The issues of urban design, bulk and scale and stormwater and flooding have been resolved through design amendments and are considered suitable subject to imposition of conditions of consent.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA0593/23 is recommended for approval subject to the conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site consists of one (1) allotment (Lot 1 DP 1135117 [20 Heradale Parade Batemans Bay) located on the northern side of Bavarde Avenue on the corner of Heradale Parade, in Batemans Bay.

The site is an irregular shaped allotment with a frontage of 87.2m along Bavarde Avenue, 38.58m to Heradale Parade and a depth of approximately 124 metres at its widest point. The site has a proposed vehicle access from Heradale Parade via a single entry/exit driveway and from both Bavarde Avenue and Heradale Parade for pedestrians. The site has an area of 8409m².

The site is constrained by easements for services (water) along the southern and south-western boundaries.

The site is located within the R3 Medium Density Residential zone under *Eurobodalla Local Environmental Plan 2012* and accommodates existing buildings (2 x single storey) and cleared grassed and treed areas. The site is located within an established residential area of Batemans Bay, approximately 350m south-west of Batemans Bay foreshore area.

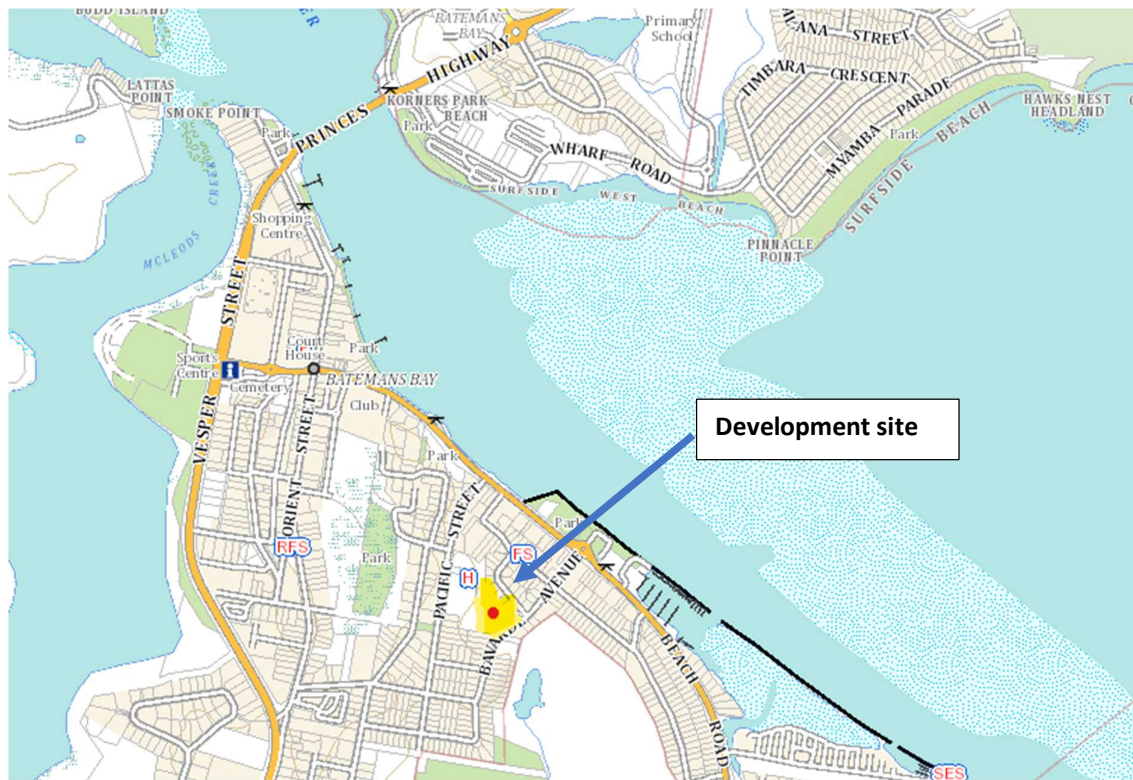


Figure 1: Location Map



Figure 2: Aerial Photograph of Development Site

The irregular shaped site is roughly L-shaped, fronting two streets to the south and east and forms the rear of existing residential properties to the north-eastern boundary. The site shape is the result of a 2 lot subdivision undertaken for the hospital site (which is located immediately adjacent this allotment upslope to the west) which was undertaken in 2009. The site is relatively level within the eastern and southern parts of the site within the area proposed for development and includes a steep treed embankment within the western part of the site. The existing buildings are located adjacent to the sites southern boundary at Bavarde Avenue to the south of cleared grassed areas.

The site is mapped as flood prone (Council mapping) and contains mapped areas of acid sulfate soils.



Figure 3: Mapped Acid Sulfate Soils (NSW Planning Portal)



Figure 4: Mapped Flood affected areas (Council GIS mapping)

1.2 The Locality

The site is located to the east of the Princes Highway and to the south-east of Beach Road a key coastal transport connection between Batemans Bay to the north and the coastal suburbs and key town centres to the south, within a developing residential area of Batemans Bay. The site has two street frontages to Bavarde Avenue to the south or Heradale Parade to the east. The site adjoins residential properties to the north and north-east, residential properties to the

south and Batemans Bay Hospital to the west (upslope from the site). The site is located 50 metres north-west of Catalina Country Club and golf course.

Photographs

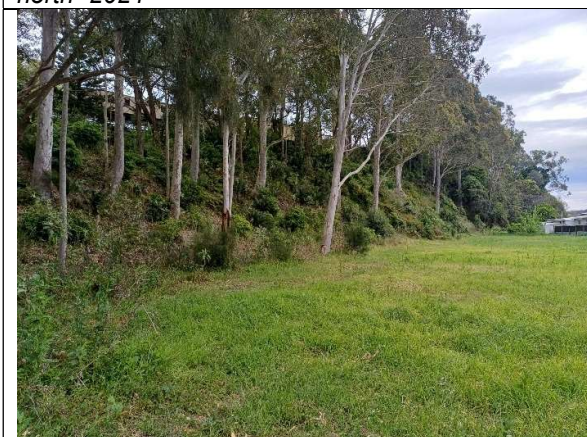
	
<i>Looking south – opposite and south along Bavarde Ave - 2023</i>	<i>Looking north – within the site. The treed embankment on the left - 2023</i>
	
<i>Rear of properties fronting Heradale Pde – looking east- 2023</i>	<i>Existing buildings to be demolished- 2023</i>
	
<i>View from hospital site looking east- 2023</i>	<i>View from hospital site looking east- 2023</i>



Rear of properties fronting Heradale Pde – looking north- 2024



Rear of properties fronting Heradale Pde – looking east- 2024



*Looking north-west – within the site.
The treed embankment on the left - 2024*



*Looking west – within the site.
The treed embankment on the left - 2024*



Looking north – existing site street frontage to Bavarde Ave 2024



Looking north – opposite site along Bavarde Ave – 2024



2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The application was originally lodged seeking development consent for Demolition and construction of a Residential Flat Building (58) units (54 x 3 bedroom units; 4 x 5 bedroom units) located within 2 buildings including basement car parking for 116 vehicles (plus 3 car wash bays) at Batemans Bay.

The proposal was amended during the assessment process to provide 3 separate buildings (Buildings A, B and C) a variety of unit types with basement car parking.

The proposed development comprises:

Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 x 2 bed; 42 x 3 bed and 4 x 4 bed) including basement car parking for 91 vehicles (including 3 car wash bays)

Buildings/works

- Demolition – of existing buildings and ancillary structures
- Construction:
 - the construction of 3 residential apartment buildings of 4 storeys each consisting of 60 residential units above 1 level of basement car parking, associated landscaping, and communal open space.
 - Common open space areas with appropriate facilities and landscaping are provided on the ground level and on the roof top of Building C.
- Tree Removal
- Associated earthworks, landscaping and infrastructure works
- Water, sewer and stormwater infrastructure including on site detention.

No staging is proposed.

No subdivision is proposed.

Building layout:

In detail, the proposed development comprises of (key buildings):

Building A – GF - 5 units; L1 – 5 units; Level 2 – 5 units; Level 3 – 5 units (Total 20 units)

Building B – GF - 4 units; L1 – 6 units; Level 2 – 6 units; Level 3 – 5 units (Total 21 units)

Building C - GF - 6 units; L1 – 6 units; Level 2 – 5 units; Level 3 – 2 units (Total 19 units)

Total: 60 apartment units

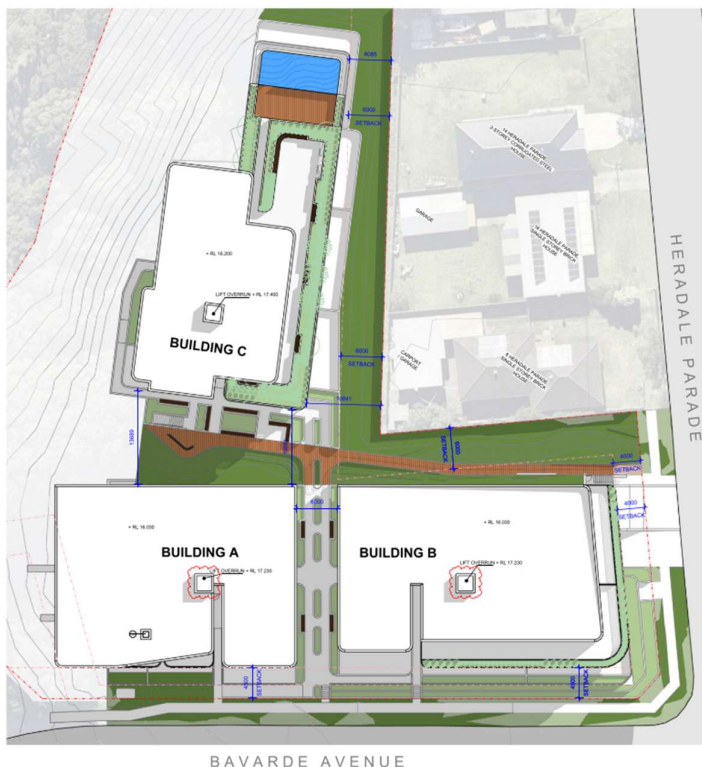


Figure 5: Site layout – building locations

Each building is accessed via pedestrian entries from Bavarde Avenue or Heradale Parade. These provide through-links between buildings to each building entry lobby. Each building has a ground floor lobby and lift area providing access to the upper levels of the building. Building C contains a roof top (Level 03) communal open space area and pool for the

apartment complex. This allows for greater building separation and landscaping at the ground floor level. The ground floor of each building is raised to provide habitable areas above the identified flood planning level.



Figure 6: Perspective View – looking south- west along Bavarde Avenue (corner of Heradale Parade)



VIEW FROM BAVARDE AVENUE



VIEW FROM HERADALE PARADE

Figure 7: Photomontage View – Elevations

In relation to the proposed floor levels above the existing ground levels the proposal involves a proposed finished ground level of RL3.430m AHD for Buildings A & B and RL3.600m AHD for Building C. For building C the above natural ground level NGL of RL1.73m results in a finished ground floor level above natural ground levels of 1.87m at the highest point. For

Buildings A & B the natural ground level RL1.88m results in a height above natural ground level of 1.55m. These areas have been treated with proposed landscaping to provide a buffer between existing development neighbouring the site and the proposed development.

Table 1: Development Data

Control	Proposal
Site area	8409m ² (survey)
Gross Floor Area	Existing buildings: 320m ² Proposed buildings: 7753m ² (Note: FSR 0.92:1)
Clause 4.6 Requests	Yes – Height of buildings Proposed: Building A: 618mm – 3.75m (lift) (<i>within 11.5m HOB</i>) 5.3% – 32.6% Building B: 1.7m – 2.96m (lift) (<i>within 12.5m HOB</i>) 13.6% - 23.68% Building C: 420mm – 4.15m (lift) (<i>within 11.5m HOB</i>) 3.7% - 36%
Maximum Height	11.5m and 12.5m
Setbacks	North – 25m
	South – 4.5m (frontage to Bavarde Ave)
	East – 4m – 6m
	West – 18m
Earthworks	Proposed for basement car parking
Tree removal	48 trees assessed. Tree Nos. 1- 17; 19, 20, 21, 22, 23, 24, 27, 29 and 40 (26 trees) Tree Nos. 18, 25 and 26; 28, 30 – 48 to be retained (22 trees) Additional trees to be retained (sloped area to be retained)
Landscaping	Communal open space/landscaped areas 4802m ² /57%
Car Parking	91 vehicles (including 3 car wash bays)
Services	Water, sewer and stormwater connection. Connection to electricity.
Hours of Operation	N/A Residential component. Conditions of consent imposed regarding acoustic requirements (swimming pool, plant/machinery, garbage trucks)



Figure 8: Extract from Site plan – Ground floor plan

2.2 Background

Pre-lodgement advice (A0054/22) was provided prior to the lodgement of the application on 23 March 2022 where various issues were discussed. The key issues included applicable legislation, adaptable housing, sewer, water and stormwater connection, geotechnical report, earthworks, car parking and access, flooding and coastal hazards, waste management, acoustic, Aboriginal heritage, contamination, demolition, acid sulfate soils and contributions.

The development application was lodged on 17 May 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
17 May 2023	DA lodged
19/5/23 to 6/6/23	Exhibition of the application
17 May 2023	DA referred to external agencies (varies)
18 December 2023	DA referred to external agencies (varies)
11 October 2024	DA referred to external agencies (varies)
31 May 2023	Request for Information from Council to applicant
21 June 2023	Panel briefing
31 August 2023	Request for Information from Council to applicant
28 November 2023	Request for Information from Council to applicant
15 December 2023	Additional information received (revised plans and documents) <ul style="list-style-type: none"> - Redesign of proposal to include reduced basement car parking; separation of buildings and increased building setbacks (Building A, B and C), reconfiguration of unit mix and re-orientation to provide pedestrian entry from Bavarde Avenue, re-location of pool and COS areas to roof top of Building C, revised technical reports.
18/12/23 – 5/2/24	Re-Exhibition of the application
17 April 2024	Request for Information from Council to applicant
3 October 2024	Additional information received (revised plans and documents) <ul style="list-style-type: none"> - Additional technical reports and response to engineering matters raised including stormwater and flooding - Revised plans and reports
8 October 2024	Additional information received (revised plans and documents) <ul style="list-style-type: none"> - Final set of documents
16 October 2024	Panel briefing
19 December 2024	Additional information received (revised plans - sewer) <ul style="list-style-type: none"> - Increase offset to sewer – revised architectural plans

2.3 Site History

Details of previous development consents relating to the development site are outlined below:

- No recent history.
- The buildings on the site consist of 2 x single storey buildings, grassed and treed areas.
- No evidence of market gardening/ agriculture (Site Contamination report);

Council records indicate:

Other Relevant History

Concurrent Applications

- S68 applications for complying development applications NIL

Adjacent Approvals/ Applications

Refer summary below.

No. 18 Heradale Pde	2008 - CONSTRUCTION OF SHED
No. 16 Heradale Pde	2009 - FUTURE USE OF GARAGE AND ALTERATIONS TO EXISTING DWELLING
No. 14 Heradale Pde	2015 - Detached Dual Occupancy
No. 12 Heradale Pde	2019 – 2 units
No. 10 Heradale Pde	2006 – swimming pool (dwelling)
No. 7 Pacific St (Hospital site)	Batemans Bay Hospital. Note: there is no heliport associated with the hospital.
No. 14 Bavarde Ave	1992 - ADDITIONS TO RESIDENTIAL FLATS



Figure 10: Location map.

3. STATUTORY CONSIDERATIONS

3.1 Biodiversity Conservation Act 2016

Under section 7.9(2) *Biodiversity Conservation Act 2016* (BC Act), a biodiversity development assessment report (BDAR) is required unless the proposed development is not likely to have any significant impact on biodiversity values.

The site is not mapped as containing areas of biodiversity on the NSW Planning Portal however is mapped as containing areas of native vegetation under Council mapping.

Tree removal is proposed to facilitate the development. The site contains existing vegetation primarily within the western area and sloping part of the site. The applicant has lodged an arborist report assessing 48 trees located within the vicinity of the proposed buildings. Of these 26 trees (Tree Nos. 1- 17; 19, 20, 21, 22, 23, 24, 27, 29 and 40) are to be removed. Tree Nos. 1 and 3 are Council trees.

Of the trees proposed for removal, Tree No. 29 and No. 40 are identified for removal in close proximity to building works. A number of trees of the 26 trees to be removed are exempt species (2,4,11,16, 17, 19, 20, 23 & 27) resulting in 17 trees proposed for removal as required.



Plate 9: Trees 45 & 46 at southern end of eastern embankment.

Figure 11: Extract of photograph of vegetated treed area to be retained (Arborist report):

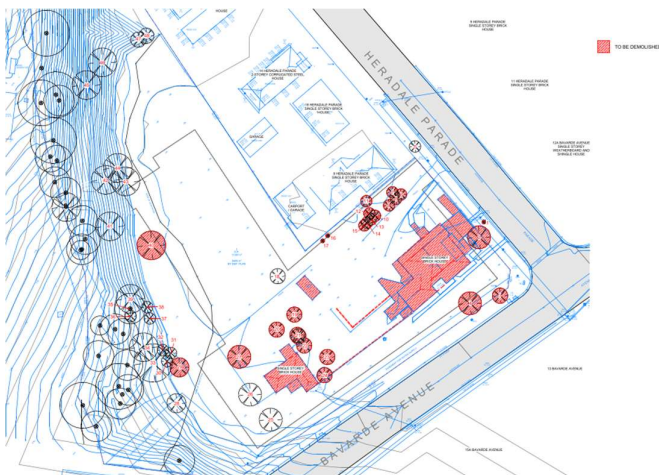
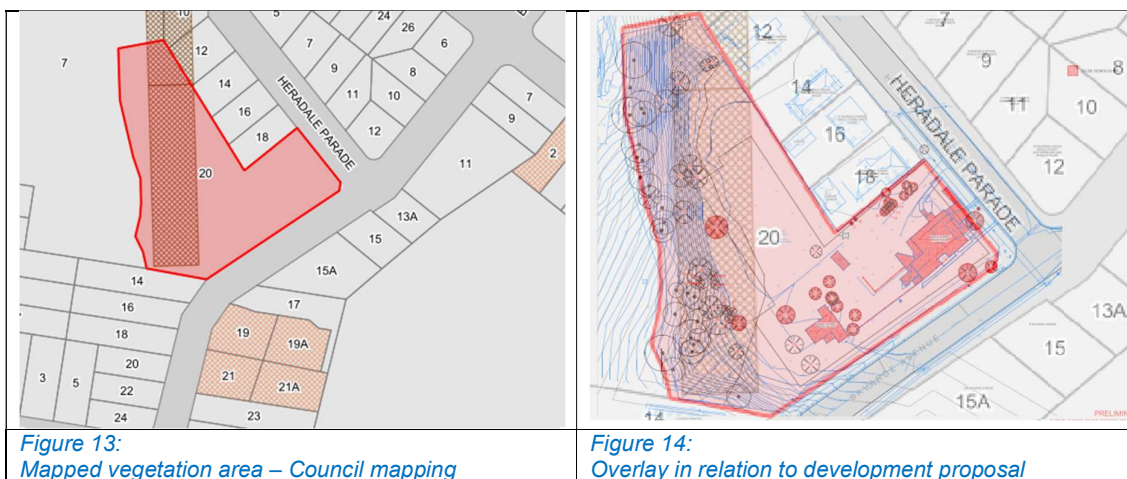


Figure 12: Trees to be removed (extract from demolition plan):

Tree Nos. 18, 25 and 26; 28, 30 – 48 (22 trees) are to be retained. The trees to be removed are proposed to be replaced by landscaping including a range of trees, shrubs and ground cover. Additional trees are to be retained (sloped area to be retained).

An overlay of the mapped vegetation area on the trees identified to be removed (Tree Nos. 29 and Tree 40) i.e. 2 x trees is provided below:





Does the application include works or vegetation removal within the Biodiversity Values mapped area ?	No
Does the application involve clearing of native vegetation above the area clearing threshold?	No
Will the proposed development have a significant impact on threatened species or ecological communities, or their habitats, according to the test in section 7.3 of the Biodiversity Conservation Act 2016 (i.e. 'test of significance')? Note: Consideration should be given to the site's proximity to NPWS land (see guidelines) and other natural areas, as well as any area that may contain threatened species, vulnerable or endangered ecological communities or other vulnerable habitats.	No
If the application exceeds the Biodiversity Offsets Scheme Threshold (i.e. if yes to any of the above), has the application been supported by a Biodiversity Development Assessment Report (BDAR)?	N/A

The land is zoned R3 and the area clearing threshold is 2,500m². The proposal involves removal of 2 x trees within the native vegetation mapped area which is below the threshold criteria for a BDAR. The applicant has considered the proposal in relation to minimising tree removal to the minimal extent necessary in the design of the proposal and proposes landscaping that considers conserving the existing vegetated areas within western portion of the site.

Council undertook an assessment against Councils *Draft Biodiversity Assessment Guidelines 2024*. It was determined (refer checklist below) that the proposal consists of low risk development and is unlikely to have a significant impact on threatened species, ecological

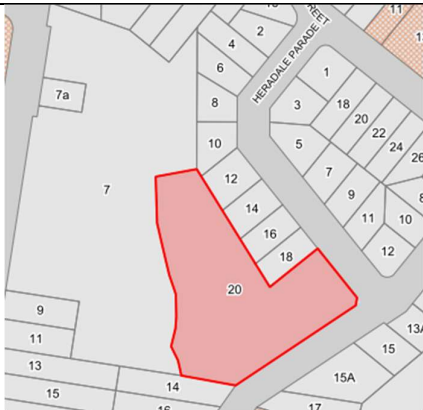
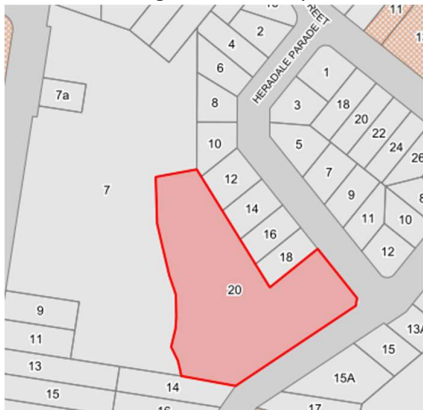
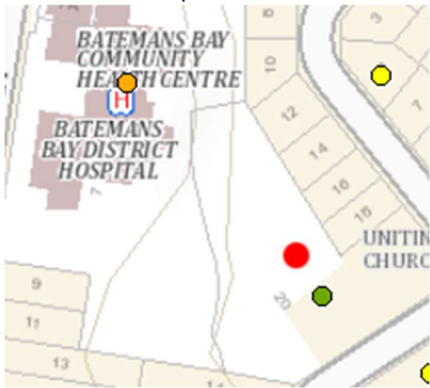
communities or their habitat. As such a detailed Flora and Fauna Assessment was not required and the development did not trigger the Biodiversity Offset Scheme. The development demonstrates the impacts to biodiversity have been considered in relation to minimising potential impacts.

Councils *Draft Biodiversity Assessment Guidelines 2024*

CHECKLIST		YES	NO
1	Does the development proposal exceed the Biodiversity Offset Scheme threshold? <i>Generate a report using The Biodiversity Values Map and Threshold (BMAT) tool. A copy of the BMAT report must be submitted with the development application.</i> If yes, a Biodiversity Development Assessment Report is required, to be prepared by in accordance with BAM 2020 by an accredited assessor. A separate FFA is not required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Does the area of proposed native vegetation clearing exceed >1500m ²	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Are ≥ 10 native trees proposed for removal? <i>2 x trees within the Council mapped native vegetation area.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are any trees proposed for removal ≥ 0.8m diameter at breast height (DBH)? ¹	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are any of the trees proposed for removal included on Council's Significant Tree Register ²  <i>Mapping extract – Councils tree register</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Is native vegetation proposed for removal on land mapped as potential Endangered Ecological Community (EEC)? ²  <i>Mapping extract – Councils EEC mapping</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7	Is native vegetation proposed part of a Grey Headed Flying Fox camp? ²	<input type="checkbox"/>	<input checked="" type="checkbox"/>

¹ Diameter at Breast Height over bark (DBH) is measured at 1.3m above ground height. Further guidance on how to measure the DBH is provided in Appendix D.

² Access mapping on [Council's land-mapping tool](#)

	 <p><i>Mapping extract – Councils</i></p>		
8	Are there any important habitat features within the development site, such as hollow-bearing trees, threatened species feed trees, rock outcrops, nests? ³	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9	Does native vegetation form part of a wildlife/biodiversity corridor? ⁴	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	 <p><i>Mapping extract – Councils</i></p>		
10	Are there any threatened species records within the subject property? ⁵ Note: BioNet SEED mapping identified a 'brushtail possum' recorded on site. Not listed as a threatened species under the BC Act.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	 <p><i>SEED – Bionet search</i></p>		
	Does the subject land contain any of the following:		

³ For guidance on identifying habitat features refer to [LLS Recognising habitat features: A guide to identifying habitat on your property](#)

⁴ Access mapping on SEED Web Map Viewer [Southeast and Tablelands Regional Plan Corridors](#)

⁵ Access records on the BioNet Atlas through [BioNet Web Services](#) and [the SEED portal](#)

11	Littoral Rainforest - <i>SEPP (Resilience and Hazards) 2021</i> ⁶	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12	Coastal Wetlands - <i>SEPP (Resilience and Hazards) 2021</i> ⁶	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13	Riparian lands and watercourses - <i>Eurobodalla Local Environmental Plan 2012</i> ²	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14	Watercourses (permanent or intermittent) ⁷	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Recommendations of the Arborist report in relation to tree removal and tree retention are included as conditions of consent.

3.2 Water Management Act 2000

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') under s.90 *Water Management Act 2000*. A Water Supply approval is required under s.90 of the Act.

Water NSW have issued their GTAs, which are required to be implemented throughout all stages of the development as a condition of consent.

3.3 Coastal Management Act 2016

The subject site is not located within a Coastal Environment area or a Coastal use area. There are no coastal protection works proposed as part of this application. The proposal is considered to satisfy the requirements of this Act.

3.4 Marine Estate Management Act 2014

<i>Does the application include any works within the marine park or aquatic reserve?</i>	No
<i>Is the development site within the locality (100m buffer) of a marine park or aquatic reserve?</i>	No

The application was referred to DPE Fisheries (Marine Parks) who identified no referral was required for consideration of impacts on Marine Parks.

3.5 Environmental Planning and Assessment Act 1979 ('EP&A Act').

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (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), and*
 - (iii) *any development control plan, and*

⁶ Access mapping on [NSW Planning Portal Spatial Viewer](#)

⁷ Refer to [Water Management \(General\) Regulation 2018 Hydro Line Spatial Data](#)

- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

- **Integrated Development (s4.46)**

Referred to Water NSW in accordance with s90 of the Water Management Act 2000 for water supply approval. Please see attached Water NSW General Terms of Approval.

3.6 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:


- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2022
- State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development) applies – Note: – DA lodged 17/5/23. SEPP 65 applied at the time of lodgement i.e. refer SEPP Housing (Schedule 7A – savings provisions)
- Eurobodalla Local Environmental Plan 2012;

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas The proposed development is not mapped on the BV Map. The land is zoned R3. The proposed development does not require clearing that exceeds the 2500m ² threshold. As such a BDAR is not required.	Y

	<p>The proposal involves the removal of selected trees and vegetation works within the site for building construction and associated works. Please refer to Biodiversity Conservation Act 2016, above.</p> <p>Chapter 3 – Koala Habitat Protection 2020 This Chapter does not apply to the proposed development. The land is not zoned RU1, RU2 or RU3.</p> <p>Chapter 4 – Koala Habitat Protection 2021 The land is zoned R3. The land is not contained within any approved koala plan of management. The land area is less than 1Ha. The proposed development does not involve the removal of any feed trees listed in schedule 3. As such, the proposed development is unlikely to result in any detrimental impact to koalas.</p>	
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 4 of Schedule 6 as it comprises General Development where the CIV exceeds \$30,000,000. 	Y
SEPP (Resilience & Hazards)	<p>Chapter 2 – Coastal Management</p> <p>The SEPP aims to manage development in the coastal zone, protect environmental assets of the coast, establish a framework and guide to land use planning decision making and provides mapping for the coastal management areas. Refer detailed comments below.</p>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. 	Y
SEPP (Sustainable Buildings) 2022	A BASIX Certificate is provided No. 1377657M_02 dated 27 November 2024.	Y
State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)	<p>Note: SEPP 65 applies due to date of lodgement.</p> <ul style="list-style-type: none"> A design verification statement has been submitted <i>Cl.29 EP&A Regs. 2021</i> 	Y

	<p>Yours sincerely,</p> <p></p> <p>James Alexander- Hatzipilis NSW Reg. No. 10535 Managing Director BDesArch MArch Place Studio</p> <p>Dated 14/01/25.</p> <p>In accordance with clause 28 (2) of SEPP 65 the consent authority has considered:</p> <table><tr><td>(a) the advice (if any) obtained from the design review panel</td><td>Not applicable.</td></tr><tr><td>(b) the design quality of the development when evaluated in accordance with the design quality principles, and</td><td>Refer detailed review in Attachment B – compliance table.</td></tr><tr><td>(c) the Apartment Design Guide.</td><td>Refer detailed review in Attachment B – compliance table.</td></tr></table> <p>Following detailed assessment of the proposal it is considered the proposal provides a built form and design that responds positively to the context and character of the area, providing a design that has considered housing diversity and potential environmental impacts and the amenity of occupants and neighbours.</p>	(a) the advice (if any) obtained from the design review panel	Not applicable.	(b) the design quality of the development when evaluated in accordance with the design quality principles, and	Refer detailed review in Attachment B – compliance table.	(c) the Apartment Design Guide.	Refer detailed review in Attachment B – compliance table.	
(a) the advice (if any) obtained from the design review panel	Not applicable.							
(b) the design quality of the development when evaluated in accordance with the design quality principles, and	Refer detailed review in Attachment B – compliance table.							
(c) the Apartment Design Guide.	Refer detailed review in Attachment B – compliance table.							
Proposed Instruments	None identified.	N/A						
LEP	<p>Eurobodalla LEP 2012</p> <ul style="list-style-type: none">• Clause 2.3 – Permissibility and zone objectives• Clause 4.3 - Height of buildings• Clause 4.6 – Variation to development standards• Clause 5.10 – heritage• Clause 5.21 – flood planning• Clause 6.3 – acid sulfate soil• Clause 6.4 – Earthworks• Clause 6.9 – Stormwater management	Y						
DCP	<p>Batemans Bay Regional Centre Development Control Plan</p> <p>The DCP provisions apply where not excluded by ADG provisions.</p>	Y						

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2: Vegetation in non-rural areas

Chapter 2 Vegetation in non-rural areas applies to the proposal as the land is zoned R3 Low Density Residential and is located within the Eurobodalla Shire Council area. The proposal involves the removal of selected trees and vegetation within the site for building construction and associated works. Refer Biodiversity Conservation Act section of this report.

Chapter 4: Koala Habitat Protection 2021

Chapter 4 Koala habitat protection 2021 applies to the proposal as the site is located within the Eurobodalla Shire Council area (listed in Schedule 2) and is not excluded from this section.

The site does not contain mapped areas of biodiversity and therefore a Biodiversity Report was not lodged with the application. An Arborist Report submitted with the application identifies the subject land contains a variety of tree species.

Schedule 1 of the SEPP lists Feed Tree Species:

Scientific Name	Common Name
<i>Eucalyptus tereticornis</i>	Forest red gum
<i>Eucalyptus microcorys</i>	Tallowwood
<i>Eucalyptus punctata</i>	Grey Gum
<i>Eucalyptus viminalis</i>	Ribbon or manna gum
<i>Eucalyptus camaldulensis</i>	River red gum
<i>Eucalyptus haemastoma</i>	Broad leaved scribbly gum
<i>Eucalyptus signata</i>	Scribbly gum
<i>Eucalyptus albens</i>	White box
<i>Eucalyptus populnea</i>	Bimble box or poplar box
<i>Eucalyptus robusta</i>	Swamp mahogany

The land area is less than 1Ha. The Arborist Report identifies tree species *Eucalyptus sp* and *Eucalyptus ficifolia* on site, which are not listed feed tree species. The proposed development does not involve the removal of any feed trees listed in schedule 3. As such, the proposed development is unlikely to result in any detrimental impact to koalas.

The proposal is considered to be consistent with SEPP , subject to the imposition of a condition of consent in relation to tree protection and retention.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 4 of Schedule 6 of the Planning Systems SEPP as the proposal is development for general development where the CIV exceeds \$30,000,000. Accordingly, the Southern Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

2.7 The proposed development is not in the coastal wetlands or littoral rainforest areas.

2.8 The proposed development is not located in the coastal wetland proximity area.

2.9 The site is identified as partly within a coastal vulnerability area.

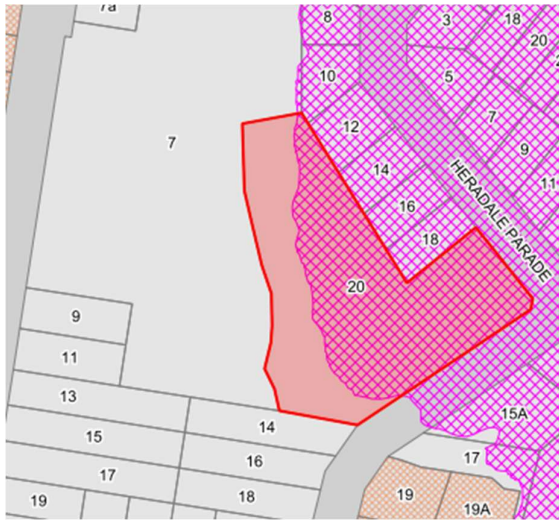


Figure 15: coastal vulnerability area - Council mapping

2.10 The site is not located in a coastal use area or coastal environment area.

2.11 The site is not located in a coastal use area or coastal environment area.

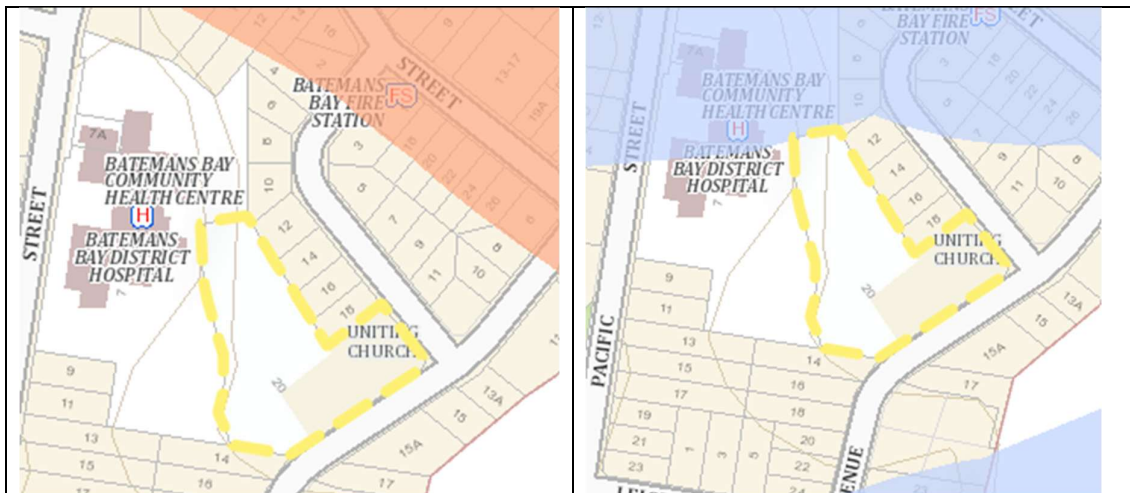


Figure 16: coastal environment and coastal use area – NSW Planning Portal mapping

2.12 The applicant has demonstrated the proposed development will not cause unacceptable risk of coastal hazards on other land.

2.13 There is a coastal management plan or program applying to the land. The *Eurobodalla Coastal Hazard Code* identifies that development within coastal areas consider flooding and inundation and requires mitigation measures to be implemented into the design and engineering of the development. These matters have been considered in the lodged hydrological report and flood report and are considered suitable subject to imposition of conditions of consent in relation to stormwater and flooding.

The applicant has demonstrated the proposed development will not result in any unacceptable biophysical, hydrological and ecological impacts, any coastal environmental values and natural coastline processes, the water quality of the marine estate, impact to the marine vegetation, native vegetation and faunae and their habitats, existing public open space access to and along the foreshore, including persons with a disability, aboriginal cultural heritage and the use of the surf zone.

DPI Fisheries (Marine Parks) reviewed the proposal and identified a referral was not required.

Chapter 4: Remediation of Land

Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared for the site.

The site has historically been identified as used within the southern part of the site for residential purposes. No history of industrial or market garden, agricultural uses has been identified in the report.

The PSI consisted of a search of a desktop review and on site inspection including analysis of soil samples. The soil samples tested were below the adopted assessment criteria for heavy metals and asbestos. Groundwater samples were tested with findings of metals exceedances however the Preliminary Site Investigation report found *'These exceedances were consistent with background conditions of an urbanised area and therefore, not a cause for concern'*. The Preliminary Site Investigation report concluded *'the site is suitable for the proposed work and can be used for Apartment Buildings'*.

A number of recommendations are provided that include:

- *Evidence of site contamination be identified at any stage during the development process, such as staining, odorous soils, or suspect asbestos, then an experienced site contamination consultant should be contacted immediately for advice.*
- *Any material to be removed off-site, ENM, MUST be classified for off-site disposal in accordance with the NSW EPA (2014) Waste Classification Guidelines.*
- *Any material being imported to the site for backfilling purposes should be assessed for potential contamination in accordance with the EPA guidelines.*
- *Furthermore, after demolishing of the properties (if the construction was completed prior 1980) and clearance of the site vegetation etc, the client may carry out HAZMAT assessment by a licensed assessor.*

The proposal is considered to be consistent with Chapter 4: Remediation of Land, subject to imposition of relevant conditions of consent in relation to implementing an unexpected finds protocol (UFP) and management procedures for asbestos works during construction on any consent granted.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

The provisions of Chapter 2 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('the Infrastructure SEPP') have been considered in the assessment of the development application.

Clause 2.48 Determination of development applications—other development

It is considered the site can be made suitable for the proposed development subject to conditions of consent being imposed in relation to Essential Energy electricity requirements.

Clause 3.58 Traffic Generating Development of the Infrastructure SEPP does not apply to the development. Residential accommodation of 300 or more dwellings or with access to a classified road (or within 90m of a classified road) requires referral to Transport for New South Wales (TfNSW). The site is located approximately 220m south-west of the closest classified road (Beach Road).

State Environmental Planning Policy (Sustainable Buildings) 2022

A valid BASIX certificate (Certificate No. 1377657M_02) has been submitted as part of the application. The certificate demonstrates compliance with the provisions of the SEPP and is consistent with commitments illustrated in the application documentation.

State Environmental Planning Policy 65 — Design Quality of Residential Apartment Development

The proposal does not rely upon the in-fill affordable housing provisions which at the time of lodgement were located within the *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

Part 4 Application of design principles

<i>Clause 28 Determination of development application</i>	No
(a) Design review panel does not apply.	N/A
(b) design quality of the development when evaluated in accordance with the design quality principles,	Refer Attachment B-compliance table .
(c) the Apartment Design Guide.	Refer Attachment B-compliance table .
<i>SEPP 65 Clause 30 Standards that cannot be used as grounds to refuse development consent or modification of development consent</i>	
(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters—	
(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide	Y Car parking adopts 400m area of business zoned land or equivalent.
(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide	Y

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	Y
(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to— (a) the design quality principles, and (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.	Y Refer Attachment B-compliance table.

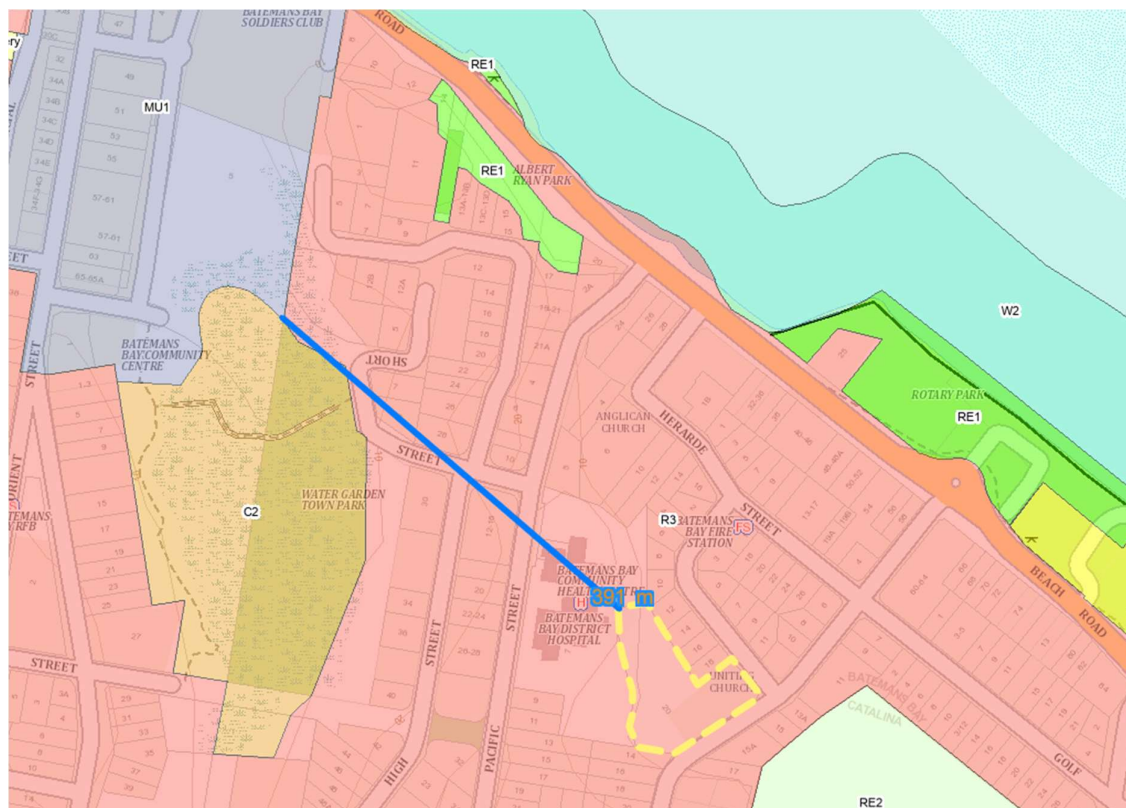


Figure 17:
Zoning map – including identification of the site within 400m of land zoned B3 Commercial core; B4 mixed use or equivalent zone i.e. **current MU1 Mixed Use zone**

Note: Clause 6A Development control plans cannot be inconsistent with Apartment Design Guide

(1) This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following—

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

The relevant local environmental plan applying to the site is the *Eurobodalla Local Environmental Plan 2012* ('the LEP').

Zoning and Permissibility (Part 2)

The site is located within the R3 Medium Density Residential zone pursuant to clause 2.3 of ELEP (refer zoning map below).

Zoning Map

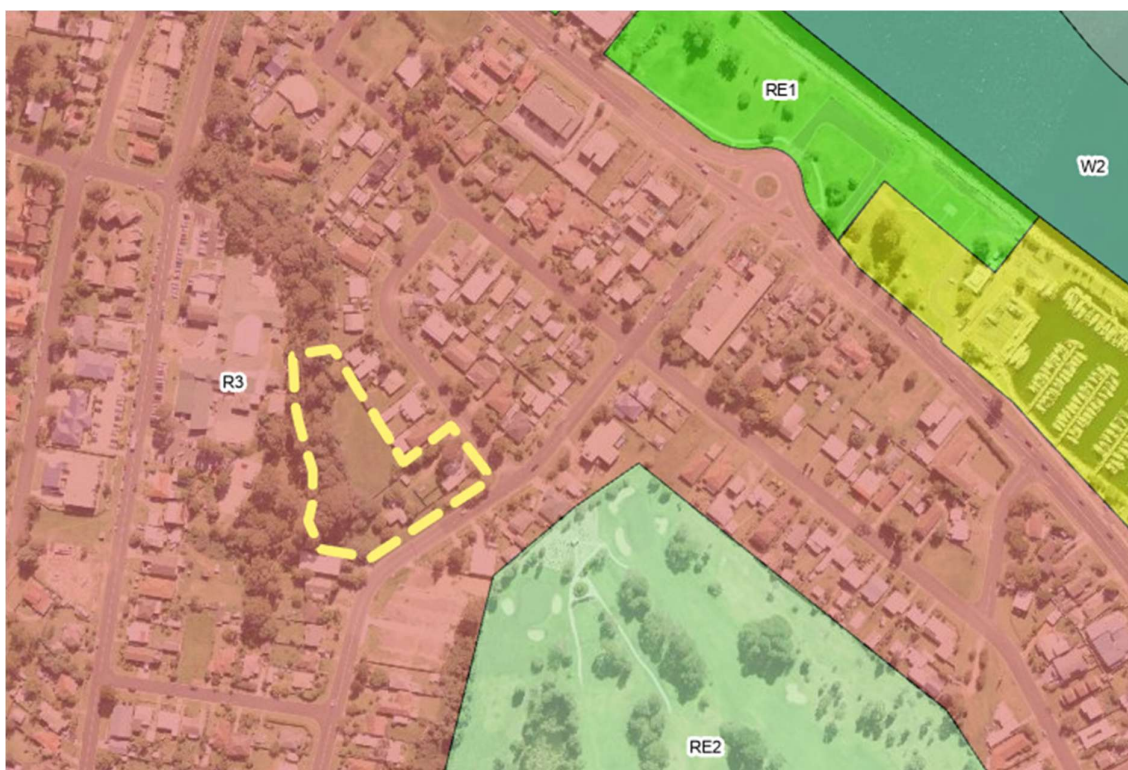


Figure 18:
Planning Portal – zoning map extract

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of 'residential flat building' (proposing 3 x residential flat buildings on the site), a use permissible use with consent in the Land Use Table in Clause 2.3.

The aims of the R3 zone under ELEP 2012 include:

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

- To encourage tourist and visitor accommodation in areas of demand subject to controls to ensure the adequate protection of a permanent residential housing supply and amenity.
- To encourage walking, cycling and the use of public transport.

The proposal is considered to satisfy the relevant objective in that it provides residential housing in a residential zoned area. The proposal has considered the potential impacts of the development on the locality and incorporates management and mitigation measures to minimise potential impacts (built form, heritage and environmental and biodiversity values).

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below. The proposal does not comply with the development standard/s in Part 4 of the LEP Clause 4.3 and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum Height of buildings.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	550m ²	No subdivision proposed.	N
Height of buildings (CI 4.3(2))	11.5m and 12.5m	A height variation is proposed – refer discussion.	N
FSR (CI 4.4(2))	Not adopted	-	-
Clause 4.6 variation to development standard	Proposed	Provided – refer discussion.	Y
Land acquisition (CI 5.1/5.1A)		N/A	N/A
Heritage (CI 5.10)	Consider impacts	Provided – refer discussion.	Y
Flood planning (CI 5.21)	Consider impacts	Provided – refer discussion.	Y
Special Flood considerations (CI 5.22)	Not applicable.	DA lodged 17 May 2023 cl. 5.22 adopted 10/11/23.	N/A
Acid sulfate soils (CI 6.3)	Consider impacts	Provided – refer discussion.	Y
Earthworks (CI 6.4)	Consider impacts	Provided – refer discussion.	Y
Stormwater Management (CI 6.9)	Minimise impacts	Provided – refer discussion.	Y

The proposal is considered to be generally consistent with the LEP.

Clause 4.6 Request

The proposed development requests a variation to the clause 4.3 height of buildings development standard.

Note: Cl. 4.6 changes came in to effect on 1/11/2023. DA lodged 17 May 2023

Required: Height of Buildings Limit: 11.5m and 12.5m

Proposed:

Building A: 618mm – 3.75m (lift) (*within 11.5m HOB*) 5.3% – 32.6%

Building B: 1.7m – 2.96m (lift) (*within 12.5m HOB*) 13.6% - 23.68%

Building C: 420mm – 4.15m (lift) (*within 11.5m HOB*) 3.7% - 36%

The site contains 2 differing height limits that split the site.



Figure 19: Extract from Height of buildings map (NSW Planning Portal):

The proposal involves a height of buildings variation as illustrated below:

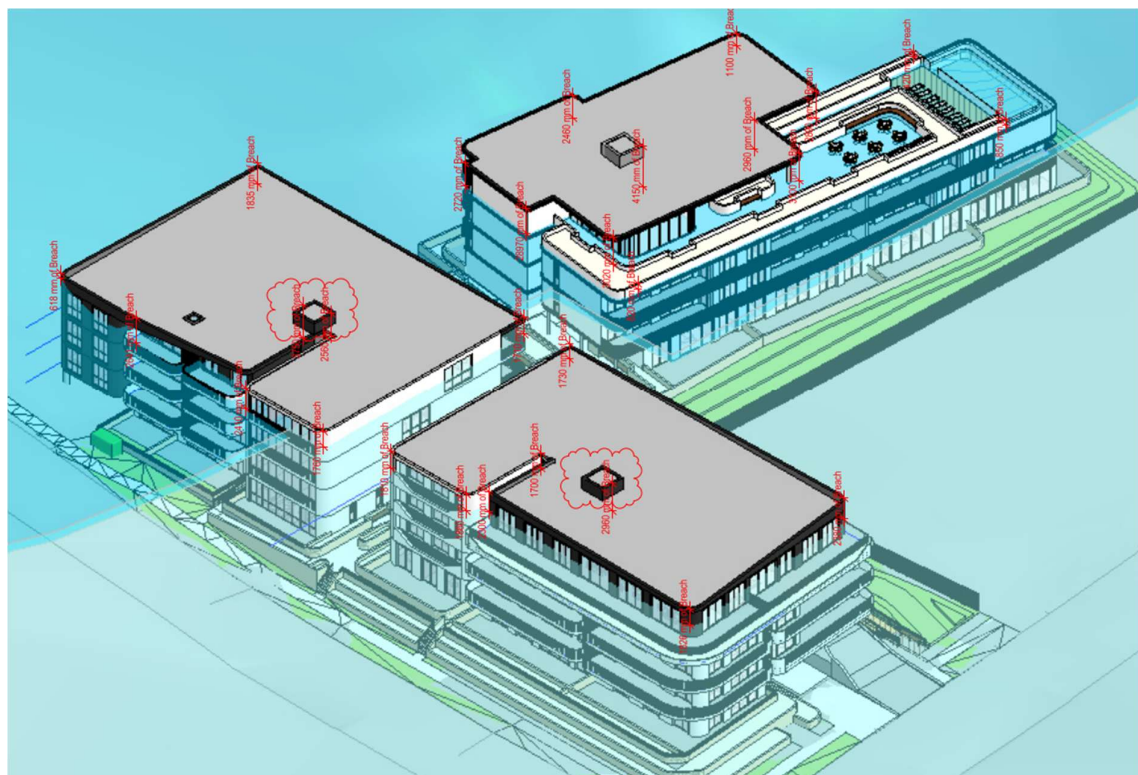
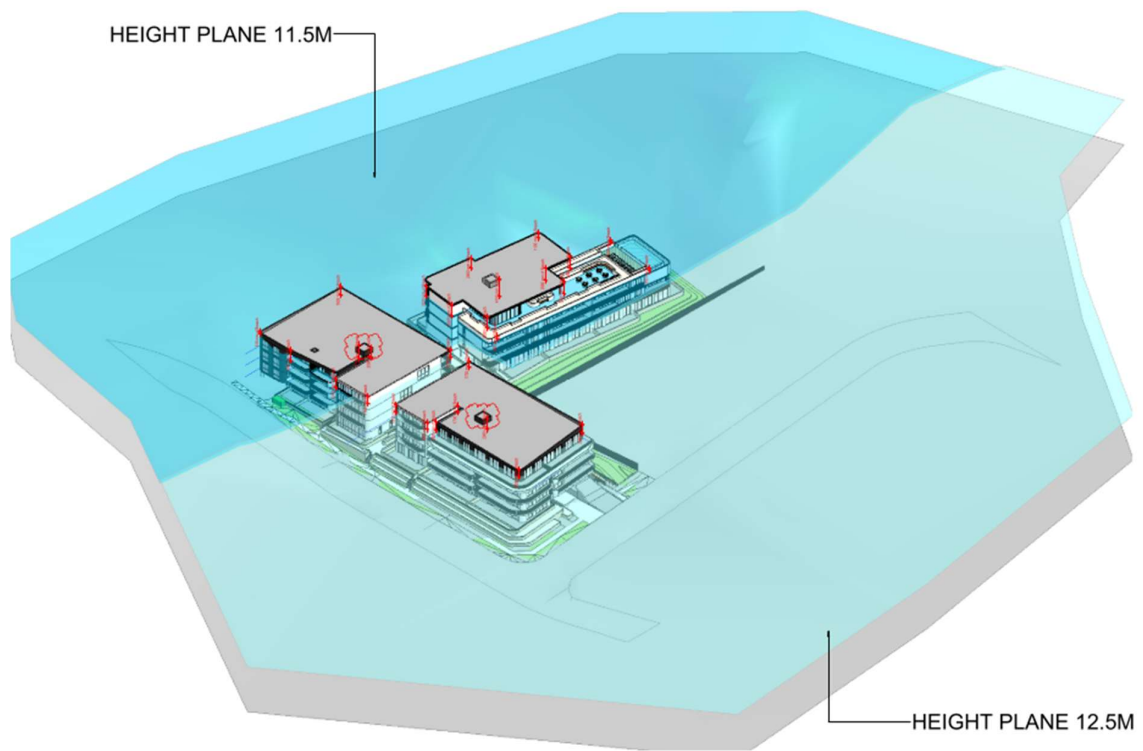


Figure 20: architectural plans –extract from Height of buildings plan/s

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request.

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) as follows:

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

Comment:

In the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ provides the following guidance (paragraph 43) to inform the consent authority's finding:

'The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).'

The 'first method' - The objectives of the standard are achieved notwithstanding non-compliance with the standard *Wehbe v Pittwater Council* (2007) NSWLEC 827

The objectives of Clause 4.3 include:

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

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

The applicant provides a detailed justification for the variation to the development standard in relation to Clause 4.3 Objective (a) including (summarised):

- *The proposal demonstrates that the building will visually adapt with that of neighbouring buildings both current and future*

- *the resulting height breach has been appropriately sited and or integrated into the built form envelope, reducing its visual prominence from both neighbouring properties and the public domain/s.*
- *It is also evident that the consent authority has been flexible in its approach to the height standard noting that numerous variations have been supported across the defining context.*
- *The approval of height departures as evident across the aforementioned applications, gives rise to both an existing and desired future character that is not monotonous in terms of building forms but rather offers a more diverse range in perceivable scales and volumes.*
- *In some respect, a height compliant development would not serve to respond to this objective in the same manner that this height breaching development seeks to. A height compliant development would present as visually subordinate to these more pronounced forms and would therefore, not present as compatible with the desired future character.*

Planner comment:

The proposal involves a variation to the development standard that varies across the site for the three proposed buildings varying:

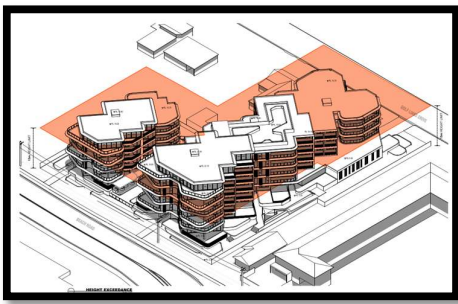
Building A: 618mm – 3.75m (lift) (*within 11.5m HOB*) 5.3% – 32.6%
 Building B: 1.7m – 2.96m (lift) (*within 12.5m HOB*) 13.6% - 23.68%
 Building C: 420mm – 4.15m (lift) (*within 11.5m HOB*) 3.7% - 36%

Buildings A and B present to Bavarde Avenue and are proposed to have the same overall building height of RL16.030m for the roof and RL 17.230m for the lift. Due to the split Height of Buildings limit for the site (12.5m at the corner and 11.5m at the western part of the site) this results in differing building height variations. Building C is proposed to have an overall building height of RL16.200m and lift overrun of RL17.4m, being slightly higher than buildings A and B i.e. 170mm for the main roof height than Buildings A and B.

The site is located within an area affected by flooding site constraints which has resulted in raised finished floor levels for the ground floor of all proposed buildings and subsequently affecting the overall building heights. The flood planning level for the site is identified as 3.43m AHD for Building A&B and FPL of 3.60m AHD for Building C with existing natural ground levels varying across the site from a range of RL1.87m – RL 2.14m AHD within the development footprint area i.e. requiring raised ground floor levels of 1.73m for building C and 1.26m for Buildings A & B.

This area of Batemans Bay is identified as a developing area close to the town centre in the Greater Batemans Bay Structure Plan suitable for increased density housing. This area of Batemans Bay is zoned R3 medium density residential which allows residential flat building development, and while immediately adjacent to established 1-2 storey dwellings, the area in the vicinity has been developed for residential apartment accommodation.

The area is undergoing redevelopment with a number of building height variations supported by the consent authority in relation to residential flat buildings including a number located within the vicinity of this proposed development, being located predominantly along the Beach Road main road foreshore area of Batemans Bay (refer the extract below).

		
DA0248/22	2 Golf Links Dr Batemans Bay	No variation to HOB

This demonstrates that the consent authority has supported clause 4.6 variations to the building height standard in certain circumstances, based on an individual merit assessment.

The site location contains a steeply sloping portion in the western part of the site that slopes up to the hospital site which effectively 'frames' the proposed buildings to the west context for the building height.



View looking south along Bavarde Ave (including RFB x 4 opposite the site to the south-east) at Nos. 19 -21 Bavarde Avenue



View looking north within the site boundary – sloping topography within the western part of the site containing existing trees

Clause 4.3 Objective (b)

The bulk and scale of the proposal has been considered in relation to impacts on adjoining properties including view loss, privacy impacts and overshadowing.

Views - An assessment of the proposal in relation to the submitted survey plans identifies the hospital site located upslope to the west retains existing views.

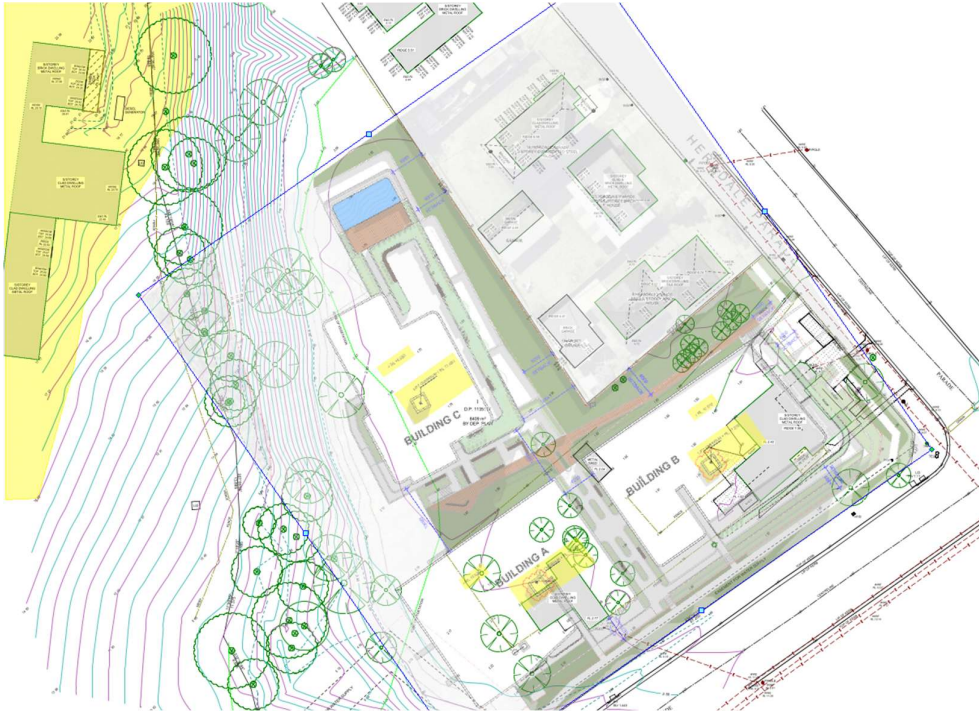


Figure 22: A Council planner mark up of 'yellow' area of proposed building heights and location of building height upslope i.e approximate RL16.2m AHD

This is consistent with the Greater Batemans Bay Structure Plan scenic protection directions which requires development to be designed and located to protect and enhance major vistas, view corridors and areas of scenic protection. This includes protecting views from the hospital site and vicinity located upslope to the west.

Assessment is required from public and private views in a manner that is consistent with the four- step process in the NSW Courts planning principle on views, established in *Tenacity Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29). Tenacity defined 'view sharing' as being "invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment".

The proposed development removes a minor portion of the filtered coastline views currently afforded to dwellings along Bavarde Avenue which are located upslope. These dwelling views are currently screened by treed vegetation to the north and contain limited views along Bavarde Ave to the north-east. Existing views enjoyed by residents on Herarde Street have resulted from the undeveloped nature of the subject site, a site which allows development under current planning controls of buildings up to 11.5m and 12.5m respectively. Views would be obscured were the buildings constructed to the building height limit notwithstanding the variation to the height limit proposed. Although there is view loss, it would be unreasonable to assume that the site would not be developed.

A view analysis was submitted with the application which demonstrates that while some view loss is interrupted, the view to the coastline along Bavarde Avenue is maintained.

Visual impact - In relation to visual impacts the applicant has submitted a series of perspectives illustrating the proposal in relation to the context of surrounding views.

VIEW ASSESSMENT VIEW 01
22 BAVARDE AVENUE - FOOTPATH VIEW AT TERRACE LEVEL



1.1 EXISTING



1.2 MODEL VIEW ALIGNMENT



1.3 PROPOSED



VIEW ASSESSMENT VIEW 02
19 BAVARDE AVENUE - FOOTPATH VIEW AT TERRACE LEVEL



2.1 EXISTING



2.2 MODEL VIEW ALIGNMENT



2.3 PROPOSED



Figure 23: applicant submitted View Impact Assessment (extracts)

Solar and overshadowing - Solar impacts and overshadowing are identified as being located on site or overshadowing to the street frontages throughout the day. Minor overshadowing occurs to the property to the south however it achieves solar access to the living areas and rear yard throughout the day.



Figure 24: existing aerial photograph – site and surrounds



Figure 25: shadow diagrams

No. 14 Bavarde Avenue contains a residential flat building (4x flats approved on 24 February 1970 – T35/35/70).

Additional information submitted by the application identified the extent of overshadowing on No. 14 Bavarde Avenue as limited to overshadowing of the building /deck area during the 9am morning period, not evident at the building by 12midday (being confined to the front corner area of the site). Shadow diagrams are provided for a height compliant building and the building height variation proposed, illustrating the greatest impact is in the morning period. The building/s at No. 14 Bavarde Ave receive the minimum 3 hours direct sunlight between 9 am and 3 pm at mid winter as required under the ADG.

The stamped approved plan for the residential development at No. 14 Bavarde Ave illustrate the POS areas are located within the rear of the site, which continues to receive solar access:

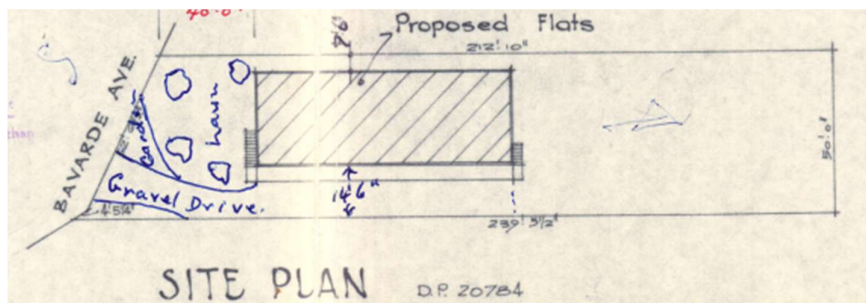


Figure 26: Stamped site plan – No. 14 Bavarde Ave – 21/4/70

The applicant has provided sufficient information to demonstrate the proposal achieves the objectives of Clause 4.3 providing a development that is consistent with the developing future character of this area of Batemans Bay.

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard (i.e. satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827). The Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (paragraph 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. *The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request provides the following justification for contravening the development standard providing the following environmental planning grounds (in part – Refer to Applicants Clause 4.6 variation written request for full excerpt):

- *The proposed development for residential flat buildings is permissible and is consistent with the objectives of the Height of Building control contained in ELEP 2012;*
- *The topography is a unique constraint which affects the site and results in a design that exceeds the numerical height limit. The site slope results in an inevitable variation to the extent of exceedance of the building height standard;*
- *The subject site is flood affected. According to council's requirements, the habitable floor levels and the basement protection level (crest level) shall be set minimum at the FPL 3.43m AHD. This land impediment has had a direct bearing with respect to the extent of height breach observed across the development.*
- *An identifiable extent of the site is identified as bushland area and therefore, any future development form needs to be distributed across the land in a manner that avoids the bushland. Numerically, 3,988.5m² or 47% of the site is identified as bushland. Any future development form therefore needs to be sited within the eastern/south-eastern components of the land thereby limiting any base floor plate expanse and distribution. This outcome will inevitably result in a tighter floor plate arrangement that will result in a building height increase across the areas of the land not burdened by the preservation of bushland.*
- *The Proposal will not result in the generation of an unreasonable extent of amenity impacts beyond that of a compliant scheme; and*
- *All other requirements relating to height and land use are consistent.*

The submitted plans and documents demonstrate the proposal has been considered in relation to site constraints (flooding), does not result in any significant adverse impacts in relation to overlooking or overshadowing and the proposal is consistent with the future character of this area of Batemans Bay which allows residential flat buildings in a typically 3 storey configuration. The application has demonstrated the proposal is suitable in relation to the bulk and scale, density, visual impacts and view sharing requirements.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment *Note: Cl. 4.6 changes came in to effect on 1/11/2023. DA lodged 17 May 2023 therefore this clause applies.*

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the ELEP 2012 are:

(1) The objectives of this clause are as follows:

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

Refer detailed discussion in this report. The proposal provides a medium density housing development consistent with the R3 zoning of the land. The proposed development provides a bulk and scale that is consistent with the developing future character of the area.

The applicant has submitted a detailed view analysis plans to demonstrate the visual impact from various viewpoints in the public domain including along Bavarde Avenue. The applicant has demonstrated the visual impact will be minimised to the extent possible and impacts on privacy and solar access to existing developments have been considered and can be supported.

The proposal is not compatible with the with the existing and desired future development and has adequately considered the potential impacts on surrounding and nearby development. For this reason, the proposal is assessed as achieving Objective (a).

The application demonstrates the proposed building height variation will not result in significant adverse impacts on the locality including neighbouring properties. For this reason, the proposal is assessed as meeting Objective (b).

Zone Objectives – R3 Medium Density Residential

The underlying objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage tourist and visitor accommodation in areas of demand subject to controls to ensure the adequate protection of a permanent residential housing supply and amenity.*
- *To encourage walking, cycling and the use of public transport.*

Comment: the proposal provides for the housing needs of the community (residential development) providing a proposal that is suitable for the medium density residential environment, providing for 60 dwellings including a mix of unit types in an area that is zoned to provide higher density development within a building height limit area of 11.5m and 12.5m including demonstrating compliance with applicable development controls applying to the land in relation to residential flat buildings.

The proposal is considered inconsistent with the objectives of the R3 Medium Density Residential Zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment *Note: Cl. 4.6 changes came in to effect on 1/11/2023. DA lodged 17 May 2023 therefore this clause applies (ELEP cl. 1.8A Savings provisions).*

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning and Environment, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the consent authority.

The applicant has demonstrated (as required under Clause 4.6) (4) that the development that contravenes a development standard has provided a written request that has adequately addressed the matters required and has demonstrated the proposed variation is in the public interest therefore this application is recommended for approval.

Clause 5.10 Heritage

(5) Heritage assessment

The site is not located near any identified heritage items or areas:

(8) Aboriginal places of heritage significance

The applicant submitted an Aboriginal Heritage Report and an Archaeological Technical Report with their application. The Aboriginal Heritage Report identified an area that required further investigation (refer Figure 27).



Figure 19: Areas of potential identified during the survey for the study area and proposed test pit locations

Figure 27: *Aboriginal Heritage Archaeological Assessment (ELA 2024) (Figure 19) – extract above.*

Archaeological test excavations were recommended to identify whether Aboriginal objects are located within the study area and determine the nature and extent of the Aboriginal resource within the study area.

Archaeological excavations within the study area resulted in no Aboriginal objects being identified across twelve (12) test pits.

The Archaeological Technical Report states (in part):

Cultural contributions during the test excavation also indicated that whilst the study area was likely to have been used a short term campsite, it had previously been ploughed and utilised as a horse paddock and historic homestead (c. 1930s), and several test pits displayed some degree of disturbance from historic land use. The remainder of the test pits contained relatively intact soil profiles.

The impact assessment in the report identifies the study area contained 'landform features that that indicated the presence of Aboriginal occupation due to the relatively flat and sheltered landscape, results of previous assessments in the local area in similar landforms which identified sites with artefact and shell features, cultural contributions during the archaeological survey which indicated the study area could have been a potential short term campsite and overall lack of observable ground disturbance'.

Archaeological test excavations undertaken within the study area did not identify any evidence of Aboriginal occupation or land use.

The history of the site was identified as potentially *the study area was likely to have been used a short term campsite, it had previously been utilised as a horse paddock, according to Uncle Les Simon, associated with an historic homestead (c. 1930s) adjacent to the study area. Several test pits displayed some degree of disturbance from historic land use.....*

No Aboriginal objects or Aboriginal cultural heritage values will be impacted by the proposed development.

A number of recommendations are included in the report which have been incorporated in to the recommended conditions of consent. The assessment identifies that no further assessment is required and the proposed development may proceed with caution. The application was referred to Heritage NSW under *National Parks and Wildlife Act 1974* who advised the proposal is not integrated development and provided recommended conditions. The proposal is considered suitable subject to implementation of recommended conditions including an unexpected finds protocol during construction.

Clause 5.21 Flood planning

The site is identified as being subject to flooding and flood related development controls apply.

The flood planning level (FPL) for the development is **3.43m AHD** based on Council engineers referral comments. It is noted that the Flood Impact Assessment Nominates FPL as **3.43m AHD** for Building A&B, and FPL of **3.60m AHD** for Building C.

The architectural design proposes finished floor levels of Building A and B – RL3.430m and Building C – RL3.600m, above the flood planning level identified by both Council and the applicant specialist flood report.

The proposal is considered suitable in relation to flooding subject to imposition of conditions including implementing flood management and mitigation measures in to the construction

and operation of the development. The development has the ability to provide pedestrian egress in any flood event, to higher level of Bavarde Pde supporting evacuation.

It is considered the proposal meets the objectives of this clause and is suitable subject to recommended conditions:

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

Acid sulfate soils (CI 6.3)

The land is identified as containing acid sulfate soils over the eastern part of the site (Class 3).

The applicant submitted an Acid Sulphate Soil (ASS) Investigation and Management Plan report. The report identified that boreholes and soil sampling was undertaken in accordance with Australian Standards. The report states *'The laboratory results do not indicate any acid trail in the shallow soil profile. From the above findings, it can be stated ASS management plan is not required for the above site'. Soil samples tested indicated no presence of AASS to the maximum depth of 3m, and possible presence of ASS, depth of below 3m.*

The report provides a number of recommendations including:

Although the site is not considered to be affected by ASS (to the maximum depth of 3m), it is recommended that all excavations and construction activities are to be monitored to ensure that ASS are not encountered during construction. Signs that may indicate the presence of ASS include:

- Lowering of the soil pH by at least one unit.*
- Soils change colour into a greyish and/or darker tone.*
- Noticeable sulphur-smelling gases (similar to rotten egg) such as sulphur dioxide or hydrosulphide into the atmosphere.*
- Effervescence.*

Should any of the above indicators be present during construction, excavation work on the site is to stop, and CEC (Geotechnical) should be contacted to determine what actions are required to be taken before work may recommence.

A number of additional recommendations are made in the report including an Acid Sulphate Management Plan. Conditions of consent have been imposed in relation to acid sulfate soils management including implementation of recommendations of reports.

It is considered the proposal meets the objectives of this clause and is suitable subject to recommended conditions:

- (1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*

Earthworks (CI 6.4)

Earthworks are proposed to be undertaken to facilitate the development including excavation of basement car parking areas to facilitate the proposal.

The applicant has submitted a number of reports in relation to soil investigations including a Geotechnical Investigation report, Hydrogeological Assessment and an Acid Sulphate Soil Investigation and Management Plan which provide an assessment and recommendations in relation to construction management and mitigation measures.

Council engineers have reviewed the proposal and provided conditions of consent in relation to earthworks. The engineer identified the calculated groundwater extraction is less than the extraction limit nominated by WaterNSW.

The applicant has demonstrated the proposal can be managed in relation to potential impacts on the existing drainage patterns and amenity of adjoining properties subject to implementation of conditions. It is considered the proposal has provided sufficient information to address the matters identified in clause 6.4(3):

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development*

Stormwater Management (Cl 6.9)

The stormwater management measures have been incorporated in the design of the development.

The stormwater design and management was amended during the assessment process to delete the proposed void area between the basement and ground floor including the culvert to provide an above-ground stormwater management solution.

The proposal involves collection of flows via a series of pits and pipes and bio-retention basins from the western area of the site i.e. downslope of the treed area adjacent to the western side of the development to provide for collection, on-site detention and disposal to the stormwater network at Heradale Parade. The basement level provides for pump holding tanks, pits and pipes for stormwater management.

Detailed referral comments are provided by Council engineers in relation to water management and stormwater engineering matters.

The applicant has demonstrated the proposal can be managed in relation to potential impacts on the existing drainage patterns and amenity of adjoining properties subject to implementation of conditions. It is considered the proposal has provided sufficient information to address the matters identified in clause 6.9(3):

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

- (a) *is designed to maximise the use of water permeable surfaces on the site, having regard to the soil characteristics affecting on site infiltration of water, and*
- (b) *includes, where practical, on site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) *avoids, or where an impact cannot be avoided, minimises and mitigates, the impacts of stormwater run off on adjoining downstream properties, native bushland and receiving waters.*

(2) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act which are relevant to the proposal.

(3) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Batemans Bay Regional Centres Development Control Plan* ("the DCP")

Note: provisions of a Development Control Plan apply including in relation to building setbacks and car parking provision. Refer **Attachment B – compliance table** for detailed assessment.

Note: SEPP 65 - Clause 6A Development control plans cannot be inconsistent with Apartment Design Guide

(1) This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following—

- (a) visual privacy,*
- (b) solar and daylight access,*
- (c) common circulation and spaces,*
- (d) apartment size and layout,*
- (e) ceiling heights,*
- (f) private open space and balconies,*
- (g) natural ventilation,*
- (h) storage.*

The DCP setbacks and parking provisions have been considered and/or used as a guide for car parking provision. Car parking requirements are in accordance with the ADG requirements for development within 400m of business zoned land (Part 3J) or Councils car parking requirement (whichever is less).

The proposal is considered to have satisfied the intent and controls in the DCP.

Contribution Plans

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Eurobodalla S7.11 Local Infrastructure Contributions Plan 2022*

This plan does apply to the proposal (applies to residential development and car-parking deficient development in town centres).

The site is located in the northern district. The available Council records for the original development on this site do not indicate that contributions were paid for residential dwellings

i.e. existing hospital site. Therefore no existing credits (ETs) for residential accommodation are applied for existing development.

Facility NORTHERN DISTRICT	Per lot or 3+ bedroom dwelling	Per 2 bedroom dwelling	Per 1 bedroom dwelling	Calculations 2 x 1 bed units 12 x 2 bed units 42 x 3 bed/ 4 x 4 bed (46 units)	Total (no. of dwellings * rate)
Open Space and Recreation	\$533.80	\$305.05	\$247.85	(2*247.85)+(12*305.05)+(46*533.80) \$495.7 + \$3,660.6 + \$24,554.8	\$28,711.1
Community and Cultural	\$154.75	\$88.40	\$71.85	(2*71.85)+(12*88.40)+(46*154.75) \$143.7+\$1,060.8+\$7,118.5	\$8,323
Arterial Roads	\$5,326.35	\$3,043.65	\$2,472.95	(2*2,472.95)+(12*3,043.65)+(46*5,326.35) \$4,945.9+\$36,523.8+\$245,012.1	\$286,481.8
Paths and Cycleways	\$710.60	\$406.05	\$329.90	(2*329.90)+(12*406.05)+(46*710.60) \$659.8+\$4,872.6+\$32,687.6	\$38,220
Stormwater	\$1,433.20	\$819.00	\$665.40	(2*665.40)+(12*819.00)+(46*1,433.20) \$1,330.8+\$9,828+\$65,927.2	\$77,086
Marine	\$215.45	\$123.10	\$100.05	(2*100.05)+(12*123.10)+(46*215.45) \$200.1+\$1,477.2+\$9,910.7	\$11,588
Plan Preparation and Admin	\$125.60	\$71.80	\$58.30	(2*58.30)+(12*71.80)+(46*125.60) \$116.6+\$861.6+\$5,777.6	\$ 6,755.8
Total	\$8,499.75	\$4,857.05	\$3,946.30	(2*3,946.30)+ (12*4,857.05)+ (46*8,499.75) \$7,892.6 + \$58,284.6 +\$390,988.5	\$457,165.7

Total payable: \$457,165.70

- *Eurobodalla S7.12 Contributions Plan 2022*

This plan applies to all land in the Eurobodalla LGA with a proposed cost of development of \$100,000 or more and does not apply to this proposal.

WATER & SEWER HEADWORKS

The proposal is subject to contributions under Section 64 Local Government Act.

Water	
2x 1 bed = 0.4 12 x 2 bed = 0.6 46 x 3 bed = 0.8	0.8 + 7.2 + 36.8 = 44.8 ETs
Sewer	
2x 1 bed = 0.5 12 x 2 bed = 0.75 46 x 3 bed = 1.0	1+9+46 = 56 ETs = 25.5 ETs

Contributions	ET applicable to this DA	Rate FY24/25 per ET	Total Amount
Water Headworks	44.8 ETs	\$7,845.00	\$ 351,456
Sewer Headworks (DSP2 – MO, BB)	56 ETs	\$9,905.00	\$ 554,680
		TOTAL	\$906,136

This Contributions Plan has been considered and included the recommended draft consent conditions.

(4) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(5) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- Demolition - provisions of AS 2601;

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) are not relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

3.7 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting** – The proposal is considered to be generally consistent with the context of the site, in that the proposed residential apartment development (proposed within 3 separate buildings) appropriately response to the context of the local and regional environment.

The proposal is located within an area that is identified as suitable for increased residential densities and proposes a built form that has considered the existing character and amenity of the locality and streetscape, providing adequate building setbacks and a separation of built form that has considered the scale, mass, form, and character of the developing area of Batemans Bay. The proposed development has provided three separate buildings to minimise the potential impacts on the streetscape from bulk and scale and provides a well articulated design that is sympathetic to the existing and desired future character of the area.

- **Access and traffic** – The proposal incorporates appropriate off-street car parking for the site including for residents and visitors. A Traffic and Parking Assessment has been lodged in support of the application which identifies the proposal is suitable in relation to potential impacts on traffic demand, parking spaces, traffic generation and that the capacity of road network is suitable.

- **Public Domain** –the proposal does not impact on the public domain in relation to the vicinity of open space areas or pedestrian linkages in the area. The proposal addresses both street frontages of Heradale Parade and Bavarde Avenue in relation to built form and building setbacks including provision of landscaping to the front setback areas.
- **Utilities** – the proposal will connect to existing utilities which are available at the site. Conditions of consent have been imposed in relation to requirements and clearances in response to Council and agency comments.
- **Heritage** – the site does not contain a heritage item or Heritage conservation area. The potential impacts on Aboriginal heritage have been considered and Heritage NSW have provided recommendations in relation to construction site management including unexpected finds during construction. It is considered this matter can be managed subject to imposition of recommended conditions.
- **Other land resources** – the site is located within a residential zoned area, and is not within the vicinity of intense land uses such as mining or agricultural land.
- **Water/air/soils impacts** – the applicant has submitted a preliminary site investigation report in relation to potential contamination which has identified the site is suitable subject to imposition of conditions during construction.
- **Flora and fauna impacts** - tree and vegetation removal is proposed to the minimum extent necessary. The site is not mapped as containing threatened species or mapped areas of biodiversity. It is considered the proposal has adequately considered the potential impacts on the natural environment, providing a built form that has considered retention of the vegetated treed areas located in the western portion of the site.
- **Natural environment** – the proposal involves excavation to provide basement car parking which results in a change to the natural environment due to excavation. The proposed finished floor levels result from provision of a finished floor area above flood planning levels, which does not significantly change the natural contours of the site. Stormwater management and mitigation measures and groundwater management measures are proposed to minimise any potential impacts on the environment. Tree and vegetation removal is proposed to the minimum extent necessary. The proposed development will not have a significant adverse impact on the natural environment and the proposal is considered appropriate for the locality.
- **Noise and vibration** – the applicant has submitted an acoustic report in relation to construction measures to be incorporated in to the design of the development. A condition of consent has been recommended in relation to noise management during construction.
- **Natural hazards** –the site affected by natural hazards including flooding and the proposal includes potential impacts on groundwater. The hazards have been adequately addressed by the proposal including via specialist consultant reports and GTAs by Water NSW.
- **Safety, security and crime prevention** – CPTED Principles have been considered in the design of the built form including street facing balconies and entry ways and separation of the buildings. It is considered the communal open space areas of the site can be managed for safety and security of residents.

- **Social impact** – the proposal provides positive social impacts through provision of residential accommodation that meets the housing needs of the community in a manner the considers the existing residential environment and the developing area of Batemans Bay.
- **Economic impact** – employment generation is provided through the construction phase of the development, with additional housing provision contributing economic benefits to the wider community.
- **Construction** – the potential impacts from construction been considered and mitigation measures imposed in the recommended conditions. A construction management plan will be required to be implemented during construction and hours of construction are proposed to limit construction hours during weekends and public holidays.
- **Cumulative impacts** – it is considered the proposal will not result in significant adverse cumulative impacts. The proposal involves construction of residential housing within a residential zoned area and is generally consistent with the planning controls and subject to imposition of conditions will not result in adverse cumulative impact.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.8 Section 4.15(1)(c) - Suitability of the site

The site is suitable for the proposed development.

- The development is permissible with Council consent within the zone.
- The proposal is consistent with the R3 Medium Density Residential zone objectives.
- The proposal is consistent with the objectives and requirements of the applicable environmental planning instruments including *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* for residential flat buildings and the relevant objectives within the Apartment Design Guidelines
- The proposal is consistent with the objectives and requirements of the *Eurobodalla Local Environmental Plan 2012*.
- The proposal is consistent with the objectives and requirements of the *Batemans Bay Regional Centre Development Control Plan*.
- The proposal adequately addresses the natural hazards that affect the land including flooding
- The intended use is compatible with surrounding/adjoining land uses with sufficient justification provided regarding the variation to the Height of Buildings control in relation to the surrounding topography and developing character of this area of Batemans Bay

3.9 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4 of this report.

3.10 Section 4.15(1)(e) - Public interest

The public interest has been taken into consideration, including assessment of the application with consideration of relevant policies and process.

The proposal is consistent with the regional growth strategy *Batemans Bay Structure Plan* which aims to balance the demands for new housing, commercial development and servicing, while preserving what residents and visitors treasure about Batemans Bay.

The proposal includes a number of specialist reports to address the potential impacts and it is considered the proposal can be managed to minimise potential impacts on the environment, subject to imposition of conditions.

The proposal is generally consistent with planning controls for residential apartment development within a medium density residential zoned area. The applicant has demonstrated the Clause 4.6 Variation to the Development Standard (Height of Buildings) can be supported.

The proposal will provide a range of economic and social benefits including ongoing construction works providing economic benefit and provision of a mix of dwelling types (1, 2, 3 and 4 bedroom units) contributing social benefits due to provision of housing to the community.

Ecologically sustainable development principles have been considered through implementation of sustainable building principles, minimising removal of existing vegetation, incorporation of green roof or landscaped areas on roof tops, implementing sustainable design principles in landscaping and stormwater design, consistent with the principles of Ecologically sustainable development.

The proposal provides for medium density residential development within a developing residential area of Batemans Bay and on balance is considered to be in the public interest.

4. REFERRALS AND SUBMISSIONS

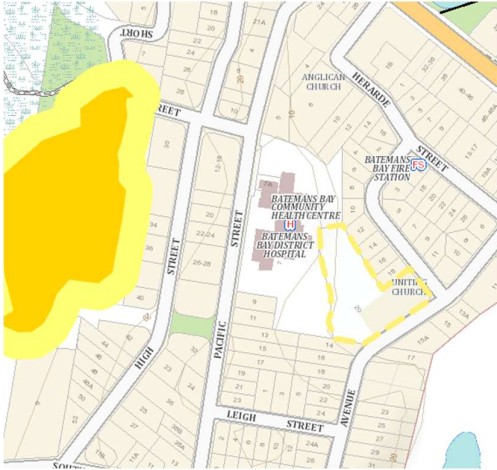
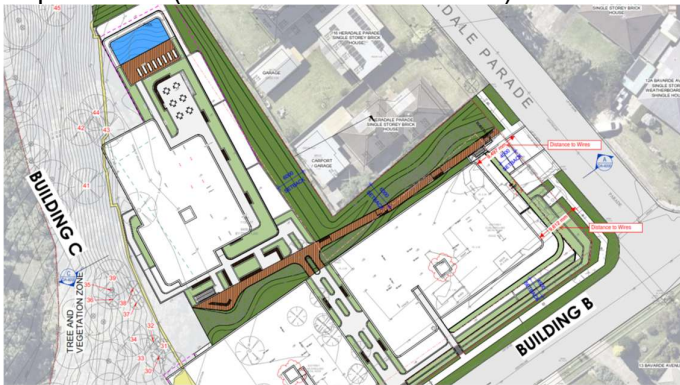
4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	The proposal is <u>not</u> likely to significantly affect threatened species. The proposal involves minimal tree removal of 2 x trees mapped within a vegetation area and is not within biodiversity mapped land. Concurrence is not required.	Y

Referral/Consultation Agencies			
RFS	S4.14 – EP&A Act Development on bushfire prone land	<p>Not applicable. The site is not bushfire prone land.</p>  <p>Figure 27: NSW Planning Portal – bushfire prone land mapping</p>	N/A
Electricity supply authority	<p>Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure</p>	<p>Suitable subject to conditions. Essential Energy required further information in relation to offsets to powerlines (require 2.5m and 3.3m respectively).</p> <p>The applicant provided the following distant measurements demonstrating the proposal meets offset requirements (min. 9.49m offset distance).</p>  <p>Figure 28: offset dimensions from electricity infrastructure – Applicant plans</p>	Y
Rail authority	<p>Section 2.97 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development land that is in</p>	<p>Not applicable.</p>	N/A

	or adjacent to a rail corridor.		
Transport for NSW (TfNSW)	<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development.	Not applicable. Residential accommodation of 300 or more dwellings or with access to a classified road (or within 90m of a classified road) requires referral to Transport for New South Wales (TfNSW). The site is located approximately 220m south-west of the closest classified road (Beach Road). The proposal involves provision of 88 residential car spaces (91 spaces including wash bays).	N/A
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	Not applicable.	N/A
NSW Police	(s4.15) (likely impacts of development)	Not applicable.	N/A
Heritage NSW	(s4.15) (likely impacts of development)	Heritage NSW advise that <i>since there are no known Aboriginal objects on the subject site, the development is not integrated for the purposes of the National Parks and Wildlife Act 1974, and we cannot provide general terms of approval.</i> Heritage NSW provided recommended conditions of consent.	Y
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	General Terms of Approval Issued	Y
Heritage NSW	<i>National Parks and Wildlife Act 1974</i>	The application is not integrated development for heritage.	Y

		Heritage NSW advise that <i>since there are no known Aboriginal objects on the subject site, the development is not integrated for the purposes of the National Parks and Wildlife Act 1974, and we cannot provide general terms of approval.</i>	
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety authority	Not applicable.	Not applicable.

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Traffic	<p>Council's Engineering Officer reviewed the proposal and initially raised concerns in relation to waste collection and basement car parking access in relation to flood access for vehicles. These matters were resolved during the assessment process with a modified car access ramp design provided and waste collection area nominated in the front setback area of the site which has been considered in relation to conditions imposed for vehicle entry/exit and pedestrian safety.</p> <p>The subject proposal (as amended during the assessment process) is considered suitable subject to conditions.</p>	Y
Engineering	<p>Council's Engineering Officer reviewed the submitted engineering plans and specialist reports and initially required additional information be provided. This resulted in a change to the building configuration on the site and stormwater and flood design requirements.</p> <p>The subject proposal (as amended during the assessment process) is considered suitable subject to conditions.</p>	Y
	<p>Detailed engineering referral comments are provided by Councils engineer. It is noted that works undertaken in Council road and stormwater network since lodgement of the application have been nominated in relation to the proposal i.e.</p> <ul style="list-style-type: none"> <i>New Stormwater Works have been carried out along Heradale Pde. The new stormwater pit along the Heradale Frontage will conflict with the Driveway. As this application has been within Council since May 2023, and the works have been carried out since the development has been lodged, it is not considered reasonable for the applicant to redesign the proposal to avoid the driveway/stormwater conflict. Developer to convert</i> 	

	<p><i>stormwater pit to trafficable grated inlet as part of construction. Construction of the new Kerb Inlet Pit as proposed at the intersection with Bavarde Ave will assist in catering for the reduced inlet capacity of the grated inlet, particularly bypass flows from Bavarde Ave</i></p> <p>Conditions of consent have been provided in relation to flooding, water, sewer, stormwater, Geotechnical, Roads /Access, Waste, Traffic and accessibility.</p>	
Waste	<p>Referred to Councils waste officer who advised that the quantity of bins is sufficient per dwelling and the waste room for storage seems sufficient. A comment was provided in relation to commercial contractor collection, as Council do not collect waste on-site.</p> <p>A condition of consent has been imposed in relation to waste collection by a commercial contractor.</p> <p>The subject proposal (as amended during the assessment process) is considered suitable subject to conditions.</p>	Y

The key matters raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 19/5/23 to 6/6/23 and 18/12/23 – 5/2/24. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties
- Notification on the Council's website.

The Council received a total of three (3) unique submissions during the first notification period and one (1) submission during the second notification period. The first submission period contained 2 x objections to the proposal and 1 x submission in support. The issues raised in these submissions are considered in **Table 7**.

Table 7: Community Submissions

Issue	Council Comments
<p>Stormwater</p> <p>Submissions raised concern the development will adversely impact flooding within the locality.</p>	<p>The application proposes an appropriate stormwater management network which will capture and control discharge of stormwater to be diverted to Councils stormwater system.</p> <p>Stormwater modelling has been submitted to demonstrate the proposed stormwater management chain, including discharge to Councils stormwater system can be managed subject to</p>

	<p>conditions in relation to potential negative impacts on downstream properties.</p> <p>Council engineers identified that <i>new stormwater works have been carried out along Heradale Pde.Construction of the new Kerb Inlet Pit as proposed at the intersection with Bavarde Ave will assist in catering for the reduced inlet capacity of the grated inlet, particularly bypass flows from Bavarde Ave.</i></p> <p>Council's Development Engineer has reviewed the proposal and raises no objections to the proposed stormwater management arrangements subject to implementation of conditions.</p> <p>Outcome: This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment 1).</p>																
Footpath provision Lack of footpath on Heradale Parade	A condition of consent has been imposed requiring construction of a footpath along the site frontage.																
Lack of visitor parking and impact on on-street parking	<p>ADG allows for provision of car parking to RMS Traffic Generating Development or DCP requirements (whichever is less).</p> <p>Calculations RMS parking:</p> <table border="1"> <tr> <td>Metropolitan sub-regional centres unit</td><td></td></tr> <tr> <td>2 x 0.6 spaces per 1 bedroom</td><td>1.2</td></tr> <tr> <td>12 x 0.9 spaces per 2 bedroom unit</td><td>10.8</td></tr> <tr> <td>46x 1.40 spaces per 3 bedroom unit</td><td>64.4</td></tr> <tr> <td>TOTAL</td><td>76.4 (77) spaces</td></tr> <tr> <td>+1 space per 5 units (visitor parking)</td><td>60 units = 12 spaces</td></tr> <tr> <td>Total required</td><td>89 spaces</td></tr> <tr> <td>Provided:</td><td>91 spaces (including car wash bays) or 88 spaces (residential/visitor)</td></tr> </table> <p>The applicant has submitted a traffic report in support of their proposal.</p> <p>On street parking is also available within this area of Batemans Bay. The car parking is not restricted along Heradale Parade. Conditions of consent are recommended in relation to car parking provision.</p>	Metropolitan sub-regional centres unit		2 x 0.6 spaces per 1 bedroom	1.2	12 x 0.9 spaces per 2 bedroom unit	10.8	46x 1.40 spaces per 3 bedroom unit	64.4	TOTAL	76.4 (77) spaces	+1 space per 5 units (visitor parking)	60 units = 12 spaces	Total required	89 spaces	Provided:	91 spaces (including car wash bays) or 88 spaces (residential/visitor)
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+1 space per 5 units (visitor parking)	60 units = 12 spaces																
Total required	89 spaces																
Provided:	91 spaces (including car wash bays) or 88 spaces (residential/visitor)																
Waste bin collection area impacts on on-street parking	The proposal involves an amended design which proposes on-site collection of waste bins from a dedicated waste bin area i.e. 1100L bins. This is required to be undertaken by a commercial waste contractor.																

Building height

The application proposes a building height variation. The application has been amended during the assessment process to consider the potential impacts on the amenity of adjoining properties from the proposed variation to building height.

The proposal involves the following roof building heights following construction:

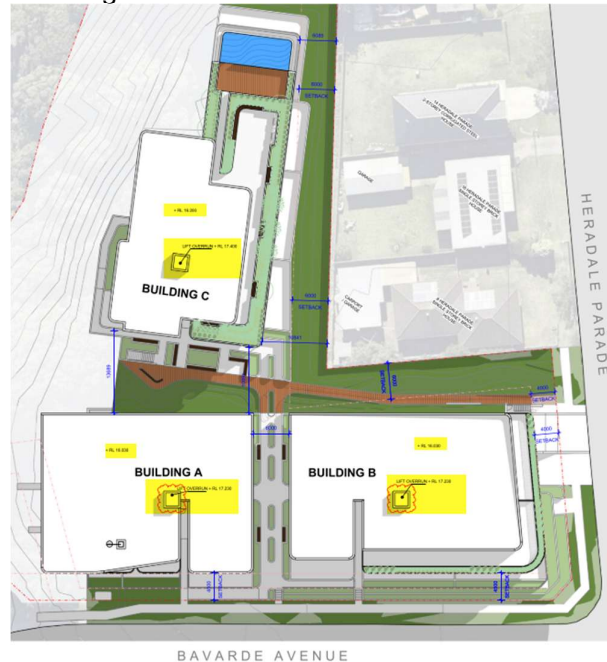


Figure 29: Height of buildings (roof plans) - Applicant plans

Building A & B – roof RL16.030m; lift RL17.230m

Building C – roof RL16.200m; lift RL17.400m

The dwellings upslope to Bavarde Avenue are impacted by the proposed development in relation to views.

No. 14 Bavarde Ave and development to the south of the site at Bavarde Avenue is impacted by overshadowing (which has been considered by the applicant). The submitted shadow diagrams illustrate overshadowing occurs in the morning period, retaining solar access to rear COS areas throughout the day. Existing views are considered constrained from this site (No. 14) to the north by existing vegetation. A view corridor is retained along Bavarde Ave to the north-east towards the coastline (refer submitted View Analysis).

The applicant submitted revised development plans during the assessment process to provide increased top floor building setbacks.

Planning controls allow variations under clause 4.6. A detailed assessment has been undertaken in consideration of the variation request. Overall the development as proposed meets

	the objectives of the Height of Buildings clause under ELEP 2012 and clause 4.6 variation to development standards provisions.
Visual impacts	<p>The applicant submitted a revised visual impact assessment in support of the proposal. The proposal is compatible with the height, bulk and scale of the desired future character of the locality. While the proposal does propose visual impacts, these are limited to the immediate locality due to the site location immediately adjacent to sloping topography (hill-top) location immediately to the west of the site that contains Batemans Bay Hospital.</p> <p>Council is satisfied that the design, bulk and height of the proposed buildings is consistent with the developing residential density in this area of Batemans Bay. The built form has considered reducing potential visual impacts through use of built form visual separation (3 separate buildings), provision of sufficient streetscape setbacks and landscaping within setback areas and on roof areas and balconies.</p>

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Built form and Urban Design

The proposed building form presents a considered response to the streetscape and is of an bulk and scale that is compatible with the desired future character of the area. The parallel building alignment to street frontages provides sufficient setbacks and facade articulation to both Heradale Parade and Bavarde Avenue and side and rear boundaries including retention of established vegetation within the sloping western part of the site, represents a perceived bulk and scale and is compatible with the existing residential streetscape character, which comprises a developing medium density residential area.

The design of the proposed facades for Buildings A, B and C including to the street and side and rear boundaries are considered acceptable as the proposal presents separated buildings with articulated facades, minimising the wall of development presenting to the streetscape. A considered approach has been taken to the interface between proposed buildings and existing development along Heradale Parade, providing stepped landscaped areas to provide screening and separation between existing and proposed development for privacy and amenity. This presents a development that is consistent with the developing character of the area that provides for residential development of increased density.

The built form for each building provides upper level setbacks and the proposed vehicle entry from Heradale Parade which is set back behind the main building line, provides a bulk and scale that is considered to contribute to the existing residential streetscape character in a manner that reflects the developing character of the area.

The built form and design have been amended through the assessment process to provide increased building separation and set backs from existing development in recognition of the existing established residential character of the environment.

The proposal involves the use of differing upper level materials and finishes (darker colours) to mitigate the visual appearance of the proposed bulk and scale of the development that results from the increased building height of buildings proposed within a flood-prone area. The extensive landscaping proposed for the roof-top communal open space area and level 3 planting to the perimeter of residential units provides a softening of the built form, contributing to a vibrant streetscape.

The applicant addressed this issue satisfactorily with amended plans and accordingly, this application is recommended for approval.

Resolution: The issue has been resolved through recommended conditions of consent.

5.2 Noise and vibration Assessment

The potential for noise and vibration to impact on adjoining properties is an important consideration given the proposed construction works (excavated basement) and proximity of the residential development to busy roads.

The application was accompanied by a Noise Assessment prepared by SLR, dated August 2024 ('Acoustic Report') which considered the potential road noise intrusion from the surrounding road network.

The report concluded that:

Calculations show that the proposed building constructions, together with the specified minimum sound insulation ratings determined in this report, would be acoustically suitable to achieve acceptable noise levels within all habitable areas within the dwellings. The required sound insulation ratings are not onerous and would be achieved with standard proprietary constructions.

Council has considered this report and following a detailed assessment, concluded the report was satisfactory in relation to assessing the potential impacts on residents in relation to road noise through implementation of building construction requirements, subject to imposition of recommended conditions of consent.

A Construction Noise and Vibration Management Plan is required to be prepared prior to the issue of a construction certificate to consider the reduction and likelihood of noise impacts due to construction activity.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

5.3 Flooding

The potential for flooding to impact on residents and adjoining properties is an important consideration as the site is identified as flood prone land and subject to stormwater overland flows from the sloping topography located on and adjacent to the site. The application was accompanied by a Flood Impact Assessment prepared by Telford Civil, dated 2 September 2024 ('Flood Report') which considered this issue.

The flood planning level (FPL) for the development is **RL3.43m AHD** based on Council engineers referral comments. It is noted that the Flood Impact Assessment Nominates FPL as **3.43m AHD** for Building A&B, and FPL of **3.60m AHD** for Building C.

The architectural design proposes finished floor levels of Building A and B – RL3.430m and Building C – RL3.600m, above the flood planning level identified by both Council and the applicant specialist flood report.

Councils engineers reviewed the proposal and recommended conditions of consent in relation to flood management and mitigation, building design (flood compatible materials and design of vehicle access ramp for basement) and identified the development has the ability to provide pedestrian egress in any flood event, to higher level of Bavarde Pde supporting evacuation during a flood event.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

5.4 Sewer and Stormwater

The Eurobodalla Shire Council is the water and sewer authority for this area. The application has amended the building design to provide offsets to the sewer main located within the front setback of the site to Bavarde Avenue and conditions are recommended to allow for impacts on sewer from building and excavation to be minimised throughout the construction process.

The stormwater design has been modified throughout the assessment process to remove the initial design box culvert and raised ground floor (void) area to provide for overland flows to be captured above-ground and diverted through or around the site. Conditions are recommended in relation to stormwater on site detention, treatment and management to minimise potential impacts on residents and adjoining properties. It is requirement prior to any construction certificate being issued to accurately locate the water main and then realign the water supply easement (that is identified on Title running between Pacific Street upslope to the west (the 'hospital site') and Heradale Parade to the east) prior to issue of any construction certificate to ensure that any structures are clear of identified easements and that the water main is consistent with the easement location.

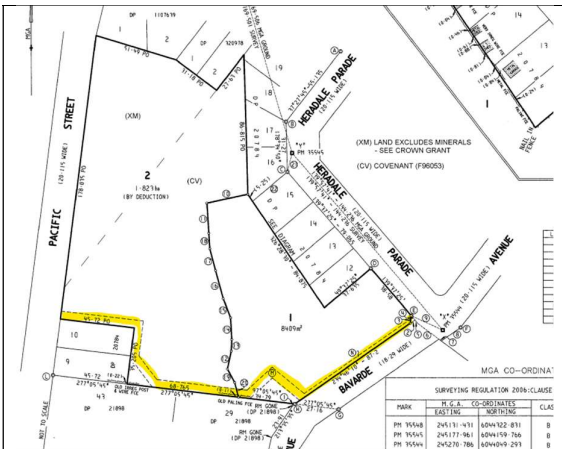


Figure 30: Water supply easement – DP



Figure 31: Stormwater layout plan – Council infrastructure mapping

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

5.5 Heritage

The application was accompanied by an Aboriginal Heritage Report (prepared by EcoLogical Australia dated 24 October 2024) and an Archaeological Technical Assessment prepared by EcoLogical Australia dated 3 September 2024). A detailed discussion is undertaken in the LEP section of this report.

The assessment identifies that no further assessment is required and the proposed development may proceed with caution. The application was referred to Heritage NSW under *National Parks and Wildlife Act 1974* who advised the proposal is not integrated development and provided recommended conditions. The proposal is considered suitable subject to implementation of recommended conditions including an unexpected finds protocol during construction.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

5.6 Biodiversity and Vegetation

The application has considered the potential impacts on biodiversity and vegetation due to the site area containing established treed areas and the proposal which includes tree removal to facilitate the development. A detailed discussion is undertaken in the *Biodiversity Conservation Act 2016* section of this report.

The assessment undertaken identifies the proposal consists of low risk development and is unlikely to have a significant impact on threatened species, ecological communities or their habitat. As such a detailed Flora and Fauna Assessment was not required and the development did not trigger the Biodiversity Offset Scheme.

Conditions are recommended in relation to tree retention and tree removal and tree protection measures during construction including requirements for a site arborist to be present during critical phases of the development. The development demonstrates the impacts to biodiversity have been considered in relation to minimising potential impacts.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

5.7 Traffic and Parking

The applicant has submitted a traffic and parking assessment in support of the proposal (prepared by CJP Consulting Engineers dated 3 September 2024). The Traffic Report identifies the site is within 400m of public transport (bus services).

The Traffic Report considered the traffic impacts arising from the proposal and identified the proposal is supportable in terms of traffic impacts:

In any event, the microsimulation models that analyse intersections and road networks are unlikely to be impacted to any significant extent by 19-32 additional vehicle movements, such that the road network operation is expected to remain at the same Level of Service as it is currently.

The report provides an assessment of car parking as follows (referencing RMS Traffic Generating Guidelines):

Table 5.1 – Off-Street Car Parking Requirement						
Use	Eurobodalla Parking & Access Code 2011			RMS Guide		
	Rate	Quantity	Requirement	Rate	Quantity	Requirement
1 bedroom	1 space/unit	2	2 spaces	0.6 spaces/unit	2	1.2 spaces
2 bedroom	2 spaces/unit	12	24 spaces	0.9 spaces/unit	12	10.8 spaces
3 bedroom	2 spaces/unit	42	84 spaces	1.4 spaces/unit	42	58.8 spaces
4 bedroom	2 spaces/unit	4	8 spaces	1.4 spaces/unit	4	5.6 spaces
Visitors	-	60	-	1 space/5 units	60	12.0 spaces
Total			118 spaces			88.4 spaces

Planner comment: the car parking calculation has been rounded down in the traffic report. Council in the recommended consent conditions have recommended that the minimum residential car spaces be allocated to units (i.e. 77 spaces) with visitor parking being adjusted to a provision of 11 spaces for car parking provision on site (a total of 88 residential /visitor spaces plus 3 washbays).

Accessible parking:

Planner comment: Accessible parking is provided for 16 spaces. The 25% adaptable unit requirement requires 25% of apartments be adaptable equating to 15 units. The 16 car spaces provided cater to this requirement. The architectural plans state that 18 adaptable units are provided. To allow for provision of adequate accessible parking for the overall development a condition of consent is recommended limiting car parking to 15 accessible spaces for residential use and 1 x accessible visitor parking (16 spaces total).

In relation to waste collection, the proposal provides an on-site waste collection bay. The waste collection has been conditioned to be undertaken by a private waste contractor. Council does not undertake on-site collection of waste bins.

The report concluded that:

Based on the findings contained within this report, the following conclusions are made:

- the site is located within easy walking distance to bus services
- the proposed development is expected to generate in the order of 19-32 vehicle trips during the weekday morning and afternoon peak periods
- the proposed level of traffic activity is minimal and not expected to result in any unacceptable traffic implications to the surrounding road network, nor will any road or infrastructure upgrades be required
- the proposed development makes provision for 116 residential car parking spaces (including 16 accessible spaces) and 3 dedicated car wash bays
- the proposed development also makes provision for 25 bicycle spaces
- the proposed vehicular access, parking and loading area design complies with the relevant requirements of the AS2890 series

In light of the foregoing assessment, it is therefore concluded that the proposed development is supportable on vehicular access, traffic, parking and servicing grounds and will not result in any unacceptable implications.

Council engineers have reviewed the proposal and provided conditions of consent in relation to car parking design and access.

Council has considered this report and following a detailed assessment, concluded the report is satisfactory subject to the matters which have been addressed in recommended conditions of consent in relation to adequate parking provision for residents and visitors.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

5.8 BCA and fire engineering

The applicant has submitted a Building Code of Australia 2022 (BCA) Assessment Report prepared by AllCert (ref: 220192) dated 3 September 2024 and a Fire Engineering Statement prepared by Holms Australia LP dated 3 September 2024 in support of the proposal.

The proposal is identified as consisting of the following building classifications:

- Class 2 residential sole-occupancy units (SOUs)
- Class 7a car park

The building is considered a 'united building' that will be approximately 9m in effective height, more than 6,000m² in area and with a fire compartment of greater than 2,000m². The building is to be sprinkler protected.

The BCA report identified a number of non-compliances with the deemed-to-satisfy (DtS) provision of the Building Code of Australia (BCA) 2022.

Proposed performance solutions i.e. fire engineered solutions for BCA compliance (identified in the Fire Engineering Statement include the following clauses:

- BCA Clause D2D5(1)(a)(i) – maximum travel distance (SOU)
- BCA Clause D2D5(1)(b) - maximum travel distance (pool area and pool maintenance room)
- BCA Clause D2D5(1)(3) maximum travel distance (carpark)
- BCA Clause D2D12(2) – location of fire isolated exit Building B
- BCA Clause D2D12(3) – location of fire isolated exit Building C (proximity to external wall)
- BCA Clause D3D5 – building A flights of fire-isolated stair
- BCA Clause D2D13 – exit discharge to a roof of a building i.e. podium level of basement

The fire engineering report provides the following summary:

3 SUMMARY

Based on Holmes's review of the project documentation, it is considered that performance based fire engineering can be utilised to demonstrate compliance with the Performance Requirements of the BCA without major changes to the current design. Additional non-compliances may be identified as the design is further developed, however it is considered that there are no significant issues that would affect the building layout.

While building code compliance is not required to be demonstrated in accordance with legislative provisions at development assessment stage, the applicant submitted building code compliance reports in accordance with requirements required for construction certificate stages which under the *Design and Building Practitioners Act 2020* requires class 2, 3 and 9c buildings to comply with the Building Code of Australia (BCA) and design and building

practitioners to be registered. i.e. that a development as approved would generally be consistent with construction certificate requirements for building construction and fire safety and would not result in 'major' changes to the building layout.

For the purposes of assessment, the submitted reports address matters required for building compliance and the recommended conditions include the submitted reports in the listed conditions.

Resolution: The issue has been considered with recommended conditions of consent provided as outlined in **Attachment A**.

5.9 Access

The applicant has submitted a Statement of Compliance Access for People with a Disability ('Access report') prepared by Accessible Building Solutions dated 03-09-2024 in support of the proposal. The proposal involves the provision of 25% adaptable units (minimum 15 units of the 60 proposed) and has addressed the provision of the features of the Livable Housing Guidelines 'Silver' level. The requirement under the ADG (section 4Q1) is to provide 20% of the units to incorporate the features of the Livable Housing Guidelines 'Silver' level. i.e. 12 required Livable units.

The application provides the required number of adaptable units and associated car parking and includes the required number of 'silver' level Livable Housing units. Conditions have been imposed in relation to allocation of car parking for accessible car spaces for residents and visitors.

Resolution: The issue has been considered with recommended conditions of consent provided as outlined in **Attachment A**.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The proposal provides a built form that responds to the existing and developing character of this area of Batemans Bay and considers site constraints such as flooding, resulting in a development that is considered compatible with the locality.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application No. PPSSTH-247 – DA0593/23 for *Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 x 2 bed; 42 x 3 bed and 4 x 4 bed) including basement car parking for 88 vehicles (plus 3 car wash bays)* at 20 Heradale Parade Batemans Bay (Lot 1 DP 1135117) be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

• Attachment A	Draft Conditions of consent
	Tables of Compliance -
• Attachment B	- SEPP 65 Design Quality Principles
	- ADG Checklist
	- DCP Checklist
• Attachment C -	Clause 4.6 Variation to development standard
• Attachment D -	Architectural Plans
• Attachment E -	Architectural Plans (shadow diagrams) <i>DO NOT STAMP</i>
• Attachment F -	Landscape Plans
• Attachment G -	Engineering Plans (stormwater)
• Attachment H -	Engineering Plans (civil)
• Attachment I -	BASIX Certificate
• Attachment J -	Nathers Certificate and summary
	(incl. Links to each Unit number certificate)
• Attachment K -	Aboriginal Heritage report
• Attachment L -	Archaeological Technical report
• Attachment M -	Acid sulphate soil (ASS) investigatio and management plan
	report
• Attachment N -	Statement of Compliance
	Access for People with a Disability (Access report)
• Attachment O -	DA Noise Assessment (acoustic report)
• Attachment P -	Arboriculture Impact Assessment report (Arborist report)
• Attachment Q -	Applicant - Apartment design guide compliance table
• Attachment R -	Applicant Design Verification Certificate
• Attachment S -	Building Code of Australia (2022) Assessment Report
	Report
• Attachment T -	Fire Engineering Statement
• Attachment U -	Flood Impact Assessment
• Attachment V -	Hydrogeological (groundwater) assessment
• Attachment W -	Geotechnical Investigation report
• Attachment X -	Preliminary site investigation (PSI) report
• Attachment Y -	Traffic and Parking assessment report
• Attachment Z -	Visual Impact assessment
• Attachment Z1 -	Site waste minimisation and management plan
• Attachment Z2 -	Applicant RFI Response 2 October <i>DO NOT STAMP</i>
• Attachment Z3 -	Statement of Environmental Effects <i>DO NOT STAMP</i>
• Attachment Z4 -	Survey Plans - <i>DO NOT STAMP</i>
• Attachment Z5 -	Stormwater RFI response - <i>DO NOT STAMP</i>
• Attachment Z6 -	Referral comments – Essential Energy - <i>DO NOT STAMP</i>
• Attachment Z7 -	Referral comments – Council engineers - <i>DO NOT STAMP</i>