

SOUTHERN REGIONAL PLANNING PANEL - ASSESSMENT REPORT

PANEL REFERENCE	PPSSTH-327
DA NUMBER	DA2023.338
LGA	Bega Valley Shire Council
PROPOSAL	<p>3 Lot subdivision with a mixed use development on proposed Lot 1 and associated stormwater works.</p> <p>The proposal comprises:</p> <ul style="list-style-type: none"> • A Torrens Title subdivision of the allotment into three (3) lots (Lots 1, 2 & 3) including road upgrade works along Weecoon Street in front of Lots 1 & 2. • A mixed use building on proposed Lot 1 consisting of: <ul style="list-style-type: none"> ○ A basement carpark containing waste and service areas, resident storage facilities, 55 car parking spaces, 2 wash bays and a single delivery bay. ○ Two (2) commercial tenancies (the subject of future land-use DAs). ○ A shop-top housing development consisting of two residential towers containing a total of 57 units. • Stormwater infrastructure works over proposed Lots 2 & 3, which future DAs for development will incorporate.
ADDRESS	19-21 Weecoon Street, Eden, being Lot 50 in DP 1109545
APPLICANT	Applicant: Benn Lane C/- HDC Planning
OWNER	<p>Multiple owners:</p> <ul style="list-style-type: none"> • Hank Pty Ltd • DC Peters • Ludamon Pty Ltd • Plus others (not specified)
APPLICATION TYPE	CIV > \$30M
REGIONAL DEVELOPMENT CRITERIA	<p>State Environmental Planning Policy (Planning Systems) 2021:</p> <p>Schedule 6- Regionally Significant Development – Item 2: Development</p>

(SCHEDULE 6 OF THE SEPP (PLANNING SYSTEMS) 2011	that has an estimated development cost of more than \$30 million.
CAPITAL INVESTMENT VALUE	\$67,113,200 (excl. GST but incl. professional fees)
KEY SEPPS/ LEP	SEPP (Resilience and Hazards) 2021 SEPP (Housing) 2021 SEPP No. 65 – Design Quality of Residential Flat Buildings Bega Valley Local Environmental Plan 2013 Snug Cove Masterplan
LIST OF ALL RELEVANT S4.15(1)(A) MATTERS	<ul style="list-style-type: none"> • SEPP (Biodiversity and Conservation) 2021 • SEPP (Resilience and Hazards) 2021 • SEPP (Transport and Infrastructure) 2021 • SEPP (Housing) 2021 • SEPP (Industry and Employment) 2021 • SEPP (Planning Systems) 2021 • SEPP (Sustainable Buildings) 2022 • SEPP No. 65 – Design Quality of Residential Flat Buildings • Bega Valley Local Environmental Plan 2013 (BVLEP 2013) • Bega Valley Development Control Plan 2013 (BVDCP 2013) • Snug Cove Masterplan • Bega Valley Local Infrastructure Contribution Plan 2024-2036 • Information Request dated 31 July 2024
REFERRALS	EXTERNAL: <ul style="list-style-type: none"> • Essential Energy – requires further information regarding potential safety risk to their assets, location of proposed electrical plant • Crown Lands – no response. • Eden Local Aboriginal Land Council – no response. INTERNAL: <ul style="list-style-type: none"> • Strategic Planning – did not raise any significant concerns from a strategic planning perspective but did note the proposal did not

	<p>meet the height controls.</p> <ul style="list-style-type: none"> • Water and Sewer Services – generally supportive but requires design details of the augmentation of Council's existing sewerage pump station adjacent the site. • Development Engineering – unable to support the application in its current form given the lack of information to fully understand the proposal's impacts on public infrastructure and the environment and there is not there enough information for development engineering be satisfied that these impacts can be appropriately managed. • Environmental Health Unit – unable to support the application in its current form given the lack of information to fully understand the proposal's impacts on the environment, in particular in terms of land contamination and remediation requirements • Environmental Services – unable to support the application in its current form given the lack of information to fully understand the proposal's impacts on the environment, in particular in terms of coastal hazards and biodiversity • Building Services – generally supportive subject to compliance with National Construction Code and various relevant standards and regulations
PUBLIC CONSULTATION	<p>Objection to proposal = 19</p> <p>Supporting proposal = Nil – however several objections stated that they had no objection in principle to new development but only on the basis of compliance with the applicable planning controls.</p> <p>Additional submissions received post-advertising = Nil</p>
APPLICANT'S SUPPORTING DOCUMENTS SUBMITTED WITH THIS REPORT FOR THE PANEL'S CONSIDERATION	<ul style="list-style-type: none"> • Statement of Environmental Effects • Aboriginal Due Diligence Report • Arboricultural Impact Assessment Report • Architectural plans of the proposal • BASIX Certificate and Assessment Summary • Building Code of Australia Compliance Report • Bushfire Assessment Report • Civil Engineering Plan • Coastal Risk Assessment

	<ul style="list-style-type: none"> • Concept External Works Plan • Construction Environmental Management Plan • Detailed Site Investigation Report • Flora and Fauna Assessment • Geotechnical Investigation Report • Landscape Plans • NatHERS Certificate • Operational Waste Management Plan • Preliminary (Stage 1) Site Investigation Report • QS Cost Summary Report • Services Assessment Report • Stormwater Management Study • Structural Engineering Plans • Subdivision Plan • Survey Plan • Sustainable Design Report • Traffic and Parking Assessment • Visual Impact Assessment
ASSESSMENT REPORT APPENDICES	<ul style="list-style-type: none"> • Appendix A: Request for Information Letter dated 31 July 2024 • Appendix B: Site Photos • Appendix C: Apartment Design Guide Compliance
CLAUSE 4.6 REQUESTS	<ul style="list-style-type: none"> • The applicant has submitted a written request to vary the height of buildings development standard, however it is not supported.
SUMMARY OF KEY ISSUES	<ul style="list-style-type: none"> • Clarification of ownership. • Adequacy of the submitted documentation and lack of consistency. • Definition of shop-top housing – ground floor units proposed – ground floor must be for commercial premises/ health services facilities. • Adverse visual impacts/ view loss. • Compliance with Snug Cove Masterplan – particularly character,

	<p>height/ scale.</p> <ul style="list-style-type: none"> • Traffic and parking impacts/ impacts on local road network/ construction impacts, duration and management, particularly as there is only one access road to the peninsula. • Access to the public domain, foreshore and Yallungo Cove Beach/ CPTED considerations. • Land use conflict and compatibility with adjoining fish processing facility. • Infrastructure provision including utilities and “soft” services such as health care, education, banking and financial services for entire likely development scenario. • Construction management, including traffic management, especially in peak times. • Failure of SEE in providing adequate assessment of impact and compliance with relevant provisions of Chapter 2 of the Resilience & Hazards SEPP, specifically Divisions 3-5; and Chapter 4 of the Biodiversity & Conservation SEPP regarding Koala Habitat Protections. • Lack of clear direction/ recommendations in the Coastal Risk Assessment and therefore required treatment of the interface between the Site and the shoreline. • Loss of foreshore vegetation and lack of accurate identification of vegetation impacted. Arboricultural justification for removal is based on whether the vegetation is within the footprint or not, as opposed to a STARS assessment. • Interface between residential units and commercial spaces – amenity/ privacy. • Inadequate consideration of social and economic impacts on surrounding area.
RECOMMENDATION	Refusal
REPORT PREPARED BY	Michael Brewer, Consultant Planner for Bega Valley Shire Council and reviewed by Cecily Hancock, Manager Planning & Sustainability, Bega Valley Shire Council
REPORT DATE	19 March 2025

SUMMARY OF S4.15 MATTERS:

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	YES
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	YES However, the proposal fails to satisfy multiple provisions of the applicable EPIs and policy documents or provide necessary information. Accordingly, the Panel cannot be satisfied the proposal has met the appropriate standards or will be capable of achieving the required outcomes.
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	YES A submission has been made to vary the height of building development standard. The submission fails to satisfy the relevant statutory provisions and cannot be supported from a planning perspective. The submission has not adequately demonstrated the height of building development standard has met the appropriate standards or will be capable of achieving the required outcomes.
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	No
Conditions Have draft conditions been provided to the applicant for comment?	No – recommendation for refusal

1. EXECUTIVE SUMMARY:

Reasons for Report:

This report has been prepared as the Southern Regional Planning Panel is the Consent Authority in this instance. The proposal is classified as Regionally Significant Development as the Capital Investment Value (CIV) exceeds \$30M.

Key Issues:

The assessment of the proposal has identified a wide number of key areas of concern, that, in Council's view, warrant refusal of consent. These issues are listed on pages 4 and 5 above and all stem from several fundamental failures including:

- The failure to undertake an appropriate and deep enough analysis of the surrounding landforms and built environment to understand the Site and its constraints or to understand the surrounding context that the development must be compatible with.
- The failure to clearly define the proposal – both in a statutory context and in terms of providing a consistent scope of works and baseline for all of the consultants involved in the proposal. The proposal suffers from a lack of consistency across the board, leading to inconsistent statements and outcomes.
- The failure to understand and design to the statutory planning controls that apply to the Site. This has resulted in a built form that is highly inappropriate for the Site and will have unacceptable consequences for the natural environment, the future residents and patrons and the surrounding community.
- Lastly, owners consent remains unclear with respect to the subject Site and adjoining properties. Without the relevant parties providing written consent, the Panel's ability to grant approval is somewhat restricted.

Public Submissions Summary:

The issues raised in the submissions can be categorised similarly to the key issues identified above, including:

- Compliance with Snug Cove Masterplan regarding quality/ access to public domain, height/ scale of development/ Building Type, car parking,
- Visual impact – on coastline/ the Lookout Residences and loss of village character.
- View loss/ inadequate assessment of impacts / visual permeability.
- Request for height poles to be erected to show the building height at various locations including the change between 13m height limit and height proposed.
- Impact / reliance on on-street car parking and lack of details regarding footpath provision and treatment, spatial extent of new on-street car parking, future parking/ time restrictions and impact on residents.
- Traffic assessment done on a Monday outside weekend/ peak holiday times/ when cruise ship at the terminal when traffic is higher than usual.

- Traffic assessment does not take into account construction traffic or natural growth as the development is occupied or alternate routes taken around the steep part of Weecoon Street.
- Inconsistencies in Traffic assessment regarding increased traffic/ impact on existing poor road condition, non-existent kerbside waste collection, car parking requirements not met and reliance on concessions in parking rates.
- Existing choke point created by row of trees along Imlay Street and narrowing of road outside 108 Imlay Street causes vehicles to cross dividing line – proposal will increase the risk of collision.
- Height of the development is excessive and not low scale. 13m limit over the Mixed Use zones – application proposes 17m.
- Noise and length of time surrounding residences impacted by construction activities and disruption during road works.
- A second access road to the peninsula should be built by extending Imlay Street through Warrens Walk to the wharf area.
- The proposal will not alleviate the housing crisis in the LGA and the units will only be purchased by investors.
- Inadequate details of various elements – only detail provided for the first stage but holistic approach needed for the whole of the Site in terms of stormwater management/ wave attenuation and flood risk/ contamination and remediation/ utilities (power/ water/ sewer/ communications).
- Interface with adjoining properties regarding retaining walls.
- Insufficient geotechnical assessment.
- Incompatible with plans to turn the Port into a 24 hour operation.
- The proposal will stimulate other sites to redevelop which will have significant consequences for traffic, infrastructure, fire safety, and the environment of “the Lookout”.
- Compatibility with existing residential development in terms of density and coastal character.
- Impacts on coastal environment from stormwater runoff and increased flooding.
- Public access to the foreshore and Ross’ Bay Beach/ Yallumgo Cove – not reflected on Subdivision Plan.
- Significant upgrade is required to Weecoon Street to provide adequate stormwater drainage.
- The Wharf is a fire and evacuation centre and became overcrowded in the 2019/2020 bushfires. The proposal will exacerbate overcrowding in similar situations.
- No assessment of the interface with the marine environment.

- No Aboriginal Cultural Heritage assessment available.
- Lack of referral to a range of government agencies and Ministries.
- Amplification of existing Waste Water Pump Station adjacent to the Site by 35,000 ltr has not been demonstrated.
- Compatibility with and future conflict between residential uses and existing fish processing facility on adjoining property.
- Inadequate assessment or demonstration of impact on ability of existing facilities and services to support the proposal (eg, health care, essential services).
- Lack of assessment of impact on public transport and pedestrian network/ facilities associated with cruise-liners – many more buses and people walking around the area when a cruise-liner is docked.
- Sooty Oystercatchers have been observed along the shoreline of the Site – listed as Vulnerable but no assessment of the impact on these species.
- Subdivision will facilitate three separate development sites that could end up having very different built forms that lack consistency and uniformity.
- Any variation of building height in Stage 1 could set a precedence/ baseline for stages 2 and 3.
- Overshadowing from the development onto adjoining residential properties.
- Remediation of contaminants should be undertaken before any development of the Site.
- Previous investigations suggest the shoreline could be impacted by coastal erosion by up to 55m. No details on how the shoreline is to be protected or risk to developing within this zone.
- Potential impact on Southern Right Whales and their calves that use Yallumgo Cove to rest in during annual migration.
- Potential impact on known Little Penguin breeding site with a breeding program operating for over 30 years.
- Loss of mature foreshore trees and lack of accurate identification of vegetation impacted.
- Potential economic impacts on existing businesses as a result of the proposed café and lack of assessment to determine impacts/ viability with two other incomplete developments in the town creating a negative perception.

The Information Request and Applicant's Response:

An Information Request was issued to the Applicant on 31 July 2024 with a period of 28 days provided for the applicant to submit a response. Refer to Appendix A.

The key issues raised in the Information Request can be best summarised as follows:

- A lack of accurate details/ information relating to:
 - The delineation of the Site Area of Stage 1 and the extent of works along the interface between Stages 1 and 2 (stairs, landscaping, retaining walls etc).
 - Dimensions, setbacks, heights and levels of rooms/ balconies/ structures/ boundaries etc on the drawings.
 - Coastal Protection Works.
 - The extent of vegetation removal and assessment of alternative designs that would retain the vegetation.
 - The estimated development cost.
 - Visual and acoustic privacy, solar access to communal opens space areas and overall amenity.
 - Landscaping including existing and finished ground levels/ soil depth/ vegetation retention/ planting densities.
 - The restaurant and café, specifically operational details.
 - View loss and visual impact.
 - Owner's consent.
 - The construction phase including heavy vehicle/ construction equipment/ workers vehicles and impacts on both the immediate and wider area.
 - Public access to the foreshore across all stages of the development.
 - Wayfaring, lighting and Crime Prevention Through Environmental Design measures.
 - The placement of temporary/ permanent structures outside the Site and/ or below the Mean High Water Mark.
 - Capacity of the local utility networks and necessary upgrades.
 - Measures to protect Yallumgo Cove from stormwater runoff and sedimentation.
 - Noise and vibration management.
 - Resident facilities including clothes drying and BBQ areas, solar panels and Electric Vehicle charging stations.
- A lack of consistency between various reports and plans with respect to:
 - What the actual development consists of and the extent of works and how the development will function as a whole.

- Utilising a base drawing set that all consultant team members relied upon, instead of several different editions.
- The activities and impacts associated with the construction of the development including civil works to Weecoon Street.
- Ancillary items of plant such as water tanks, hydrants, HVAC etc.
- Operational aspects such as access for service and delivery vehicles, waste collection, pedestrian access, access for emergency services vehicles.
- The location of all temporary structures.
- The removal of vegetation
- Demonstrated consideration of the constraints of the Site.
- Demonstrated consideration of the impact of the development across both construction and operation including physical works and the movement of people.
- Inadequacy of the proposed vehicular access arrangements, connectivity of the proposed non-resident parking spaces to the restaurant/ café and separation of public/ commercial and private residential parking areas within the proposed car park.
- Failures and limitations in key supporting documents which led to inaccurate/ inconclusive or unacceptable outcomes, including:
 - The Aboriginal Due Diligence Report, which refers to a superseded development proposal, ignores the works proposed external to the Site and refers to inaccurate MHWL levels and superseded legislation.
 - Flora and Fauna assessment is based on a superseded development concept and lacks adequate survey and sampling information.
 - The nature of development on adjoining properties.
 - The lack of any conclusions in the Coastal Risk Assessment specifically relating to the subject proposal.
 - Lack of an adequate Visual Impact Assessment prepared in accordance with the applicable Planning Principles developed by the NSW Land and Environment Court.
 - The submitted Traffic and Parking assessment is significantly flawed, relies on minimalistic data inputs that do not represent the nature of the surrounding area, lacks adequate justification for a reduction of the car parking rate. It provides information regarding waste management operations that are at odds with the Operational Waste Management Plan.
- Failure of the submitted documentation to address the relevant statutory provisions and environmental planning instruments in force at the time of lodgement, including:
 - The applicable SEPPs and the BVLEP.

- The Snug Cove Masterplan (specifically those relating to height, massing, scale, desired future character).
- Clarification of the actual landowners, failure to provide owner's consent for works on adjacent properties and failure to provide a "Permission to Lodge" from the NSW Roads and Maritime Services to demonstrate "owner's consent" has been granted in relation to all works which are below the MHWL.
- The unnecessary removal of the protected vegetation in the northern corner, which has not been mapped or quantified or assessed using the STARS framework, the impact of the proposed level spreader and adverse impact of the scenic qualities of the Coastal Zone.
- Failure to submit a Submission of a Network Encroachment form to Essential Energy.

On 5 November 2024, the applicant was requested to advise their intentions in terms of responding to the Information Request. On 6 November 2024, the applicant responded, indicating that a response was being prepared and would be submitted at an unspecified time. On 20 November 2024, Council again sought clarification on the submission, providing a further and final period of 28 days to either submit the documentation or withdraw the application.

The applicant replied on the same date, indicating that no response was to be forthcoming, advising that *"the project and its status would benefit from a comprehensive assessment and determination by Council/Panel."* Council subsequently sought confirmation that the applicant was formally declining to respond to the Information Request and that the application was to proceed on the basis of the documentation already supplied. A note to this effect was eventually made on the Portal in response to the Information Request on 25 November 2024.

Recommendation – Refusal:

Having reviewed the application against the relevant and applicable statutory provisions and considered the information submitted (or lack thereof), as well as having given due regard to all of the submissions received, it is considered that in the particular circumstances of the case, the Panel cannot be satisfied that the proposal:

- (a) Has been adequately delineated in the context of the Site, the extent of works within the Coastal Zone or the extent of works within Stage 1 of the development.
- (b) Has provided adequate information to demonstrate that all relevant statutory provisions have been addressed.
- (c) Is consistent with the applicable statutory and policy controls related to the Site and the development contemplated.
- (d) Has demonstrated that it will not have a significant adverse impact on the biophysical environment.
- (e) Can be adequately serviced in terms of potable water, sewer and stormwater.

- (f) Has demonstrated that the subject Site is appropriate or suitable.
- (g) Has sufficient planning merit to warrant approval.
- (h) Is a development that would be in the public interest, given the above matters.

The proposal cannot be mitigated or modified to deliver acceptable or desirable environmental planning outcomes and accordingly, refusal is recommended.

FIGURE 1 – THE SITE



SOURCE: NSW SPATIALVIEWER 2024

2. DESCRIPTION OF THE PROPOSAL:

2.1. OVERVIEW

The application proposes to undertake a 3 lot subdivision with a mixed use development on proposed Lot 1 and associated stormwater works. The SEE describes the proposal as consisting of the following:

- the Torrens Title subdivision of the allotment into three (3) lots (Lots 1, 2 & 3) including road upgrade works along Weecoon Street in front of Lots 1 & 2.
- a shop-top housing development on proposed Lot 1 consisting of one (1) building with two (2) upper-level residential towers (with 57 units), over two (2) commercial tenancies (the subject of future land-use DAs), over a basement carpark containing waste and service areas, resident storage facilities, 55 car parking spaces, 2 wash bays, 1 delivery bay
- stormwater infrastructure works over proposed Lots 2 & 3, which future DAs for development will incorporate.

2.2. PROPOSED SUBDIVISION

As shown in Figure 2, the subdivision component of the development involves the creation of three (3) allotments from Lot 50 DP1109545 as follows:

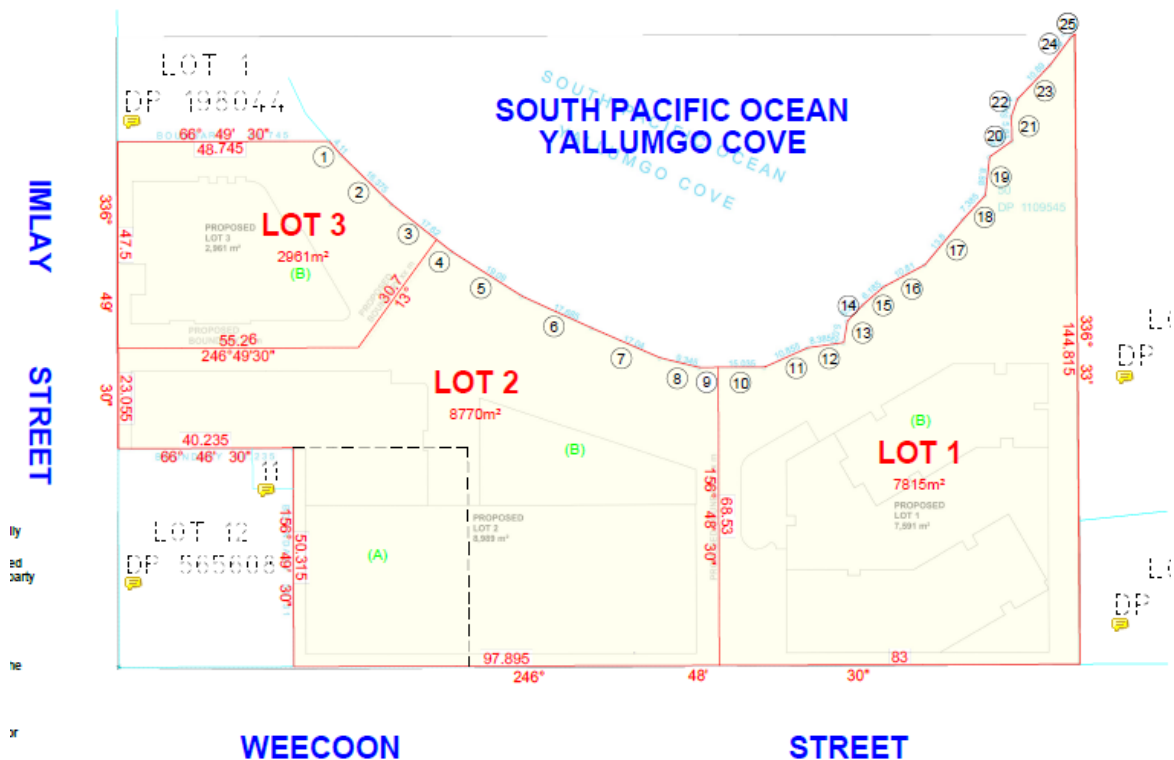
Lot 1 = 7851 m²

Lot 2 = 8770 m²

Lot 3 = 2961 m²

The application proposes to develop proposed Lot 1 as part of this development.

FIGURE 2 – PROPOSED SUBDIVISION PLAN:



2.3. PROPOSED MIXED USE DEVELOPMENT

The major part of the proposal involves the construction of a mixed-use building on proposed Lot 1. The building is comprised of the following components:

- A basement carpark containing waste and service areas, resident storage facilities, 55 car parking spaces, 2 wash bays and a single delivery bay.
- Two (2) commercial tenancies (the subject of future land-use DAs).
- A shop-top housing development consisting of two residential towers containing a total of 57 units.

The composition of each level of the building from the lowest to top-most level is as follows:

Basement Carpark & Services / Ground Floor Residential and Commercial Units:

Basement Carpark & Services

- 55 car-spaces for residents (including 5 accessible).
- 55 storage areas (including 12 for adaptable units).
- Two (2) car-wash bays.
- One (1) delivery bay.
- Two (2) airlocks.
- Two (2) lifts to the upper floors.
- Four (4) fire stairs.
- A waste and building maintenance room.
- A mechanical plant and building maintenance & storage room.
- A communications room.
- A main switch and services room.
- A driveway ramp which accesses Ground Floor level.

Lower Ground Floor Residential and Commercial Units:

- Four (4) x residential units each with a balcony, consisting of:
 - Two (2) x 1 bedroom units, and
 - Two (2) x 2 bedroom units.
- Two (2) commercial tenancies with associated outdoor dining areas (1 for potential future restaurant and 1 for potential cafe to be the subject of a future first- use DA).

First Floor Carpark / Residential Units:

Carpark and Services

- Five (5) car-spaces for commercial (food premises) staff.

- 42 car-spaces for residents (including 7 accessible spaces).
- Eight (8) motor bike spaces.
- 26 bicycle spaces.
- One (1) waste pickup bay.
- One (1) airlock.
- two (2) lifts to the upper and lower floors.
- 4 fire stairs.
- 2 waste and building maintenance rooms.
- A building store room.
- A fire tank room.
- A fire pump room.
- Driveway ramp providing access to the Basement level and a driveway crossover which accesses Weecoon Street.

Ground Floor Residential Units

- Eight (8) x residential units each with a balcony, consisting of:
 - Two (2) x 1 bedroom units.
 - Six (6) x 2 bedroom units.

Second Floor Residential Units and Communal Open Space (Podium):

Tower A Residential Units

- Seven (7) x residential units each with a balcony, with access from the street via the communal open space podium, consisting of:
 - Three (3) x 1 bedroom units (1 which is adaptable).
 - Three (3) x 2 bedroom units, (1 which is adaptable).
 - One (1) x 3 bedroom unit (adaptable).

Tower B Residential Units

- Eight (8) x residential units each with a balcony, with access from the street, consisting of:
 - Seven (7) x 2 bedroom units.
 - One (1) x 3 bedroom unit (adaptable).

Communal Open Space

- Landscaped podium level communal open space with associated passive recreational activities, accessible from the street level, and providing separation between the upper

level residential towers.

Third Floor Residential Units and Communal Open Space (Podium):

Tower A Residential Units

- Seven (7) x residential units each with a balcony, with access from the street via the communal open space podium, consisting of:
 - Three (3) x 1 bedroom units, (1 which is adaptable).
 - Three (3) x 2 bedroom units.
 - One (1) x 3 bedroom unit (adaptable).

Tower B Residential Units

- Eight (8) x residential units each with a balcony, with access from the street, consisting of:
 - Seven (7) x 2 bedroom units.
 - One (1) x 3 bedroom unit (adaptable).

Fourth Floor Residential Units and Communal Open Space (Podium):

Tower A Residential Units

- Seven (7) x residential units each with a balcony, with access from the street via the communal open space podium, consisting of:
 - Three (3) x 1 bedroom units, (2 which are adaptable).
 - Three (3) x 2 bedroom units.
 - One (1) x 3 bedroom unit (adaptable).

Tower B Residential Units

- Eight (8) x residential units each with a balcony, with access from the street, consisting of:
 - Seven (7) x 2 bedroom units.
 - One (1) x 3 bedroom unit (adaptable).

Excerpts from the submitted plans are contained in Figures 3 to 14 below.

FIGURE 3 - SITE MASTER PLAN:

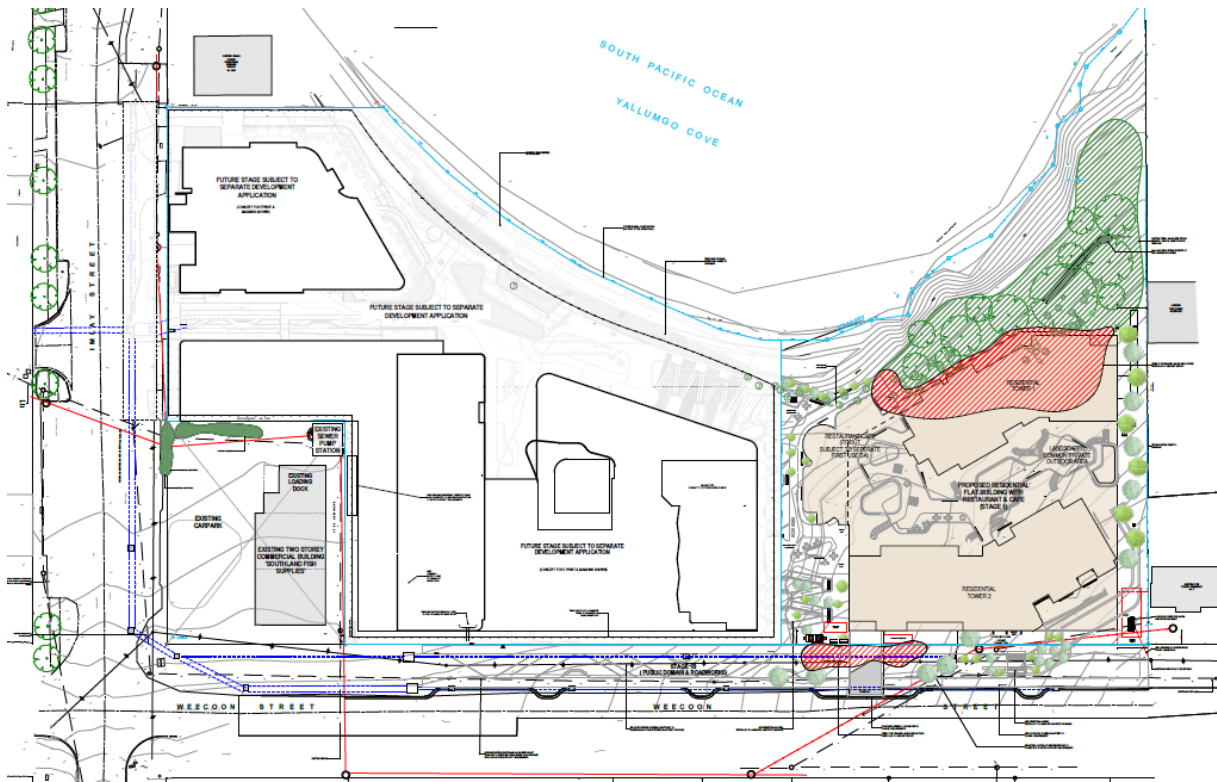


FIGURE 4 – DETAILED SITE PLAN – STAGE 1:

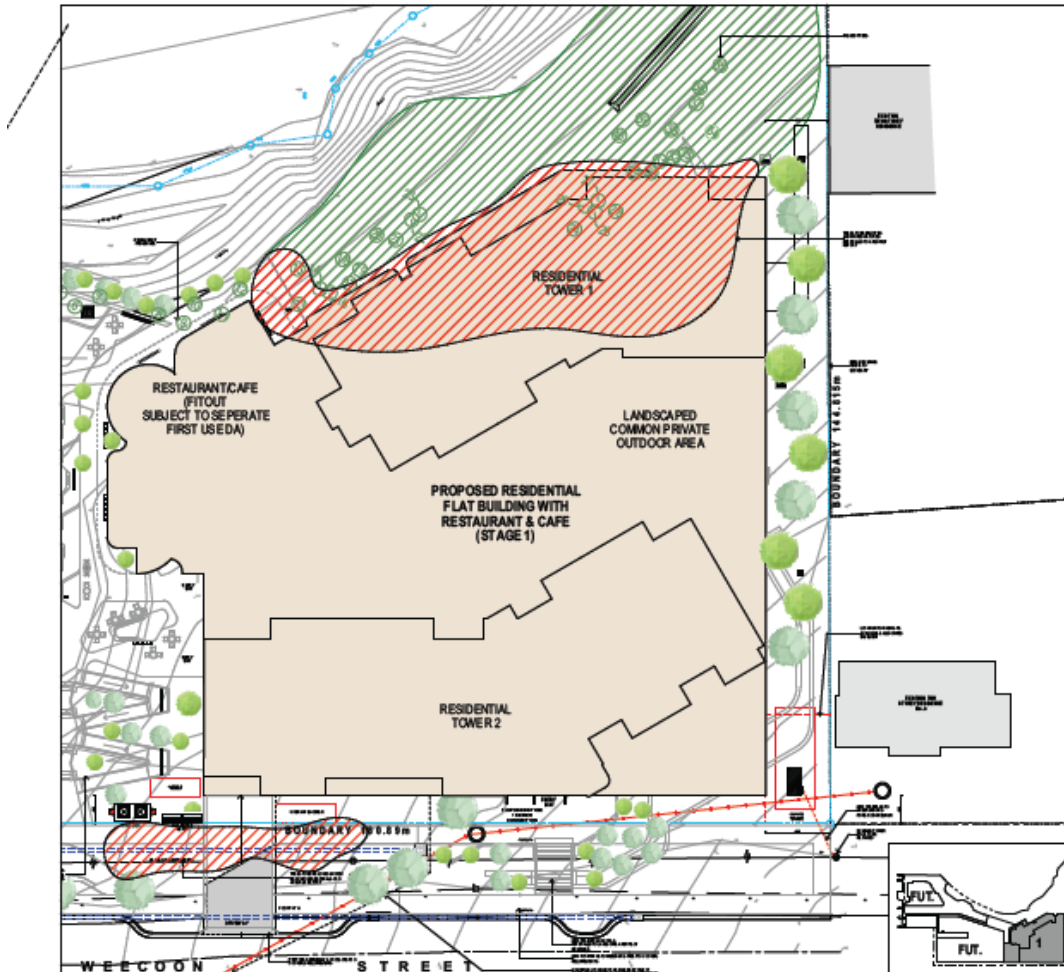


FIGURE 5 - PROPOSED GROUND FLOOR PLAN:

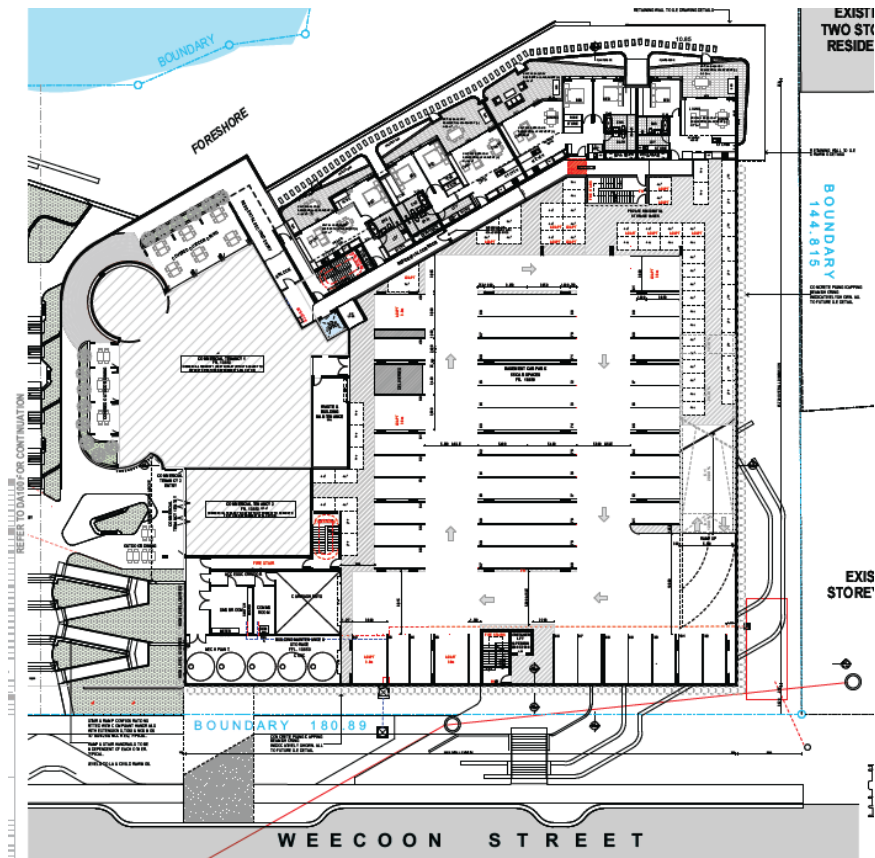


FIGURE 6 - PROPOSED FIRST FLOOR PLAN:

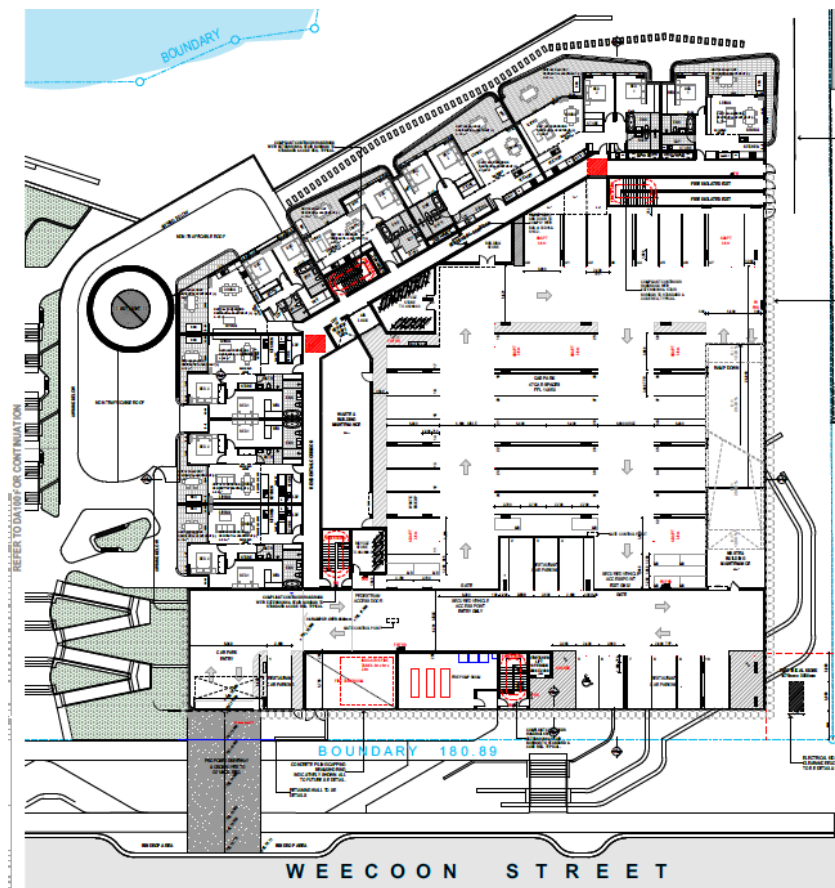


FIGURE 7 - PROPOSED SECOND FLOOR PLAN:

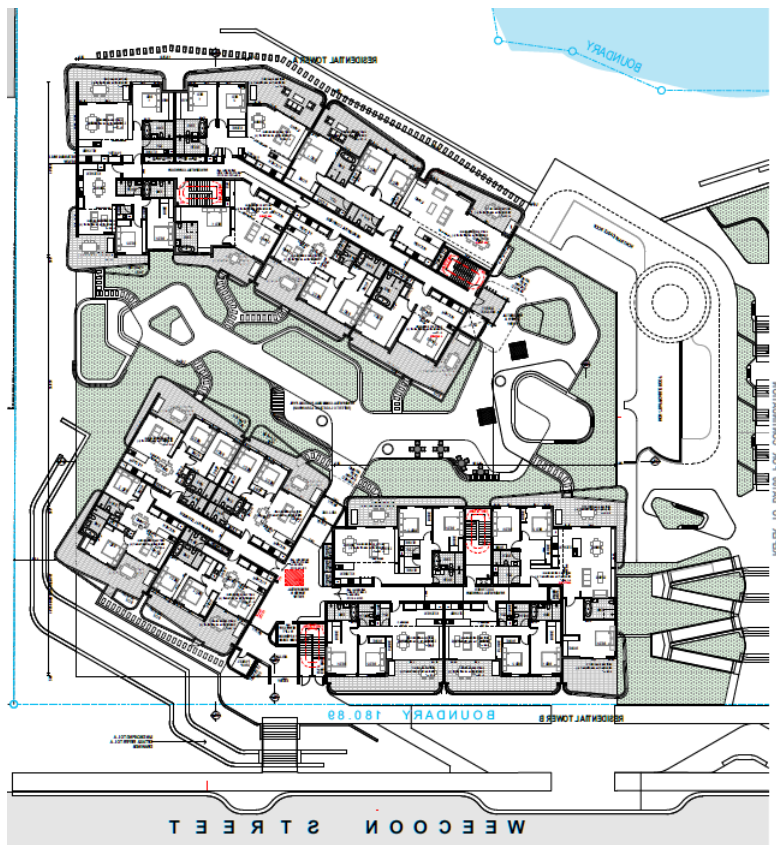
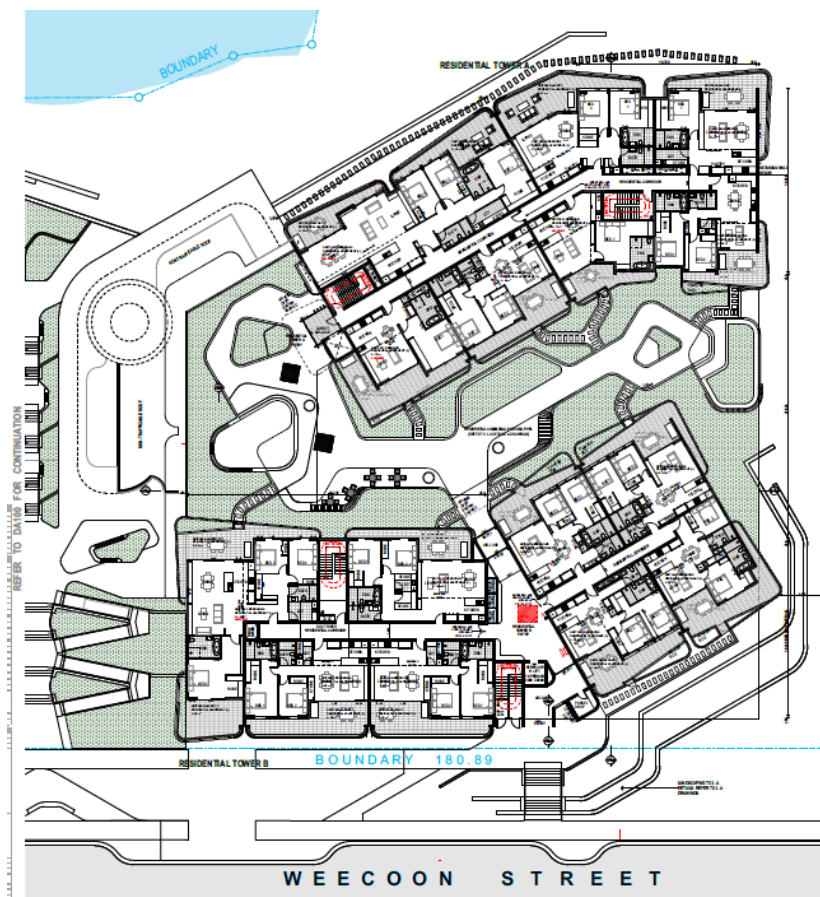


FIGURE 8 - PROPOSED THIRD FLOOR PLAN:



The site plan illustrates the layout of the Weeoon Street development. It features two main residential towers, labeled 'RESIDENTIAL TOWER A' and 'RESIDENTIAL TOWER B', which are interconnected by a central corridor. A central 'COMMON POOL' is situated between the two towers. The plan also shows various other buildings, including a 'COMMERCIAL BUILDING' and a 'GARAGE'. The site is bounded by 'WEECOON STREET' to the south and 'BOUNDARY 180.89' to the north. A 'BOUNDARY 144.815' is also indicated on the right side. The plan includes a north arrow in the upper left corner and a scale bar in the lower right corner.

The site plan shows a large rectangular area bounded by a blue line labeled 'BOUNDARY' at the top and 'BOUNDARY 180.89' at the bottom. The bottom boundary is adjacent to 'WEECOON STREET'. The plan features two main building footprints. The upper building has a central section with a 'RECREATIONAL TOWER' and a 'POOL' area, surrounded by parking lots. The lower building is a long, narrow structure with a central section containing a 'POOL' and a 'RECREATIONAL TOWER'. The plan also shows various parking lots, walkways, and landscaping elements. A north arrow is located in the upper right corner.

Architectural section drawing of the Yallungo Cove development, showing a multi-story residential building with various levels, balconies, and structural details. The drawing includes labels for 'RESIDENTIAL TOWER A (STAGE 1)', 'MECHANICAL SCREEN TOWER OF PLANT', 'ROOF PLANT & SCREENING', 'ROOF MOUNTED SOLAR ARRAY', 'CONCRETE ROOF SLAB ON TOP OF ALL ROOFS', 'GLASS BALUSTRADE', 'ALUMINUM FINISHED GLASS', 'IN CLASH TO EXISTING CURVE OF EXISTING SITE RAIL', 'RETAINING WALLS', 'EXISTING GROUNDLINE AT STRUCTURE FOOTING DASHED', 'WALKING AND CYCLING WAYWAY', 'UNPROPOSED GROUNDLINE', and 'SUSPENDED CONCRETE BALCONIES'. A vertical scale on the left indicates levels from +0.000 to +12.000. A legend on the right defines symbols for structural elements and materials.

YALLUMGO COVE

2.4. PROPOSED STORMWATER WORKS

With respect to the proposed stormwater infrastructure, the SEE states as follows:

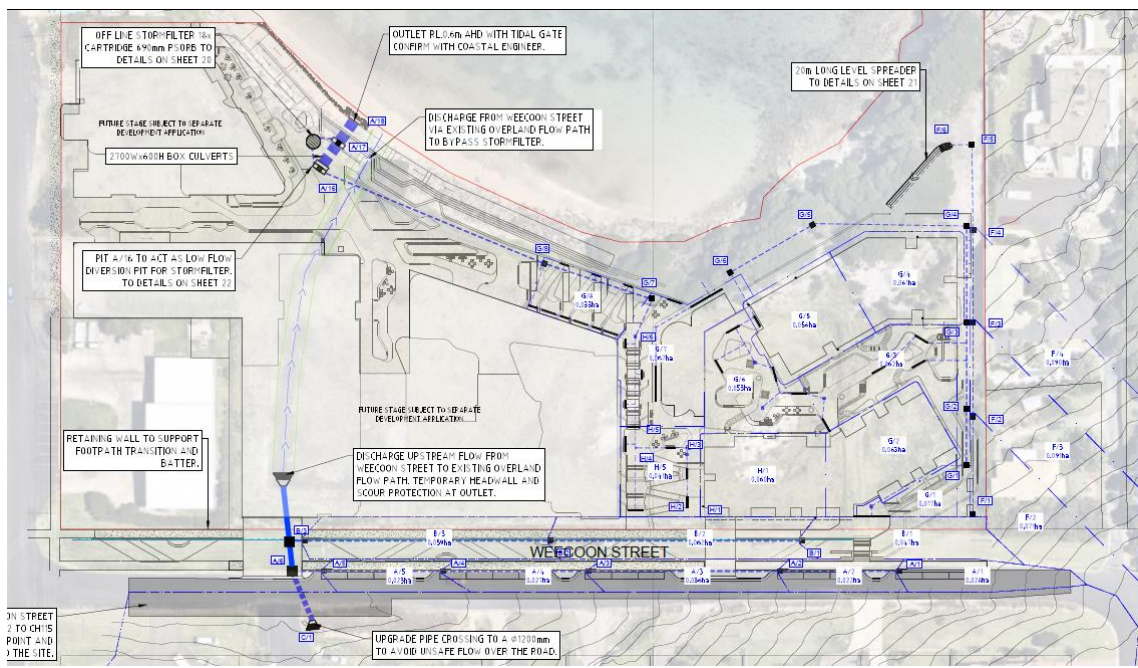
The proposed development seeks to construct the required stormwater management and water quality devices the service the proposed development, including utilisation of some of the land identified as future Lots 2 & 3. water quality basin.

Reference should be made to the Engineering Plans and Details accompanying this application and the Stormwater Management Plan.

From a review of the submitted documents, the proposed stormwater infrastructure for Stage 1 involves the following elements, as shown in Figure 15 below:

- A new 1200mm diameter piped crossing under Weecoon Street with a new culvert discharging across Stage 2 of the Site via the existing overland flow path with a temporary headwall and outlet scour protection.
- All of the Stage 1 development will be connected to a new 2.7m wide by 600mm high box culvert and off-line Stormfilter at the low point of the Site (on proposed Lot 3). The culverts and Stormfilter are intended to be connected in future stages to an upgraded pipe crossing from the low point on Imlay Street.
- The Stormfilter will have internal dimensions of 3.25m in diameter by 1.8m in height with associated dual control pits.
- Installation of an Oceanguard filter.
- Installation of a 20m long level spreader with an earthen and concrete berm with a 1.5m x 1m rock mattress as scour protection to the north of the proposed Stage 1 building.

FIGURE 15 - PROPOSED STAGE 1 STORMWATER WORKS:



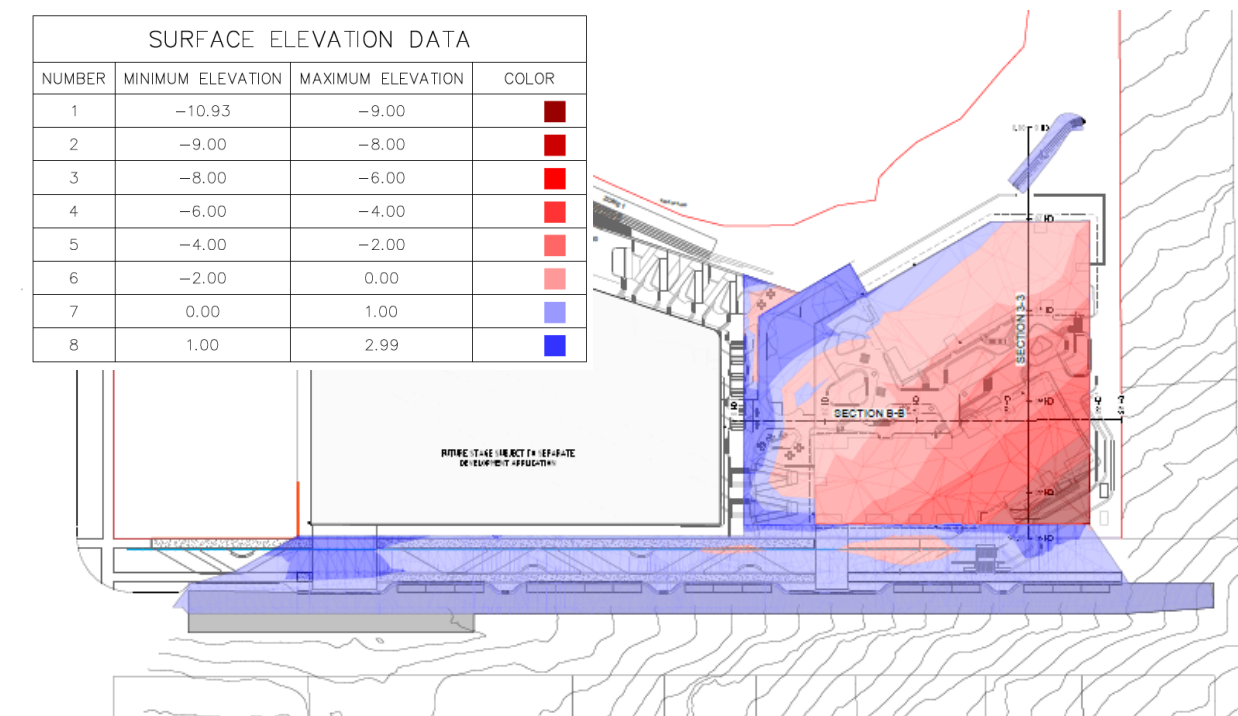
2.5. OTHER ANCILLARY ELEMENTS

The proposal also results in or necessitates the following ancillary aspects that have not been discretely identified in either the SEE or on the application form:

Bulk Earthworks:

Sheets 3-5 of the Civil Engineering Plan prepared by Siteplus, Drawing No. 22214.DA.C22, Revision E dated 19/9/2023A details the bulk earthworks proposed as part of Stage 1 of the development. The drawings indicate excavation to an approximate depth of 9.51m below existing ground level in the eastern corner and filling in places of up to 2.99m, including within the road reserve for Weecoon Street, as shown in Figures 16-18 below. The notes on Sheet 3 indicate total excavation is estimated at 12,401m³ with fill estimated at 2653m³ and 300m³ of trenching, resulting in 10048m³ being carted off site. Excerpts of these drawings are provided in Figures 16-18 below.

FIGURE 16 – PROPOSED CUT AND FILL PLAN:



[illegible]

LEGEND

- PROPOSED CUT.
- PROPOSED FILL.

VERTICAL SECTION

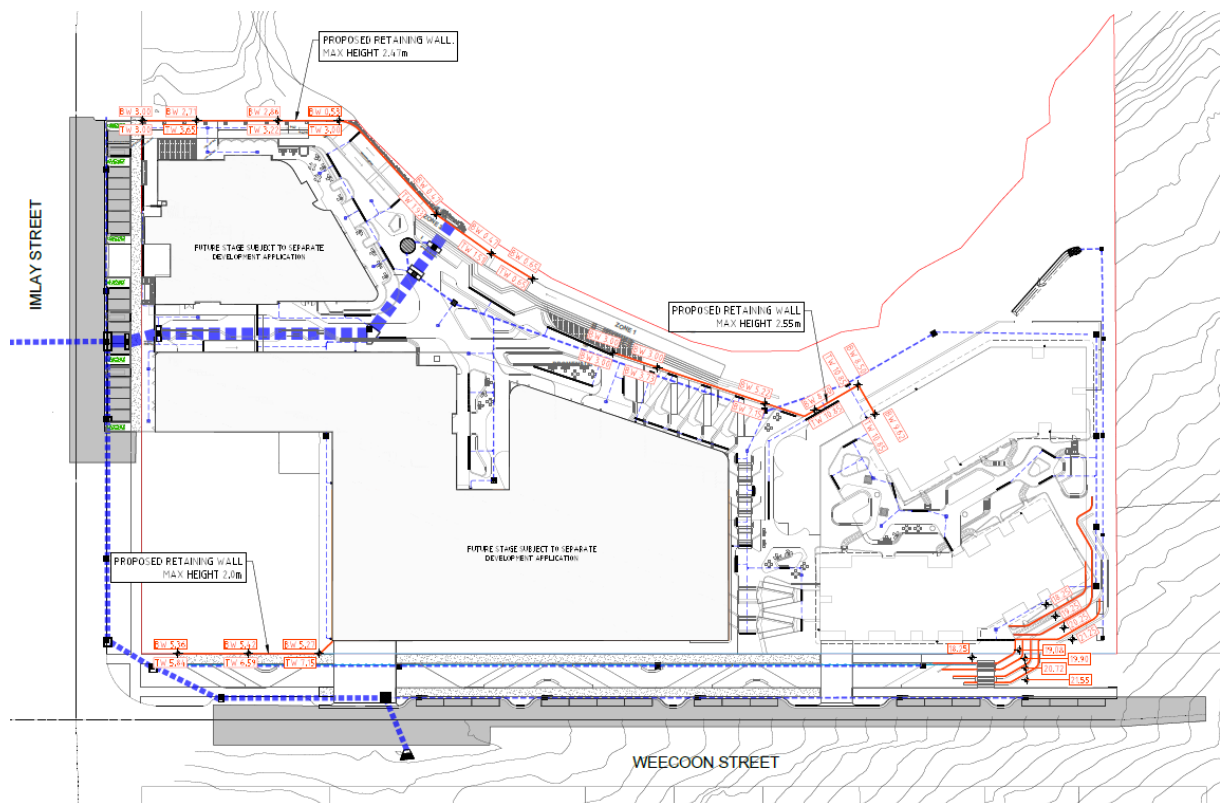
EARTHWORKS SECTION S+3 CH 0.000 to CH 80.000
SCALE: HORIZ. 1"=40' VERT. 1"=4'

CH	EXISTING SURFACE	PROPOSED SURFACE	CUT	FILL
0.00	10.00	10.00	0.00	0.00
10.00	10.00	10.00	0.00	0.00
20.00	10.00	10.00	0.00	0.00
30.00	10.00	10.00	0.00	0.00
40.00	10.00	10.00	0.00	0.00
50.00	10.00	10.00	0.00	0.00
60.00	10.00	10.00	0.00	0.00
70.00	10.00	10.00	0.00	0.00
80.00	10.00	10.00	0.00	0.00

Sheet No. 22 of the Civil Engineering Plan prepared by Siteplus, also outlines a number of retaining walls to be constructed across the entire Site. Although not specifically stated, in order to undertake the works identified in the SEE, retaining walls would need to be constructed as follows:

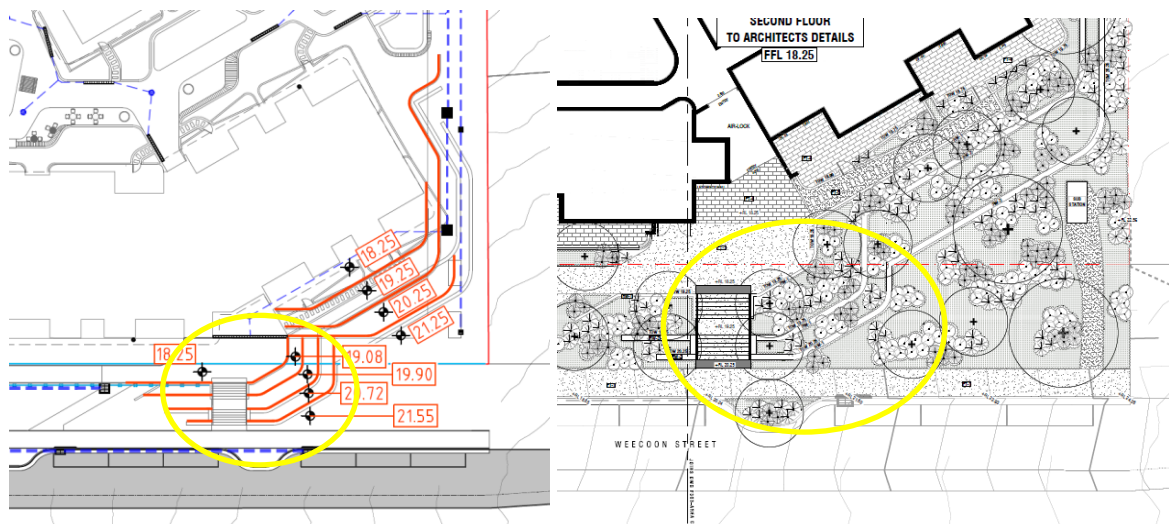
- These are detailed in Figure 19 below.

FIGURE 19 – PROPOSED RETAINING WALLS:



The presence of the retaining walls is also supported by the details contained in the Landscape Plans prepared by dsb Landscape Architects, which include extensive landscaping to the terraces to be constructed within the Weecoon Street road reserve, as shown in Figure 20 below.

FIGURE 20 – DETAIL OF PROPOSED RETAINING WALLS WITHIN ROAD RESERVE:



Temporary Soil and Water Management Plan:

According to Sheet No. 23 of the Civil Engineering Plan, the Stage 1 works appear to also involve the installation of a temporary earthen mound across the Site, feeding into a sediment basin and energy dissipator, with the energy dissipator extending into the waters of

Yallumgo Cove (refer to Figures 21, 22 and 23 below).

FIGURE 21 – PROPOSED SOIL AND WATER MANAGEMENT PLAN:

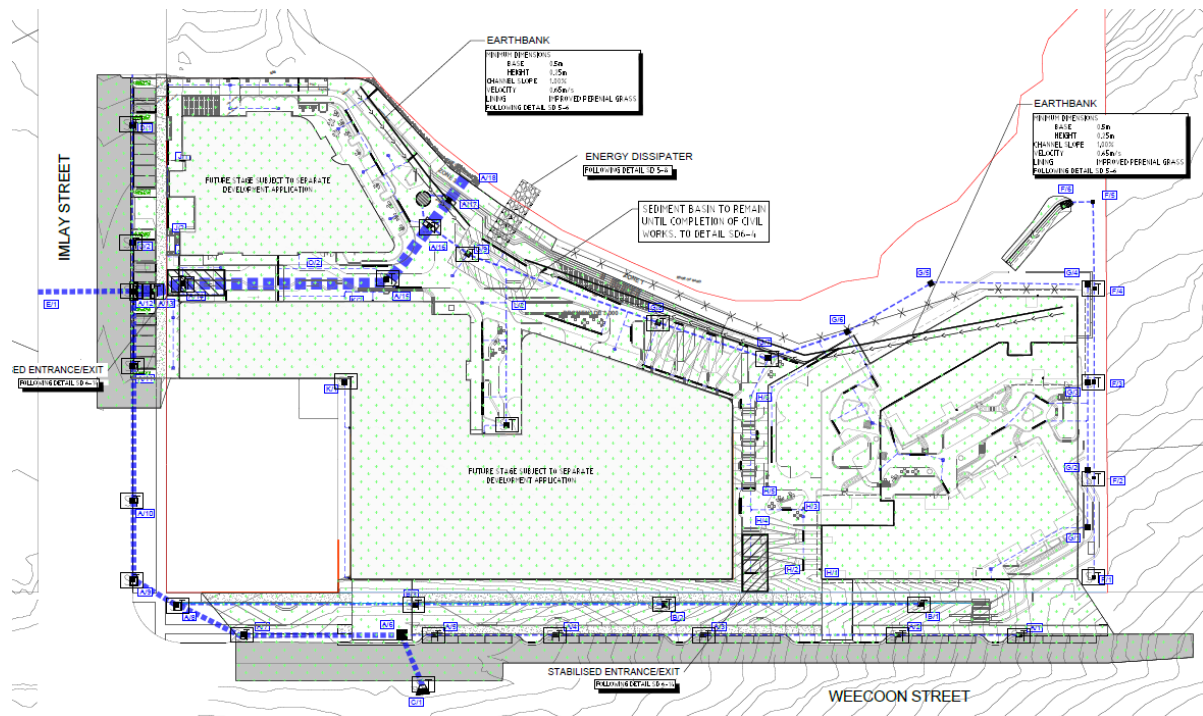


FIGURE 22 – SOIL AND WATER MANAGEMENT DEVICES:

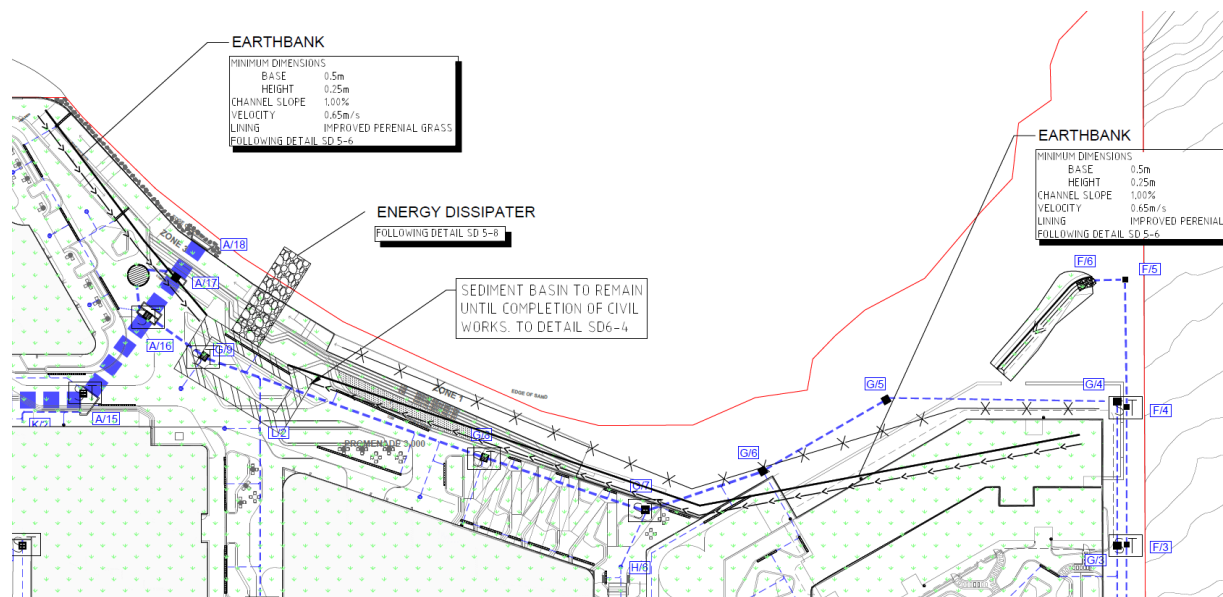
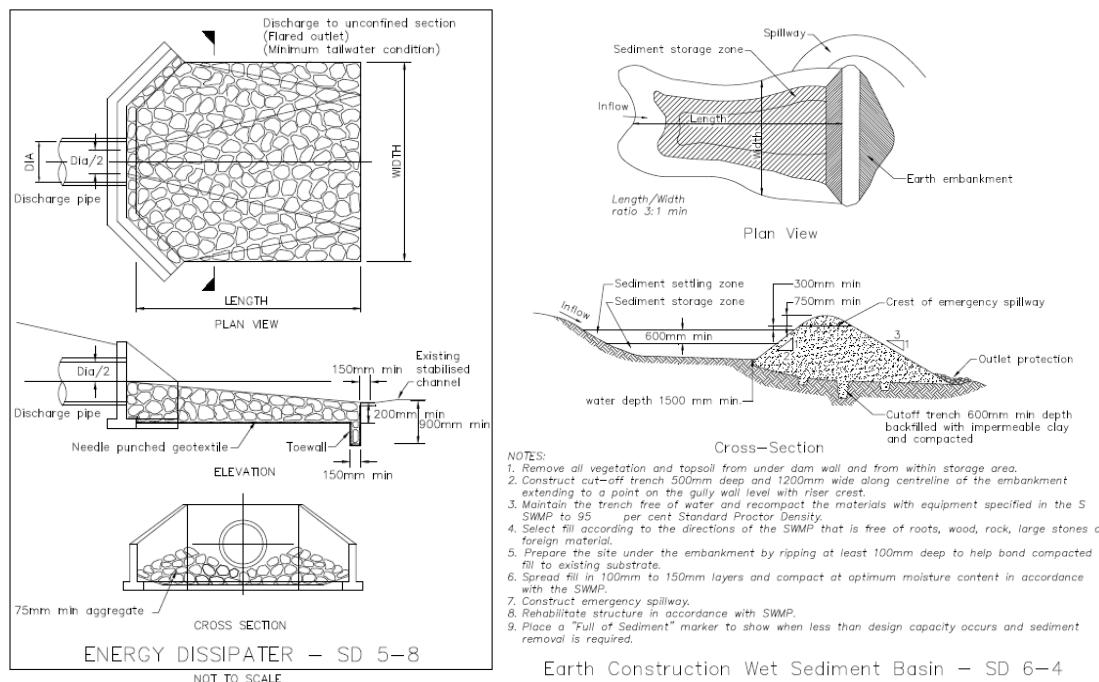


FIGURE 23 – DETAIL OF SOIL AND WATER MANAGEMENT DEVICES:



Sheet 24 also notes that the sediment basin (which is to be located within the existing pebble/ sand foreshore and below the Mean High Water Level) is to be treated with gypsum flocculant and then drained to an unspecified location, provided water analysis tests show suspended sediment concentrations below a specified level.

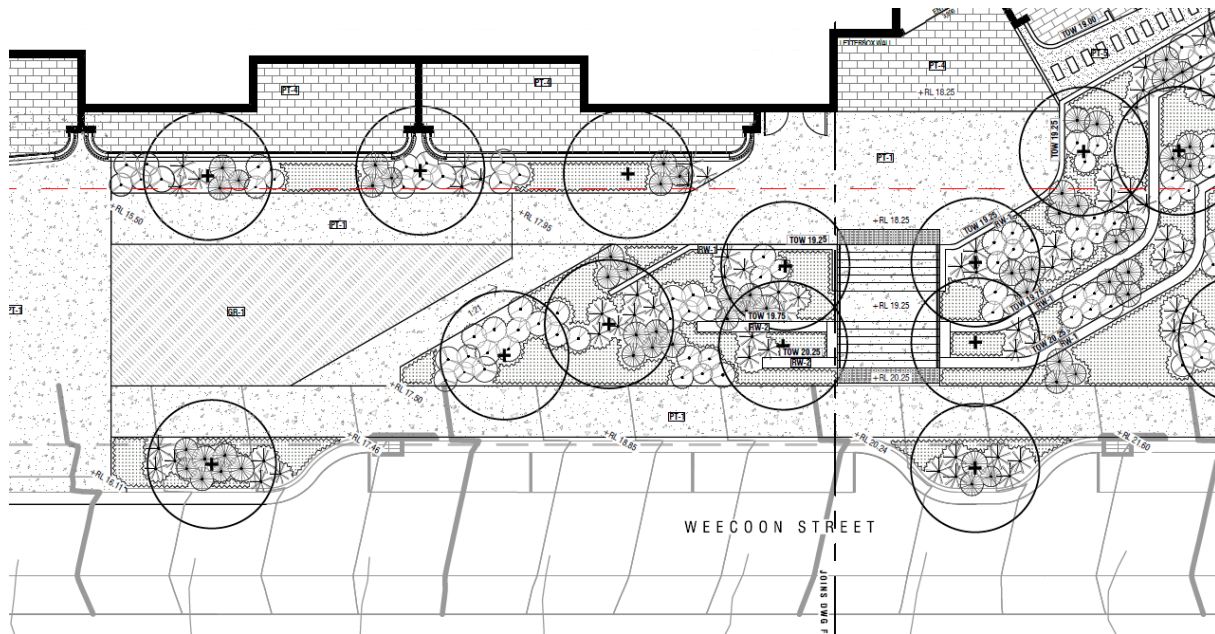
Public Domain and Roadworks:

Drawing No. DA004, Rev A dated 27/9/2023 prepared by ELK Designs, is notated with "Stage 1B (Public Domain and Roadworks)" along the Weecoon Street frontage. The drawing however lacks any details. The Landscape Drawings prepared by dsb Landscape Architects indicates the following works would be undertaken as part of the Stage 1 works, as shown in Figure 24 below:

- New car parking spaces with contrasting pavement treatments
- Rain garden inserts with street tree planting between spaces
- Regular pedestrian connection points between dual footpath frontage
- Integrated turf and planting areas to enhance streetscape interface with formalised seating inserts.

The submitted Civil Engineering Plan also states that Weecoon Street is to be reconstructed from CH.52 to CH.115 to grade out an existing low point and overflow into the Site. From CH.115 to CH.276.35, Weecoon Street is to be reconstructed only for half-width.

FIGURE 24 – SAMPLE OF PROPOSED PUBLIC DOMAIN WORKS:

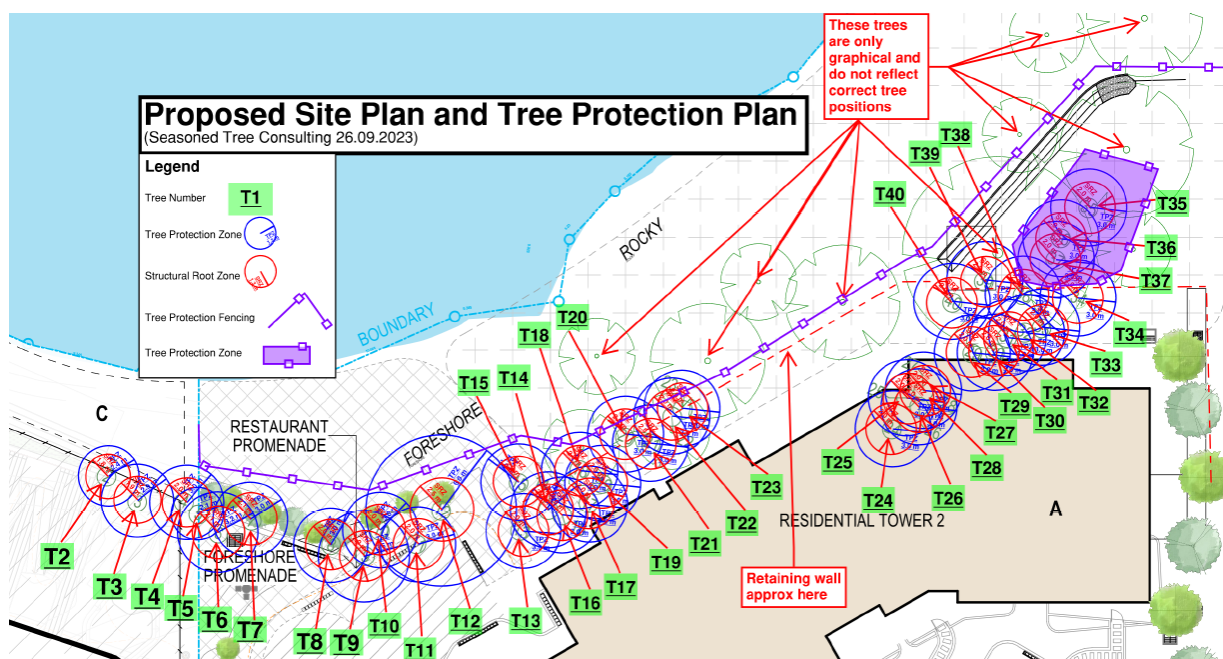


Landscaping and Tree Removal:

The Landscape Drawings prepared by dsb Landscape Architects states that the area in the northern corner of the Site referred to as the “Peninsula”, which currently contains a protected native plant ecosystem, is to be “made good” with native vegetation without any specific details provided.

On the other hand, the Arboricultural Impact Assessment Report prepared by Seasoned Tree Consulting indicates that 34 of the 40 trees surveyed are to be removed as a result of the proposed building, as shown in Figure 25 below.

FIGURE 25 – PROPOSED TREE REMOVAL:



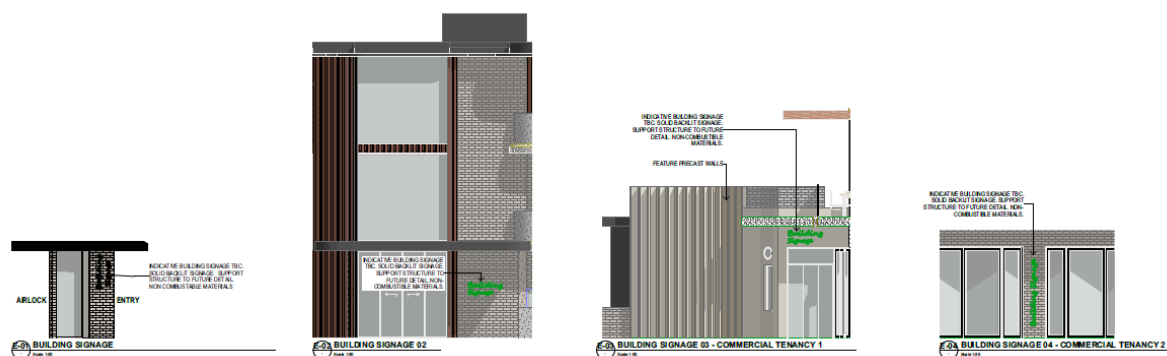
The report also notes that two of the four trees to be retained are in fact a species of

pittosporum that does not require approval from Council to remove, as it is deemed to be an invasive species. An unknown quantum of additional vegetation will be removed as a result of the proposed level spreader, of which there has been no assessment in relation to its placement.

Building Signage:

The submitted plans also detail the indicative signage at two separate building entry points (presumably for way-faring purposes), as well as indicative signage for each of the two commercial tenancies. The indicated signage generally consists of solid, back-lit lettering however no further details such as dimensions, have been provided.

FIGURE 26 – INDICATIVE SIGNAGE DETAILS:



Amplification of Utilities

The application is accompanied by a Services Assessment Report prepared by Accor Consultants. The report appears to address development across all three allotments, providing detailed floor plans of a future supermarket and retail shops, serviced apartments and hotel on Stages 2 and 3. While this report does not specify any particular works, it does identify the need to provide a range of utilities to the Site, subject to the requirements of the relevant services providers. Key notes from the report relevant to the likely works are as follows:

Electricity

Power is available to the Site with amplification

Potable Water

Existing reticulated network will require augmentation from the existing DN100 water main in Weecoon Street and DN 150 water main in Imlay Street to a minimum DN150 water main to both frontages (approximately 85m of the Weecoon Street frontage). Any new pipes would be accommodated within the existing pipeline corridor.

Power

While the surrounding area has access to a high voltage network, each of the proposed allotments will need a separate connection to that network with at least two (2) possibly three substations required.

Communications

Communications to the Site would be via a Premises Distribution Hub connected to any of the existing NBN pits along either street frontage.

Hydraulic and Fire Services

Each lot would be required to have its own sewer and potable water and fire water connections. Further pressure attenuation devices would be required in any buildings to accommodate their demand for internal water and firefighting purposes. The proposed building would be protected by a hydrant system however an on-site booster pump (diesel engine) was required as some hydrants may not achieve adequate flow rate and pressure requirements without it. Any booster pump system would require two off diesel engines (with associated fuel storage) as well as a storage tank for fire water with a minimum capacity of 60kL.

Sewer

The adjacent Wastewater pump station is to be upgraded to increase the emergency storage provision by a further 35,000 litres. The report noted that the additional storage would be provided by way of a separate 35,000 litre storage vessel.

It is noted that the SEE does not address any of the works identified above.

Coastal Protection Works:

While neither the SEE nor the application form identify any discrete coastal protection works, in order to develop Stage 1 in the manner proposed, it will be necessary to undertake a number of measures whose aim is to protect the development from coastal processes such as wave action, storm surge and inundation. The coastal protection works generally include the proposed retaining walls, upgrading of the stormwater outflow to the bay, the temporary stormwater management works (including the sediment basin and energy dissipator and altering the profile of the ground adjacent to the proposed future restaurant). Some of the proposed works will result in material or structures being placed below the Mean High Water Mark (MHW) of 0.38M AHD. This is not clearly demonstrated however and is discussed further below.

3. DESCRIPTION OF THE SITE AND LOCALITY

3.1. THE SITE:

The Site, as shown in Figure 27 below, is known as 19-21 Weecoon Street, Eden, located within the Bega Valley Shire Council Local Government Area. It is legally described as Lots 50 in DP 1109545 and has a total area of 18,028.99 m² according to the Deposited Plan. Council's on-line mapping system records the Site as having a total area of 18,021 m². Conversely, the SEE states the Site has a total area of 18,021.53sqm and the plan of the proposed subdivision records an area of 19,582m².

It is also noted that the irregular boundary to Yallumgo Cove is somewhat different between the Deposited Plan, Council's mapping resources and the government's SIX Maps on one hand and the survey submitted with the application and used as a basis for the architectural, engineering and landscaping drawings. While this has not been addressed by the applicant, it is possible that this boundary (which is defined by the MHWL), has changed over time and the survey has merely picked up the MHWL. Should this be the case, a formal redefinition process would need to be undertaken through Crown Lands, which does not appear to have occurred.

FIGURE 27 – THE SITE:



SOURCE: WWW.MAPS.SIX.NSW.GOV.AU 2024

The Site is located on the southern side of the town of Eden and on the eastern side of an isthmus of land that separates Yallumgo Cove and Snug Cove. The Site has frontages to both Imlay Street and Weecoon of 70.55m and 180.89m, respectively with the adjoining Fish Co-

op sitting at the intersection of the two streets. The Fish Co-op does not form part of the application.

The Site is presently vacant, with all structures associated with the former BP Fuel Storage facility having been demolished between 2005-2010. The Site is generally grassed with isolated trees located in the centre of the Imlay Street frontage, adjacent to the foreshore along the northern boundary and in a large clump in the northeastern corner, which extends down the rocky cliffs adjacent to the shoreline. The Site contains two distinct Plant Community Types (PCTs):

- Far Southeast Coastal Lowland Heath (PCT3816).
- Southern Lower Floodplain Freshwater Wetland (PCT3975)

The latter of the two PCT's is associated with the *Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions*, threatened ecological community (TEC). According to the Flora and Fauna Assessment, the vegetation recorded on site does not meet all the criteria for the TEC.

In terms of topography, regionally, the area is characterised by a north-western facing hillside that falls towards Yallumgo Cove. The site extends from approximately mid-slope to the toe of the hill, immediately adjacent to the foreshore of Yallumgo Cove. The Site generally falls to the northwest at approximately 3-5° with areas of steeper slopes (8-10°) towards the eastern side of the Site, levelling out towards the central north-west section of parcel. Weecoon Street itself slopes towards the southwest towards Eden Wharf. Two areas of exposed fill have been documented mid-slope on the southeastern side of the Site.

3.2. THE LOCALITY:

The Site is adjoined by Yallumgo Cove to the north, two detached dwellings at Nos. 1 and 3 Weecoon Street to the immediate north and northeast, detached 1 and 2 storey residential dwellings at 1A Yule Street to the east and Nos. 2-8 Weecoon Street to the east. Nos. 10 and 12 Weecoon Street also contain detached dwellings but have large outbuildings to their rear, indicative of the range of small-scale maritime industrial-related activities being undertaken.

Nos. 14-16 and 18-20 Weecoon Street contain single storey industrial buildings which are being used for industrial type purposes ancillary to the adjacent port including the Eden Smokehouse and Eden Fishing Equipment.

The land further to the southeast contains predominantly detached residential dwellings, with Rotary Park providing open space along the southern side of the headland. Several parcels of land currently site vacant to the southwest of the Site, bound by Weecoon Street, Imlay Street and By Street.

The facilities associated with Eden Port lie to the west providing both a working harbour, as well as tourist and visitor facilities. The land on the northern boundary of the Site at No. 198A contains a small industrial building while 198 was originally an industrial building which

has consequently been converted into a dwelling house. The Eden CBD also lies to the north.

FIGURE 28 – THE IMMEDIATE LOCALITY



SOURCE: WWW.METROMAP.COM.AU 2024

In terms of a wider regional perspective, the Site fronts Yallungo Cove, which itself opens to Calle Calle Bay. To the immediate west of the Site lies Snug Cove, which is part of Twofold Bay, as shown in Figures 29 and 30 below.

FIGURE 29 – THE WIDER LOCALITY

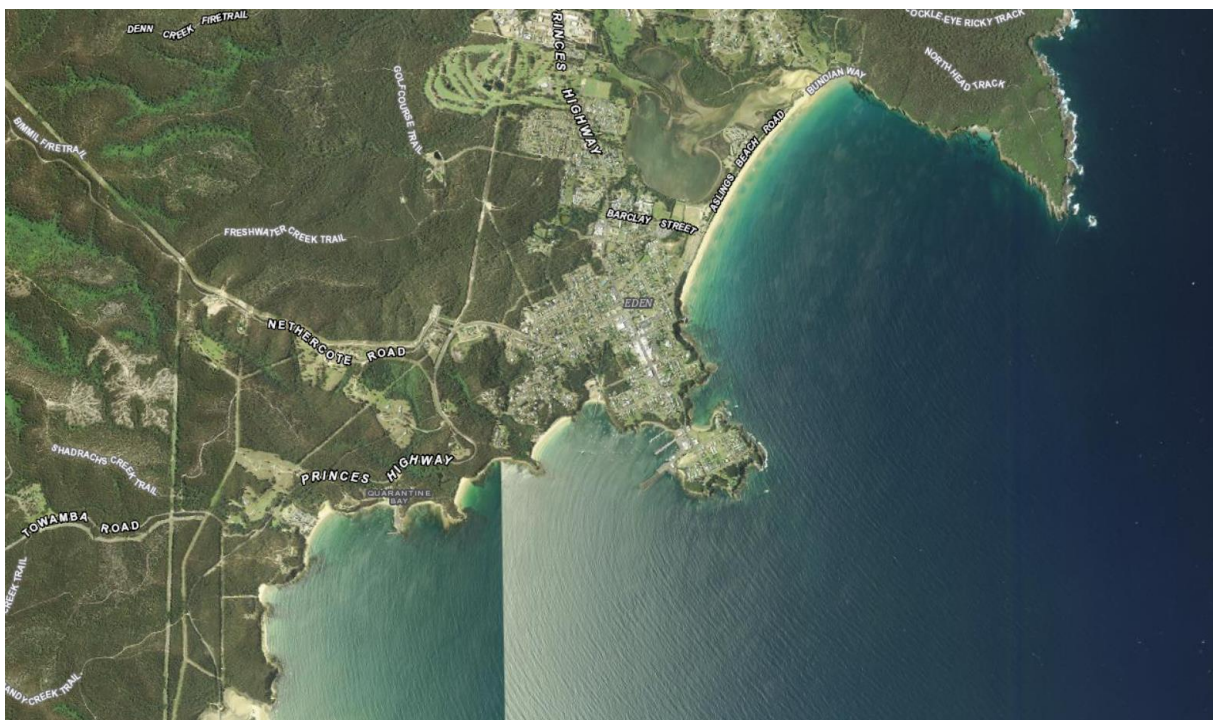
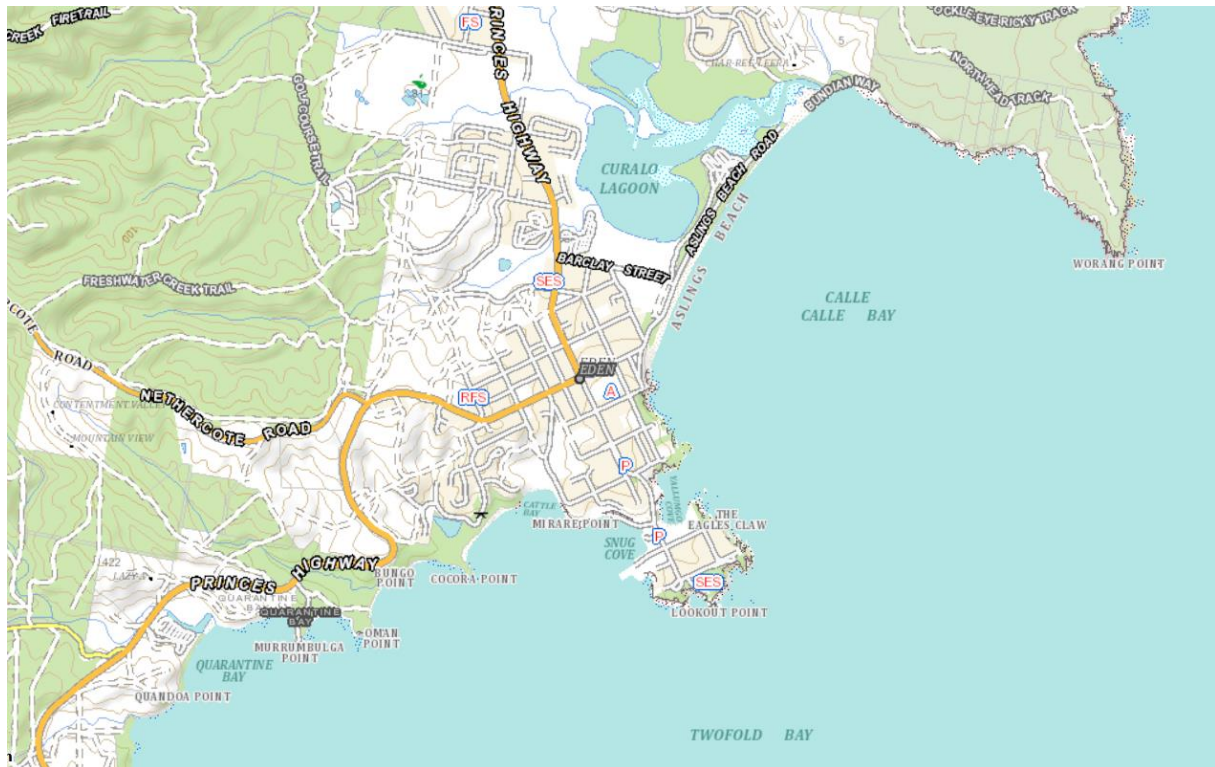


FIGURE 30 – THE WIDER LOCALITY – TOPOGRAPHICAL CONTEXT



Photos of the Site and surrounds are provided in Appendix B of this report.

4. STATUTORY CONTEXT:

4.1. REGIONAL SIGNIFICANCE

The proposal is considered Regionally Significant development (RSD) which is a category of development requiring consent under Part 4 of the EP&A Act. RSD are categorised in SEPP (Planning Systems) 2021 at Schedule 6 to include:

- General development over \$30 million
- Council related development over \$5 million
- Crown development over \$5 million
- Private infrastructure and community facilities over \$5 million
- Other categories

As the CIV of the proposal is \$67,113,200 (excl. GST but incl. professional fees), the proposal is classified as “General development over \$30 million”, the development is considered RSD. Section 4.5 of the EP&A Act stipulates that the Southern Regional Planning Panel is the consent authority for RSD. As such, the proposal has been referred to the Panel for determination.

4.2. LAND OWNERSHIP

Council’s records indicate there are multiple parties that own the property, including:

- Hank Pty Ltd
- DC Peters
- Ludamon Pty Ltd
- Plus others (not specified)

The ABN supplied by the applicant is associated with a T.F Curnow & D Peters & L Peters & the Trustee for ANKH Family Trust & the Trustee for Marich Family Trust.

Council has also received correspondence from Mr Benn Lane providing “Owner’s Consent’. This letter refers to TKM 002 Pty Ltd ATF TKM 002 (ACN 657995634), however this entity is not listed as a landowner, nor is it identified on the Government’s ABN/ ACN search registers. It is understood however that Mr Lane has also provided Council with correspondence stating that TKM 002 P/L is or will be the landowner.

The proposal also includes works that appear to enter adjoining land without the necessary consent being obtained from those parties. In this regard, it is noted that the proposed stormwater outlet will be located outside the Site and below the MHW. This requires a “Permission to Lodge” (PTL) from the Roads and Maritime Services. Likewise, the proposed new sewer line will be undertaken within the front yard of No. 3 Weecoon Street and over Lots 11 and 12 in DP565608 (208 Weecoon Street) and approval from the affected landowners has not been obtained. Additionally, works within Weecoon Street are required,

which require consent from the Council.

The applicant was requested to clarify the status of the ownership of the Site as well as provide a PTL and consent from the adjoining land as part of the Information Request. Given the applicant has refused to provide any of the requested information, the Panel cannot grant approval to the development without the relevant landowners providing consent in accordance with the NSW EP&A Regulation 2021.

4.3. CHARACTERISATION OF THE PROPOSAL

The SEE describes the proposal as consisting of three elements:

- A three (3) lot Torrens Title subdivision, with each lot representing the relevant stages in the development of the Site.
- A shop-top housing development over two (2) commercial tenancies (for which a use has not been nominated) and a basement carpark with ancillary waste, service and resident storage facilities (in effect, a mixed use building).
- Stormwater infrastructure works.

It is submitted that the applicant's characterisation of the proposal is deficient, failing, amongst other things, to adequately define the proposed land uses or encompass all aspects of the development.

In this regard, the characterisation of the proposal as containing shop top housing, is inaccurate. Shop top housing is defined in the Bega Valley Local Environmental Plan 2013 (BVLEP) as follows:

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

The BVLEP also defines *commercial premises* and *health services facilities* as follows:

health services facility means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—

- (a) a medical centre,
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) patient transport facilities, including helipads and ambulance facilities,
- (e) hospital.

commercial premises means any of the following—

- (a) business premises,

- (b) office premises,
- (c) retail premises.

The spaces nominated as the future restaurant and café are deemed to be commercial premises, notwithstanding that consent is not being sought for use any specific use.

It is noted that the current position of the NSW Land and Environment Court is that the dwelling – or the residential component - must be above the commercial premises/ health facilities in a shop top housing development and must not be on the ground floor. The Drawing No. DA1100 of the architectural drawings show that Units 01-04 (inclusive) sit directly on the ground floor with no other activity or level occurring below them. Further, only six of the 57 proposed dwellings have the residential component above the two commercial premises, with the clear majority located directly over areas associated with a dwelling (including ancillary residential car parking and facilities).

The residential component is, in the opinion of the author, more appropriately defined as a residential flat building. The BVLEP defines a residential flat building as “... a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing”. Ultimately, the technical definition of the development is of little difference – both shop top housing and residential flat buildings are permissible with consent on the Site. However, the failure to accurately characterise the proposal is yet just one example of the omissions and inconsistencies in the documentation.

4.4. PERMISSIBILITY

The site is zoned MU1 - Mixed Use in the Bega Valley Local Environmental Plan 2013 (BVLEP), as shown in Figure 31 below.

FIGURE 31 – ZONING



SOURCE: NSW PLANNING PORTAL 2025

As noted above, the development incorporates a 3 lot Torrens title subdivision, construction of a mixed use building containing a residential flat building, the commercial premises and ancillary car parking. The proposed development, inclusive of its various elements, falls under Item 3 – Permitted with consent, both discretely as a “car park” or as “*Any other development not specified in Item 2 or 4*” in the Land Use Table. There are no components of the proposal that are specifically identified as a prohibited use.

4.5. OTHER APPROVALS

The proposal constitutes “Integrated Development” as approval is required pursuant to Division 4.8 – Integrated Development of the Environmental Planning and Assessment Act 1979:

- S.219 (1)(c) of the Fisheries Management Act 1994 for carrying out a work that may otherwise create an obstruction within a bay (proposed stormwater outlet and tidal gate with associated scour protection and proposed energy dissipator associated with the temporary sediment basin).
- S. 91 of the Water Management Act 2000 for carrying out works within 40m of a wetland, which ordinarily requires a Controlled Activity Approval. In this instance, the Site contains a mapped wetland (the Southern Lower Floodplain Freshwater Wetland, which is associated with the *Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions*, threatened ecological community (TEC).

Additionally, in the event that marine vegetation is affected by the proposed stormwater outlet and energy dissipator, approval pursuant to S. 205 of the Fisheries Management Act 1994 would be required.

The Applicant has nominated that the proposal is not Integrated Development.

5. S.4.15 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – ASSESSMENT:

The relevant matters for consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* are assessed under the following headings. Where a provision is not relevant to the proposal, it has been omitted from this report.

5.1. ENVIRONMENTAL PLANNING INSTRUMENTS (s. 4.15(1)(a)(i))

The proposal has been assessed against the relevant provisions of the applicable Environmental Planning Instruments in Table 1 below:

TABLE 1 - STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs):

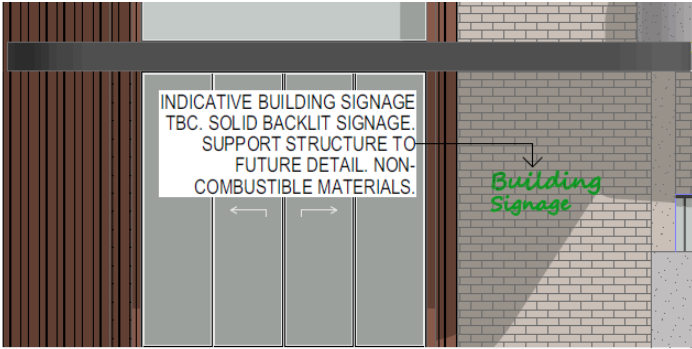

SEPP (Biodiversity and Conservation) 2021 (BC SEPP)		
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Chapter 2 – Vegetation in Non-rural Areas		
Part 2.1 - Preliminary	<p>Is the Site within an LGA listed in Section 2.3?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The Bega Valley Shire is not listed in Cl. 2.3(1)(a) and therefore Chapter 2 does not apply.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
Chapter 4 – Koala Habitat Protection 2021		
Part 4.1 - Preliminary	<p>KHP21 applies to all land within the Bega Valley Shire excluding that which is zoned RU1, RU2 and RU3 pursuant to Section 4.4 (3)(d).</p> <p>It is noted that the SEE is silent on Chapter 4 and the Flora and Fauna Assessment prepared by SLR Consulting dated March 2023, refers to the former SEPP (Koala Habitat Protection) 2021, which was superseded 1 March 2022.</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
Part 4.2 – Development Control of Koala Habitats	<p><u>Step 1: Does the KHP21 apply?</u></p> <p>Is the site:</p> <ul style="list-style-type: none"> at least 1 hectare (including adjoining land within the same ownership), and YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Is there an approved KPoM over the land YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> <p>The LGA does not have an approved Koala Plan of Management.</p> <p>Cl. 4.9(2) requires the Consent Authority to assess whether the development is likely to have any impact on koalas or koala habitat.</p> <p><u>Step 2: Will the development likely have any impact on koalas or koala habitat?</u></p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p> <p>Go to Step 2</p> <p>YES <input checked="" type="checkbox"/></p>


	<p>The Flora and Fauna Assessment notes that the Site contains only one listed feed tree species (which were few in number and too immature to support feeding by koalas), has poor connectivity to areas of eucalypt forest and is bounded by roads and the ocean. Based on these factors, it is highly unlikely the proposal will adversely affect this species.</p> <p><u>Step 3: Is a Koala Assessment Report required?</u></p> <p>The Flora and Fauna Assessment notes that the Site contains only one listed feed tree species, as discussed above). The report also notes that the Site does not contain Core Koala Habitat. A Koala Assessment Report is not required.</p>	<p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p> <p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
SEPP (Housing) 2021 (Housing SEPP)		
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Chapter 4 – Design of Residential Apartment Development		
Cl. 144 – Application of Chapter	<p>Chapter 4 applies to all residential apartment development incorporating both shop top housing and residential flat buildings.</p> <p>On 14 December 2023, State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development (SEPP 65) was repealed with a new Chapter 4 inserted into the Housing SEPP. Subsequent amendments to the SEPP meant that a Consent Authority must not grant consent unless it has considered the following matters:</p> <ul style="list-style-type: none"> (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9, (b) the Apartment Design Guide, (c) any advice received from a design review panel <p>The proposal is for the erection of a new building, is at least 3 storeys high and contains at least 4 dwellings.</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>As the DA was lodged on 25 January 2024 (after the repeal of SEPP 65) it must be considered in accordance with Cl. 144 against Schedule 9 of the Housing SEPP and the Apartment Design Guide. Council does not have a design review panel.</p> <p>The submitted Statement of Environmental Effects is dated 4 December 2023, however, the application was not formally lodged until 25 January 2024. The SEE provides an assessment against the former SEPP 65, not Chapter 4, despite the applicant being requested to do so in the Information Request.</p>	
Cl.145 - Referral to design review panel for development applications	<p>Council does not have any applicable design review panel and accordingly, referral is not required under Clause 145.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
Cl.147 - Determination of development applications and modification applications for residential apartment development	<p>Cl. 147 requires the Consent Authority, in this instance, to consider:</p> <p style="padding-left: 40px;">(a) <i>the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,</i></p> <p style="padding-left: 40px;">(b) <i>the Apartment Design Guide...</i></p> <p>Consideration of these matters is provided below and Appendix C.</p> <p>Note is made that the Design Verification Statement does not confirm how the development addresses the objectives in Parts 3 and 4 of the Apartment Design Guide, as required by Clause 29(2)(b)(ii) of the Environmental Planning and Assessment Regulation 2021. It also fails to adequately address the Design Principles, largely because the proposal is at significant odds with the height limit, is in complete contrast to the existing and desired future character and there is a significant volume of missing information or inconsistency between various supporting documents, as identified in the Information Request.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>Overall, the Statement fails to adequately address key elements of the Design Principles, including:</p> <ul style="list-style-type: none"> • Understanding the context, setting, local character, size and configuration of a development site. • Explaining the application of building envelopes and primary controls including building height, floor space ratio, building depth, separation and setbacks in the context of the applicable planning controls, the existing and desired future character of the area or contributes positively to the streetscape and views and vistas that the proposal sits within. • Demonstrate how the impacts on the built and natural environment will not cause significant adverse harm or cause a loss of amenity as a consequence of the built form and density sought. • Demonstrate how the density of the proposal is in line with or impact on existing and projected demand for services, facilities, population trends, jobs or the environment. • Demonstrate how removal of significant vegetation is necessary, whether there are adequate deep soil zones or how it will affect coastal processes, the landscaped amenity of the Site and surrounds or impact on the visual amenity of the coastal location. • Delineate the extent of the proposed works, the manner in which amenity will be achieved, particularly in those areas where private residential spaces share an interface with communal spaces within the development, the public realm or between residential and commercial activities on the Site, notwithstanding the lack of detail regarding the actual nature of the future restaurant/ café, and the public domain. There is also insufficient detail in the supporting documents regarding acoustic amenity, visual amenity, privacy and overlooking, as well as light spill and glare impacts, view loss and visual impact. • Demonstrate how occupant and public safety can 	
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	<p>be achieved or how operationally the development will function in terms of wayfinding, the interface between resident and visitor areas or residential and commercial uses (particularly around amenity and conflicts between vehicles and pedestrians).</p> <ul style="list-style-type: none"> • Demonstrate how the proposal encourages a good social mix or a broad range of people of differing socio-economic backgrounds. • Demonstrate how the design reflects the coastal location of the Site or its steep topography or the existing and future desired future character and built form 	
Cl.148 - Non-discretionary development standards for residential apartment development — the Act, s 4.15	<p>Does the proposal satisfy the following non-discretionary standards:</p> <p>(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide.</p> <p>The proposal is required to provide a total of 101 parking spaces and provides 102 spaces. However, only 11 spaces are provided for the commercial tenancies, instead of required 29 spaces, which is not supported.</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
	<p>(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide.</p> <p>Despite the poor quality of the architectural plans which lack adequate dimensions, the proposal complies. Refer to Appendix D.</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
	<p>(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.</p> <p>The plans indicate a minimum floor to floor height of 3.2m, which would enable an internal floor to</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	ceiling height of 2.7m.	
SEPP (Industry and Employment) 2021 (IE SEPP)		
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Chapter 3 – Advertising and Signage.	<p>Chapter 3 provides the relevant planning controls in relation to signage and advertising structures. The application provides details of several indicative signage areas to each commercial tenancy and on unspecified building entry points.</p> <p>The application does not provide sufficient details of the proposed signage and accordingly, the Panel cannot be confident that the development can comply with the SEPP provisions or determine if consent is required at all.</p>  <p>E-02 BUILDING SIGNAGE 02 Scale 1:50</p>  <p>E-04 BUILDING SIGNAGE 04 - COMMERCIAL TENANCY 2 Scale 1:50</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
SEPP (Planning Systems) 2021 (PS SEPP)		
RELEVANT	COMMENT:	COMPLIANCE:

PROVISION		
Chapter 2 – State and Regional Development	Cl. 2.19 The proposal is deemed to be Regionally Significant Development pursuant to Cl. 2.19(1) as it seeks consent for General Development with an estimated development cost over \$30 million, as per Schedule 6 of the SEPP. Section 4.5 of the EP&A Act stipulates that the Southern Regional Planning Panel is the consent authority for RSD. As such, the proposal has been referred to the Panel for determination.	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A <input type="checkbox"/>
SEPP (Resilience and Hazards) 2021 (RH SEPP)		
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Chapter 2 – Coastal Management		
Part 2.1 - Preliminary	Chapter 2 of the SEPP applies to all land within the Coastal Zone. The Coastal Zone is comprised of five (5) coastal management areas, which include the Coastal Wetlands and Littoral Rainforest Area, the Coastal Vulnerability Area, the Coastal Environment Area and the Coastal Use Area. The Site is mapped as being within the Coastal Environment Area and Coastal Use Area, as per the map extracts below.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
Part 2.2 - Development Controls for Coastal Management Areas Division 3 - The Coastal Environment Area	<p>The Coastal Environment Area:</p>  <p>Division 3 provides controls for land within the Coastal Environment Area. Cl. 2.10(1) requires the Consent</p>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>

	<p>Authority consider whether the proposal will have an adverse impact on a range of matters:</p> <p>(1) <i>Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following —</i></p> <p>(a) <i>the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The application does not provide sufficient information to enable the Panel to form a positive conclusion that the proposal will not adversely affect these matters.</p> <p>(b) <i>coastal environmental values and natural coastal processes</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal includes works that are both directly and indirectly within the Coastal Zone. The application does not provide sufficient information to enable the Panel to form a positive conclusion that the proposal will not adversely affect coastal environmental values and natural coastal processes, particularly with respect to coastal hazards and protection, water quality and stormwater drainage.</p> <p>(c) <i>the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The application does not provide sufficient</p>	
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information to enable the Panel to form a positive conclusion that the proposal will not adversely affect these matters. Furthermore, it appears that elements of the temporary and permanent stormwater management measures (temporary sediment basin and stormwater outfall) are below the MHWL and within the waters of Yallumgo Cove, for which owner's consent in the form of a "Permission To Lodge" (PTL) is required from the NSW Roads and Maritime Services.

(d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms*

YES ☐ NO ☒ N/A ☐

The proposal includes works that are outside the Site and within the waters of Yallumgo Cove. The application does not provide any information as to whether marine vegetation will be affected. Current aerial photography (see below) suggests there may be marine vegetation within close proximity to the proposed works.



In terms of existing native vegetation on the Site, the proposal seeks to remove a significant extent of vegetation in the

northern corner of the Site, predominantly for no reason other than it is within the footprint of the development (see image below).

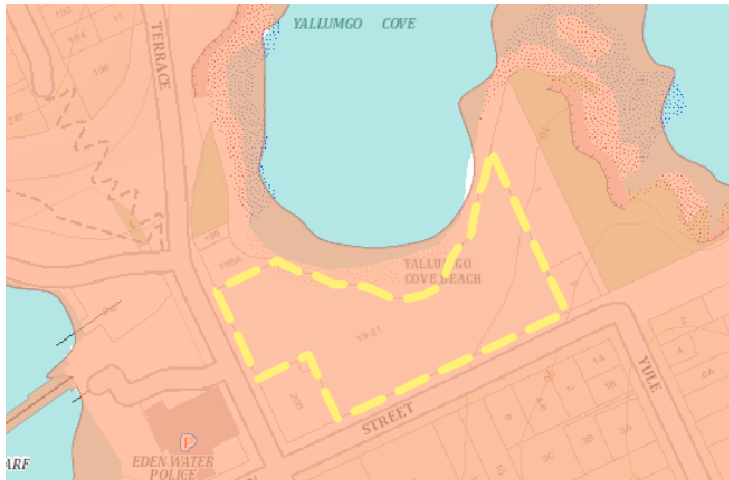


The proposed vegetation removal is inconsistent with the provisions of the Snug Cove Masterplan, which seek to retain and enhance this vegetation. The supporting documents also fail to consider the landscape value of the vegetation or acknowledge the sensitive foreshore location and opportunities to restore degraded portions of the bushland, as opposed to simply removing it. Furthermore, the proposal is not supported by any assessment using the STARS methodology, developed by the by the Institute of Australian Consulting Arborists (IACA) to determine the amenity and landscape value of this stand of bushland, given its prominent location. Accordingly, the removal of the vegetation is not supported.

- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a*

	<p><i>disability</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>Access to the foreshore is presently informal and not legally provided. Anecdotal evidence indicates the local community have had access to Yallungo Cove via the Site for some years. Although not formally designated as public open space, access to the foreshore for the community is a desirable and appropriate outcome that the applicant has failed to adequately demonstrate.</p> <p>(f) <i>Aboriginal cultural heritage, practices and places</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal has not provided an adequate Aboriginal Archaeological Due Diligence Assessment, as outlined in the Information Request, referring to the proposal as a "recreational complex", forming an opinion that is based on plans that are inconsistent with the proposal before the Panel and long-since superseded statutory provisions.</p> <p>It also fails to consider works outside the Site (such as the works to Weecoon Street and stormwater devices within Yallungo Cove). The report also refers to incorrect details regarding the existing pebble shoreline and the MHWL.</p> <p>(g) <i>the use of the surf zone.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The application has not provided adequate information pertaining to the provision of public access through the Site to the existing beach and associated surf zone.</p> <p>The proposal in its present form does not</p>	
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	demonstrate that access is acceptable.	
	<p>(2) <i>Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—</i></p> <p>(a) <i>the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal is not an appropriate design response to the Site or its surrounding context, relies upon extensive modification of the land surface that is not supported by adequate and consistent supporting documentation or provide any coherent and rational environmental planning grounds for its approval.</p> <p>(b) <i>if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact</i></p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal relies on extensive modification of the Site, the removal of almost all of two significant vegetation communities and fails to provide adequate information to support variations to the established planning controls. A significant redesign of the proposal was requested via the Information Request, however the Applicant has declined to provide any information or amend the design to resolve a number of significant issues.</p> <p>(c) <i>if that impact cannot be minimised—the development will be managed to mitigate that impact.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>The design of the development represents a significant departure from the applicable planning controls and, given both this and the lack of adequate and consistent information regarding the proposal itself, aspects of the proposal claimed by the applicant to mitigate impacts (such as stormwater management devices and landscaping), the proposal in its current form has not demonstrated that any impacts can be suitably mitigated. Overall, the Panel cannot, on the basis of the information supplied, be satisfied that the development has been designed, sited and will be managed to avoid any adverse impacts.</p>	
	<p>(3) <i>This section does not apply to land within the Foreshores and Waterways Area within the meaning of SEPP (Biodiversity and Conservation) 2021, Chapter 6.</i></p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p> <p>Chapter 6 of the SEPP does not apply to the Site.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
<p>Division 4 - The Coastal Use Area</p>	<p>Division 4 provides controls for land within the Coastal Use Area.</p>  <p>(1) <i>Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—</i></p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>(a) <i>has considered whether the proposed development is likely to cause an adverse impact on the following—</i></p> <p>(i) <i>existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>Access to the foreshore is presently informal and not legally provided. Anecdotal evidence indicates the local community have had access to Yallumgo Cove via the Site for some years.</p> <p>(ii) <i>overshadowing, wind funnelling and the loss of views from public places to foreshores</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal does not provide any information with respect to wind direction on the Site Analysis or wind funneling, particularly between the two towers and within the communal open space areas. As discussed further in this report, the proposal will have an unacceptable adverse visual impact on the surrounding area and will result in critical loss of views from public places of the foreshore.</p> <p>(iii) <i>the visual amenity and scenic qualities of the coast, including coastal headlands</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>As discussed further in this report, the proposal will have an unacceptable adverse visual impact on the scenic qualities of the adjoining coastal areas, in particular, Yallumgo Cove.</p> <p>(iv) <i>Aboriginal cultural heritage, practices</i></p>	
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	<p><i>and places</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal has not provided an adequate Aboriginal Archaeological Due Diligence Assessment, as outlined in the Information Request, referring to the proposal as a “recreational complex”, forming an opinion that is based on plans that are inconsistent with the proposal before the Panel and long-since superseded statutory provisions.</p> <p>It also fails to consider works outside the Site (such as the works to Weecoon Street and stormwater devices within Yallungo Cove). The report also refers to incorrect details regarding the existing pebble shoreline and the MHWL.</p> <p>(v) <i>cultural and built environment heritage</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>With respect to European cultural heritage, neither the Site nor the immediate surrounding area are listed as heritage items or within a Heritage Conservation Area (HCA), however the Southern end of Imlay Street contains a number of Items of Local Significance and contains the South Imlay Street HCA.</p> <p>The submitted SEE contains scant assessment of the impact of the proposal on the heritage values of the HCA and has not adequately demonstrated there will be no adverse impacts.</p>	
	<p>(b) <i>is satisfied that—</i></p> <p>(i) <i>the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</i></p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal is not an appropriate design response to the Site or its surrounding context, relies upon extensive modification of the land surface that is not supported by adequate and consistent supporting documentation or provide any coherent and rational environmental planning grounds for its approval.</p> <p>(ii) <i>if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact</i></p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal relies on extensive modification of the Site, the removal of almost all of two significant vegetation communities and fails to provide adequate information to support variations to the established planning controls. A significant redesign of the proposal was requested via the Information Request, however the Applicant has declined to provide any information or amend the design to resolve a number of significant issues.</p> <p>(iii) <i>if that impact cannot be minimised—the development will be managed to mitigate that impact.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The design of the development represents a significant departure from the applicable planning controls and, given both this and the lack of adequate and consistent information regarding the proposal itself, aspects of the proposal claimed by the applicant to mitigate impacts (such as stormwater management devices and landscaping), the proposal in its</p>	
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	current form has not demonstrated that any impacts can be suitably mitigated. Overall, the Panel cannot, on the basis of the information supplied, be satisfied that the development has been designed, sited and will be managed to avoid any adverse impacts.	
	<p>(c) <i>has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal is inconsistent with the existing and desired future character of the surrounding area and presents a height, bulk, massing, scale and external appearance that is incompatible with the Snug Cove Masterplan, which was created specifically to facilitate development that did not have an adverse impact on the surrounding built and natural environment, while allowing the working harbour to develop accordingly.</p> <p>The supporting documentation on a whole, is either inconsistent, lacks critical detail, contains or relies upon various unresolved errors/ omissions/ outdated information and does not allow for a positive assessment of the proposal.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
	<p>(2) <i>This section does not apply to land within the Foreshores and Waterways Area within the meaning of SEPP (Biodiversity and Conservation) 2021, Chapter 6.</i></p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p> <p>Chapter 6 of the SEPP does not apply to the Site.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
Division 5 - General	<p>Cl. 2.12 - Can the Consent Authority be satisfied that the proposal is not likely to cause increased risk of coastal hazards on the land or other land?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>The submitted Coastal Risk Assessment fails to provide a detailed and conclusive review of the submitted plans, providing only preliminary recommendations and advice on a superseded set of drawings. The Assessment also notes that any works to protect the future stages from coastal wave action and erosion would need to provide a return wall adjacent to the development on 198A Imlay Street, however this may cause future erosion on that site.</p> <p>Cl. 2.13 - Are any certified coastal management programs relevant to the proposal?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p>	
Part 2.2 – Miscellaneous	<p>Cl. 2.16 permits coastal protection works by a person, other than a public authority, but only with development consent.</p> <p>During the assessment of the application, the question of whether the proposal included any “coastal protection works” arose, and whether any proposed works may trigger Clause 8A, Schedule 6 of the SEPP (Planning Systems). It is the author’s conclusion that despite the ambiguities within the SEE, architectural plans and application form and the applicant’s decision to decline to respond to the Information Request, it is considered that the proposal does include works that would satisfy the definition contained in the Coastal Management Act 2016 of “coastal protection works”. These include the proposed retaining walls, upgrading of the stormwater outflow to the bay and altering the profile of the ground adjacent to the restaurant.</p> <p>Accordingly, development consent is required for these works.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
Chapter 4 – Contamination of Land		
	<p>Pursuant to Clause 4.6(1), the Consent Authority must consider whether the land is contaminated and if so, whether it can be suitably remediated.</p> <p>The Site’s previous land use history as a BP fuel storage facility and previous remediation is well documented.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>The applicant has provided both a Preliminary and Detailed Site Investigation (PSI and DSI respectively), however these appear to relate to the overall built form contemplated (but not proposed) over all three lots within the development.</p> <p>The submitted DSI incorrectly states <i>"There is no residential use proposed on the ground floor; all of the lowest levels of the buildings areas either comprise basement car parking or commercial/retail uses."</i> The architectural drawings, however, show this to be incorrect, with Units 01-04 (inclusive) being located at or below existing natural ground level.</p> <p>The DSI also notes that despite previous remediation, the Site is still impacted by contaminants that pose a risk to human health and/ or the environment, requiring remediation. The DSI states:</p> <p><i>The DSI identified benzene in groundwater at concentrations that represent a potential risk to ecological and human (recreational) receptors in Yallumgo Cove, through off-site migration of contamination groundwater.</i></p> <p><i>However, the impacted groundwater that could pose a potential risk appears to be relatively limited in its extent and is likely to be diluted to some degree by mixing with other groundwater that is less impacted before it enters the cove. The clayey soil conditions are also likely to limit the migration potential for the benzene-impacted groundwater. A complete SPR linkage with ecological receptors or recreational water users has not yet been confirmed.</i></p> <p><i>A RAP is required to address potential contamination risks in the context of the proposed development and the RAP must consider the data gaps outlined in Section 9.4 of this report.</i></p> <p><i>Based on the results of the DSI, JKE consider that the site can be made suitable for the proposed development via remediation, provided the following recommendations are implemented:</i></p>	
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	<ul style="list-style-type: none"> • A RAP is to be prepared to outline the remediation and validation requirements for the site. The RAP must include provisions for a data gap investigation and associated reporting; • An AMP is to be prepared prior to commencement of any construction/excavation works to manage the potential risk associated with asbestos in fill; and • Additional/validation reporting in accordance with the RAP requirements. <p>The requirements to report the contamination under the NSW EPA Guidelines on the Duty to Report Contamination under Section 60 of the CLM Act 1997 (2015)¹⁶ should be reviewed during the data gap investigation and as part of the remediation works at the site.</p> <p>In line with the provisions of CL. 4.8, any remediation would satisfy the definition of a Category 1 Remediation, given the Site is mapped as containing areas to be protected for terrestrial biodiversity.</p> <p>Given the stated data gaps, the lack of any risk assessment as noted in the DSI, the inconsistency between the plans used in the DSI and the submitted drawings, the request for information regarding the location of any off-site disposal facilities of the contaminated material and haulage routes, the sensitive coastal location and the classification of any remediation as Category 1, it is considered that the proposal has not demonstrated the Site can be adequately remediated.</p>	
SEPP (Sustainable Buildings) 2022 (SB SEPP)		
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Chapter 1 – Preliminary	The SEPP came into effect on 22 September 2022, replacing SEPP (Building Sustainability Index: BASIX) 2004 for all development applications submitted after 1 October 2023. The application was lodged on 25	YES <input type="checkbox"/> NO <input type="checkbox"/> N/A <input checked="" type="checkbox"/>

	January 2024.	
Chapter 2 – Standards for Residential Development – BASIX	<p>The residential component of the development is subject to the provisions of Chapter 2. Although a BASIX Certificate has been submitted with the application, there has been no verification that the Certificate satisfies the prescribed standards contained in Schedule 2 or that it relates to the plans that were submitted with the DA.</p> <p>Additionally, the BASIX Certificate states single phase air conditioning units with a 3.5 star rating are to be provided to all units. The proposal does not indicate the location of the A/C units.</p> <p>Given these deficiencies, the Panel cannot be satisfied that the proposal is compliant with the relevant provisions of Chapter 2.</p>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
Chapter 3 – Standards for Non-Residential Development	<p>The non-residential component of the development is subject to the provisions of Chapter 3, given that it involves the erection of a new building that involves development that is not for the purposes of residential accommodation and the cost of that part of the building would exceed \$5 million.</p> <p>Cl.3.2 requires that the Consent Authority must consider whether the development is designed to enable the following matters before granting consent:</p> <ul style="list-style-type: none"> (a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials, (b) a reduction in peak demand for electricity, including through the use of energy efficient technology, (c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design, (d) the generation and storage of renewable energy, (e) the metering and monitoring of energy consumption, 	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>

	<p>(f) the minimisation of the consumption of potable water.</p> <p>The application has not demonstrated how these matters have been addressed. Given the lack of information regarding these matters, the Panel cannot be satisfied the proposal is compliant with the relevant provisions of Chapter 4.</p>	
SEPP (Transport and Infrastructure) 2021 (TI SEPP)		
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Chapter 2 – Infrastructure		
Division 5 – Electricity Transmission or Distribution	<p>Subdivision 2 - Development Likely to Affect an Electricity Transmission or Distribution Network.</p> <p>Clause 2.48 applies as the proposal will involve the excavation of the ground within 2m of an electricity distribution pole.</p> <p>Notice in accordance with Cl. 2.48(2) was provided to Essential Energy, who have advised that the proposal may encroach upon its network. Essential Energy requested the applicant submit a Network Encroachment Form.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
Division 17 - Roads and Traffic	<p>Subdivision 2 - Development in or Adjacent to Road Corridors and Road Reservations.</p> <p>Cl. 2.122 identifies the various triggers or thresholds for traffic-generating development in Schedule 3. In this instance, the proposal does not exceed any thresholds and accordingly, referral to the NSW Roads and Maritime Services is not required.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
REGIONAL ENVIRONMENTAL PLANS (REPS) – DEEMED SEPPS – N/A		

TABLE 2 – LOCAL ENVIRONMENTAL PLANS (LEPs):

BEGA VALLEY LOCAL ENVIRONMENTAL PLAN 2013:		
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
1.2 Aims of Plan	<p>Having regard to the nature of the development, the inadequate supporting documents and inherent non-compliances, it is considered that the proposal fails to satisfy the following aims of the Plan.</p> <p>(a) <i>to protect and improve the economic, natural and social resources of Bega Valley through the principles of ecologically sustainable development, including conservation of biodiversity, energy efficiency and taking into account projected changes as a result of climate change.</i></p> <p>Comment:</p> <p>The application has not demonstrated that the proposal will protect and improve the economic, natural and social resources of the Bega Valley. The application does not provide an adequate Statement addressing the Design Principles in Schedule 9 of SEPP Housing, which include provisions relating to sustainability, retention of positive landscape elements, amenity, housing diversity and social interaction.</p> <p>The proposal also fails to demonstrate the submitted BASIX Certificate satisfies the prescribed standards contained in Schedule 2 of the Sustainable Housing SEPP or that it relates to the plans that were submitted with the DA.</p> <p>Furthermore, despite the Certificate stating that single phase air conditioning units with a 3.5 star rating are to be provided to all units, there are no details provided on the architectural plans.</p> <p>The Sustainable Design Strategy Report states that a number of elements are to be provided, yet these are not identified on the submitted plans,</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>including:</p> <p>A 25KL water tank to be provided as per the Sustainable Design Strategy Report.</p> <p>The spatial extent of proposed solar panels/ photovoltaic cells, which appear to be diagrammatic, lacking any quantification.</p> <p>The EV charging stations and any associated infrastructure are not identified and no indication has been provided on whether the electrical design can adequately meet the expected charging loads.</p> <p>Residential Buildings A and B are to have separate waste stores "to improve accessibility", despite no details provided on the plans or in the OWMP.</p> <p>The Sustainable Design Strategy Report states that no works will occur on the natural shoreline, however the proposed temporary stormwater works as well as stormwater outlet and dissipator appear to be below the MHWL, rendering this statement incorrect. Additionally, Strategy 9 of the Sustainable Design Strategy Report states that a "Minimum 5 x 15000L Rain water" is required for carwashing and landscape, however this appears to conflict with other statements in Strategy 3 regarding a 25KL rainwater tank.</p> <p>(b) <i>to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, that respond to lifestyle choices, emerging markets and changes in technology.</i></p> <p>Comment:</p> <p>No evidence has been provided to demonstrate the likely economic impacts (positive or negative) of the proposal, which includes a restaurant outside of the town centre.</p> <p>(c) <i>to conserve and enhance environmental assets, including estuaries, rivers, wetlands, remnant</i></p>	
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	<p><i>native vegetation, soils and wildlife corridors.</i></p> <p>Comment:</p> <p>The proposal has failed to demonstrate that extensive excavation or removal of significant coastal vegetation is warranted or that the works within the foreshore are clearly documented. The supporting documents also fail to consider the landscape value of the vegetation or acknowledge the sensitive foreshore location and opportunities to restore degraded portions of the bushland, as opposed to simply removing it. The assessment undertaken also fails to provide a qualitative assessment of the retention of the vegetation for its landscape value by using the STARS methodology. The Flora and Fauna Assessment has estimated the extent of native vegetation to be removed however, this has not been quantified and mapped. Furthermore, the Flora and Fauna Assessment provides descriptions and photos of the areas where vegetation is to be removed (such as Photo 5) that do not seem to match the Site Plan and Tree Protection Plan contained in the arborists report.</p>	
	<p>(e) <i>to ensure that development contributes to the natural landscape and built form environments that make up the character of Bega Valley.</i></p> <p>Comment:</p> <p>The proposal is inconsistent with the existing natural coastal landscape, nor is it compatible with the existing or desired future character. The bulk, scale, height, massing and external appearance is inconsistent with the stated outcomes and planning controls contained in various planning documents, including the BVLEP and the Snug Cove Masterplan. The proposal also involves significant excavation and filling and the loss of the majority of the existing vegetation in the northern corner, which is to be retained and enhanced as a significant natural element. The</p>	

	<p>submitted Visual Impact Assessment is inadequate and fails to provide an adequate assessment of the impact of the proposal of views and vistas obtained from both private residences and the public domain. It does not provide any assessment which refers to the established Planning Principles developed by the Court or demonstrate the full impacts in terms of view loss from either private residences or the public domain.</p> <p>(f) <i>to provide opportunities for a range of housing choices, including affordable and adaptive housing, in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities.</i></p> <p>Comment:</p> <p>While the proposal provides some three different dwelling sizes in terms of the number of bedrooms in the apartments, it does not comply with the minimum of 25% of all dwellings achieving the “silver performance level” contained in Cl. 6.20 of the BVLEP (as gazetted 5 July 2024). The submitted Access Report also appears to relate to a superseded version of the architectural drawings.</p> <p>The application also fails to adequately demonstrate how the proposal will impact on local community facilities or services, public transport (especially during peak times) or whether the future restaurant and café will impact on the existing town centre. No evidence has been provided to even demonstrate the likely economic impacts (positive or negative) of a restaurant outside of the town centre.</p> <p>(h) <i>to identify and conserve the Aboriginal and European cultural heritage of Bega Valley.</i></p> <p>Comment:</p>	
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	<p>The proposal has failed to adequately consider the impacts of the development on the adjacent Heritage Conservation Area. The proposal has not provided an adequate Aboriginal Archaeological Due Diligence Assessment, as outlined in the Information Request, referring to the proposal as a "recreational complex", forming an opinion that is based on plans that are inconsistent with the proposal before the Panel and long-since superseded statutory provisions.</p> <p>It also fails to consider works outside the Site (such as the works to Weecoon Street and stormwater devices within Yallumgo Cove). The report also refers to incorrect details regarding the existing pebble shoreline and the MHWL.</p> <p>(i) <i>to restrict development on land that is subject to natural hazards.</i></p> <p>Comment:</p> <p>The application has failed to demonstrate that the Site and proposed development will not be adversely affected by coastal hazards.</p> <p>(j) <i>to ensure that development has minimal impact on water quality and environmental flows of receiving waters.</i></p> <p>Comment:</p> <p>The proposal has not demonstrated that the proposed stormwater infrastructure will be adequately designed or located so as not to have an adverse impact on existing terrestrial or marine vegetation or coastal processes, appearing to be located below the MHWL and outside the Site's boundaries, which owner's consent from the NSW Roads and Maritime Services in the form of a Permission to Lodge application has not been obtained.</p>	
2.1 Zoning	The site is zoned MU1 - Mixed Use. As noted above, the development incorporates a 3 lot Torrens title	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p>

	subdivision, construction of a mixed use building containing a residential flat building, the commercial premises and ancillary car parking. The proposed development, inclusive of its various elements, falls under Item 3 – Permitted with consent, both discretely as a “car park” and as “Any other development not specified in Item 2 or 4” in the Land Use Table. There are no components of the proposal that are specifically identified as a prohibited use.	N/A <input type="checkbox"/>
2.3 Zoning Objectives	<p>The objectives of the MU1 - Mixed Use zone are:</p> <ul style="list-style-type: none"> • <i>To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</i> • <i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i> • <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> • <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i> • <i>To enable residential development that contributes to a vibrant and active centre and is consistent with the Council’s strategic planning for residential development in the area.</i> <p>The proposed land uses <i>per se</i> are not inconsistent with the zone objectives. However, the inconsistency in the application seeking consent for commercial tenancies for future use as a restaurant and café without providing adequate spatial or operational details means that the proposal cannot conclusively demonstrate the proposal is consistent with the zone objectives.</p> <p>Furthermore, the proposal, which is at significant odds with the established strategic planning framework for the locality via the Snug Cove Masterplan, show that it is inconsistent with the objective that “...residential</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

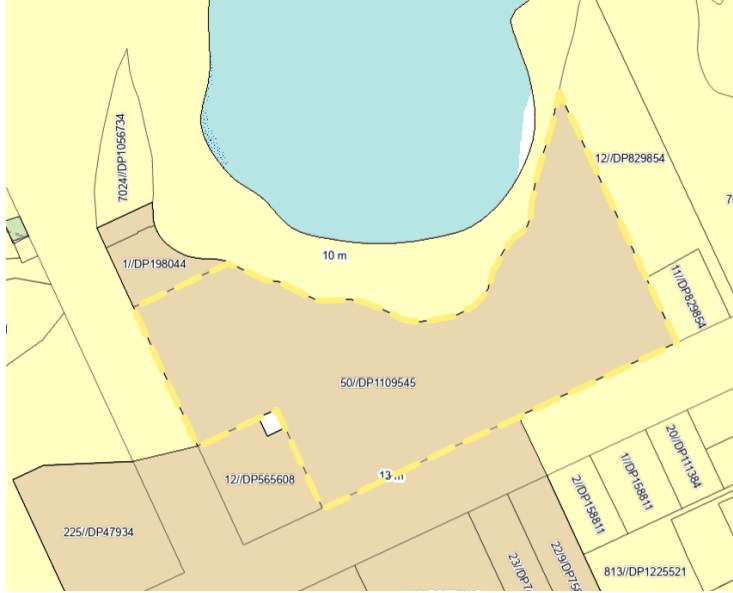
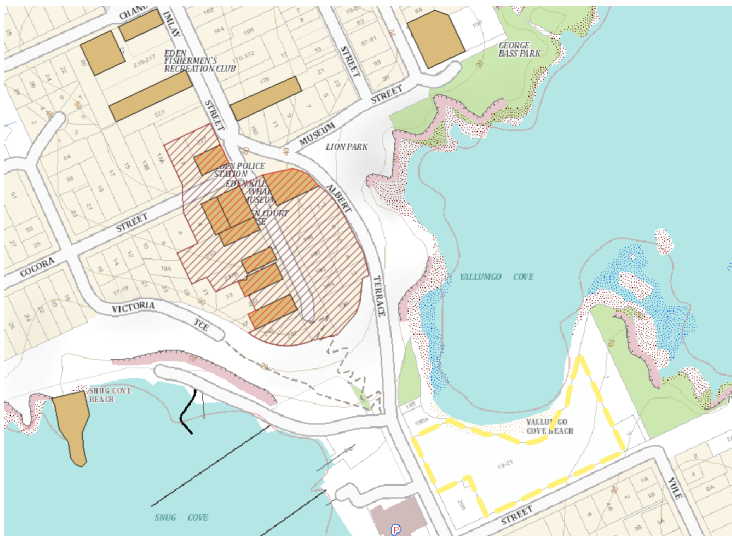
	<i>development ... contributes to a vibrant and active centre and is consistent with the Council's strategic planning for residential development in the area."</i>	
4.1 Minimum Subdivision Lot Size	<p>What is the required Minimum Allotment size?</p> <p>No minimum lot size required for this Site.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
4.3 Height of Buildings	<p>Maximum permitted: 13m</p> <p>Proposed (as stated in the SEE): 17.39m</p> <p>Proposed (as per stated RLs): 19.305m</p>  <p>The majority of the northern tower exceeds the 13m height limit while the NW portion of the southern tower is in breach. The 3D drawings demonstrating the application of the height plane across the Site does not appear to correlate to the height plan shown dotted in red on the elevations.</p> <p>Additionally, the height plane shown dotted in red on the elevations does not appear to correlate with the adjoining elevations – for example the northern and western elevations as shown in Figure 32 below.</p> <p>The scale of the development vs the small size of the height plane diagrams (which lack adequate levels) makes it difficult to accurately determine the true extent of the breach.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

FIGURE 32: BUILDING HEIGHT PLANE ANOMALIES



<p>4.4 FSR</p>	<p>What is the maximum FSR permitted?</p> <p>No maximum FSR for this Site.</p> <p>Proposed: 0.44:1</p> <p>The calculations exclude the storage area on the southern side of the garage however this is unlikely to result in the FSR changing in any significant manner.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
<p>4.6 Exceptions to Development Standards</p>	<p>Is a Cl. 4.6 submission relied upon?</p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>What is the Development Standard to be varied?</p> <p>Cl. 4.3 - Height of Buildings</p> <p>Can the submission be supported?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>See assessment in Table 3 below in relation to Clause 4.3 – Height of Buildings.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
<p>5.10 Heritage Conservation</p>	<p>Is the Site a heritage item/ Conservation Area?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p>

	<div>Item <input type="checkbox"/> HCA <input type="checkbox"/></div> <div>With respect to European cultural heritage, neither the Site nor the immediate surrounding area are listed as heritage items or within a Heritage Conservation Area (HCA). However, the Southern end of Imlay Street contains a number of Items of Local Significance and contains the South Imlay Street HCA.</div> <div>The submitted SEE contains essentially dismisses any impact of the proposal on the heritage values of the HCA. The SEE has not adequately demonstrated there will be no adverse impacts.</div> <div></div>	N/A <input type="checkbox"/>										
	<div>Aboriginal Cultural Heritage:</div> <div>The Due Diligence Code of Practice for the Protection of Aboriginal Objects NSW (DDCP) process has been undertaken as per the following:</div> <table><tr><th>Due Diligence – Step 1:</th><th>Comment:</th></tr><tr><td>Will the proposal disturb the ground surface or any modified trees? (Note: considered potential for tree root impacts)</td><td>Yes – within former oil and fuel storage facility where the ground shows evidence of modification.</td></tr><tr><th>Due Diligence – Step 2a:</th><th>Comment:</th></tr><tr><td>Is the site listed and described in LEP Schedule 5 as an Aboriginal Place of Heritage Significance?</td><td>Not listed</td></tr><tr><td>Is the site mapped within the AHIMS</td><td>– no sites or places within 200m.</td></tr></table>		Due Diligence – Step 1:	Comment:	Will the proposal disturb the ground surface or any modified trees? (Note: considered potential for tree root impacts)	Yes – within former oil and fuel storage facility where the ground shows evidence of modification.	Due Diligence – Step 2a:	Comment:	Is the site listed and described in LEP Schedule 5 as an Aboriginal Place of Heritage Significance?	Not listed	Is the site mapped within the AHIMS	– no sites or places within 200m.
Due Diligence – Step 1:	Comment:											
Will the proposal disturb the ground surface or any modified trees? (Note: considered potential for tree root impacts)	Yes – within former oil and fuel storage facility where the ground shows evidence of modification.											
Due Diligence – Step 2a:	Comment:											
Is the site listed and described in LEP Schedule 5 as an Aboriginal Place of Heritage Significance?	Not listed											
Is the site mapped within the AHIMS	– no sites or places within 200m.											

	and Aboriginal Place Buffer overlay/s? (Check Councils cultural mapping layers and ensure the cultural landscape level is reviewed – approx. 2km to 5km radius around the site).	Located within High Sensitivity mapped area.
	AHIMS search (Valid for max. 12 months):	Noted in the applicant's assessment.
	Is there any other sources of information available? (e.g. local knowledge, verbal correspondence, written reports, previous studies)	None known
	Due Diligence – Step 2b -	Comment:
	Is the site located:	
	Within 200m of waters? <i>Note: "Waters' means the whole or any part of: any river, stream, lake, lagoon, swamp, wetlands, natural watercourse, tidal waters (including the sea). Note: the boundary or tidal waters is defined as the high water mark."</i>	The Site is located immediately next to Yallumgo Cove.
	Within a sand dune system? <i>Note: "Refers to sand ridges and sand hills formed by the wind, usually found in desert regions, near a lake or in coastal areas. In areas of western NSW, windblown dunes can occur along the eastern edges of ephemeral lakes (called lunettes dunes). They can also occur along the banks of rivers."</i>	The Site is not within a dune system.
	On a ridge top, ridge line or headland?	The Site is on a small headland..


	Within 200m below or above a cliff face?	The Site is not within 200m of any cliffs.
	Within 20m of or in a cave, rock shelter, or a cave mouth and is on land that is not disturbed land?	The Site is not within 20m of any known caves.
	Due Diligence recommendation:	The proposal has not provided an adequate Aboriginal Archaeological Due Diligence Assessment, as outlined in the Information Request
5.21 Flood Planning	<p>The Site is not mapped as being flood prone, however, anecdotal evidence notes observations that coastal inundation of the lower, western section of the Site has occurred with ocean storm waves overtopping the small informal rock revetment and crossing Imlay Street at a level of about 3m AHD, flowing towards the Snug Cove boat ramp. These observations are addressed in the Coastal Risk Assessment, which has recommended a number of measures such as seawalls and a wave reflector be implemented. The submitted plans do not demonstrate such measure have been adopted.</p> <p>Subclause 2 states as follows:</p> <p>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <p>(a) <i>is compatible with the flood function and behaviour on the land, and</i></p> <p>(b) <i>will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</i></p> <p>(c) <i>will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</i></p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>(d) <i>incorporates appropriate measures to manage risk to life in the event of a flood, and</i></p> <p>(e) <i>will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</i></p> <p>Subclause 3 goes on to require the consent authority consider the following matters:</p> <p>(a) <i>the impact of the development on projected changes to flood behaviour as a result of climate change,</i></p> <p>(b) <i>the intended design and scale of buildings resulting from the development,</i></p> <p>(c) <i>whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</i></p> <p>(d) <i>the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</i></p> <p>Having regard to the issues raised previously with regard to the Coastal Risk Assessment, the Panel cannot be satisfied that the Site and the development in its current form, will not be adversely affected by coastal inundation or that the proposal will not adversely impact on adjoining properties.</p>	
6.1 Acid Sulfate Soils	<p>Is the Site mapped as containing acid sulfate soils?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>However, the Snug Cove Masterplan indicates that Acid Sulfate Soils may be present and accordingly should be tested for. No such tests have been provided.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
6.2 Earthworks	<p>Does the proposal seek to undertake earthworks?</p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>Subclause (3) requires the consent authority consider the following matters:</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>(a) <i>the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal is likely to disrupt existing drainage patterns and a new stormwater drainage system is proposed. The proposed level spreader is of concern as it will result in a number of trees to be removed within the significant coastal heath bushland that has not been evaluated.</p> <p>The Site contains a number of contaminants, which are also evident in the ground water. There is the risk that bulk earthworks, which also proposes to reuse excavated material within the Site could be spread, noting that a Remediation Plan has not been provided.</p> <p>(b) <i>the effect of the development on the likely future use or redevelopment of the land.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal is considered to be an unacceptable response to the site conditions, the sensitive coastal location and incompatible with the surrounding built typology and natural form. The drawings indicate excavation to an approximate depth of 9.51m below existing ground level in the eastern corner and filling in places of up to 2.99m, including within the road reserve for Weecoon Street. The proposal is not consistent with the established planning controls and the proposed earthworks are inconsistent with good planning outcomes for development on this Site.</p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The DSI notes that despite previous remediation, the Site is still impacted by contaminants that pose a risk to human health and/ or the</p>	
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	<p>environment, requiring remediation. A Remediation Action Plan is necessary prior to a favourable determination, noting that the majority of the fill material is to be placed within the Weecoon Street road reserve and the western and northern flanks of Stage 1. Any legacy contamination issues could potentially then be transferred to the public.</p> <p>(d) <i>the effect of the development on the existing and likely amenity of adjoining properties.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal would potentially affect the amenity of a wide area during the construction phase with a significant number of truck movements through the town to an unknown disposal site that could be a significant distance away.</p> <p>In terms of operations, the lack of coherent and consistent documentation regarding view loss and visual impact, traffic movements, parking, access, public/ private access and movement, waste management, deliveries and service vehicles and privacy controls means that the likely effect on adjoining properties will be unacceptable.</p> <p>(e) <i>the source of any fill material and the destination of any excavated material.</i></p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal intends to reuse excavated material, some of which at present appears to be contaminated. The proposal does not specify the location of off-site disposal of any excavated material (including contaminated soil and water), or document how it will be transported there.</p> <p>(f) <i>the likelihood of disturbing relics.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal has potential to disturb relics and an unexpected finds protocol was requested given the extensive earthworks proposed.</p>	
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	<p>(g) <i>the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The Site neither contains nor is adjacent to a waterway or drinking water catchment. Given its proximity to the coastline, the Site is considered to be an environmentally sensitive area. The proposed temporary construction measures to manage stormwater are not acceptable as the proposed sediment basin is to be located within land below the MHWL and therefore subject to wave action and the risk of sediment entering Yallungo Cove.</p> <p>(h) <i>any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The design of the proposal fails to avoid, minimise or mitigate any adverse impacts.</p> <p>Accordingly, the Panel cannot be satisfied that the proposed earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p>	
6.4 Coastal Risk Planning	<p>A portion of the Site is below the 3m AHD contour. As noted previously, the submitted Coastal Risk Assessment is inadequate and the Panel cannot be satisfied that the proposal:</p> <p>(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and</p> <p>(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p>(c) incorporates appropriate measures to manage risk to life from coastal risks, and</p> <p>(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, or</p> <p>(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.</p>	
6.5 Terrestrial Biodiversity	<p>Will any land mapped terrestrial biodiversity be affected?</p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> 	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
6.5 Terrestrial Biodiversity	<p>The northern portion of the Site is mapped as containing terrestrial biodiversity. The Flora and Fauna Assessment states that the majority of the vegetation within the mapped area is to be retained. This however, is in direct contradiction to the Arboricultural Impact Assessment, which states that only 3 of the 40 trees within this part of the Site are to be retained. That report also states <i>"...there are additional trees that have not been counted nor assessed that will be required to be removed due to development impacts."</i></p> <p>The Arboricultural Impact Assessment indicates that the underlying basis for the removal of the vegetation is that it lies within the footprint of the development. The Flora and Fauna Assessment states on p.4 that <i>"Assessment of the Proposal against the provisions of the relevant sections of the LEP concludes that the Proposal</i></p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	<p><i>is consistent with the minimise and mitigate provisions listed for this protected area type.”</i> The assessment provided on pages 33 – 34 of the Flora and Fauna Assessment concludes that despite failing to satisfy Cl. 6.5(a) of the BVLEP, the majority of the vegetation will be retained. The report fails to provide any evidence to substantiate this claim, nor are any diagrams clearly showing where the retained vegetation is located.</p> <p>Notwithstanding this, Clause 6.5(3) requires a consent authority consider the following matters:</p> <p>(a) <i>whether the development is likely to have—</i></p> <p>(i) <i>any adverse impact on the condition, ecological value and significance of the fauna and flora on the land.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The Site contains two distinct Plant Community Types - the Far Southeast Coastal Lowland Heath and the Southern Lower Floodplain Freshwater Wetland, which is associated with one threatened ecological community (TEC) known to occur on the locality, <i>Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions</i>. This TEC is listed as endangered under the Biodiversity Conservation Act 2016. However, the Flora and Fauna report claims the vegetation recorded on site does not meet all the criteria for the TEC.</p> <p>Figure 25 above identifies the trees within the Coastal Heath to be removed, noting that an unknown quantum of additional vegetation will be removed as a result of the proposed level spreader, of which there has been no assessment by the applicant. The retention of the Coastal Heath is considered to be significant for amenity and ecological reasons, noting that the Snug Cove Masterplan seeks to retain and manage the vegetation.</p>	
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	<p>(ii) <i>any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna.</i></p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>The retention of the vegetation is not tied to any particular habitat grounds.</p> <p>(iii) <i>any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The removal of the vegetation would fragment and diminish the scenic, landscape and amenity value of the Site.</p> <p>(iv) <i>any adverse impact on the habitat elements providing connectivity on the land.</i></p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p> <p>There does not appear to be any particular habitat elements however the vegetation is intrinsic to the coastal landscape value of the Site.</p> <p>(b) <i>any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>The proposal does not incorporate any such measures. The assessment undertaken does not provide a qualitative assessment of the retention of the vegetation for its landscape value. The applicant was requested to provide an assessment using the STARS methodology, which was developed by the Institute of Australian Consulting Arborists (IACA) to enable the landscape significance of vegetation to be determined, however has declined to do so.</p> <p>The Information Request issued on 31 July 2024 also sought to clarify the conflicting statements between the Flora and Fauna and Aboricultural</p>	
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	Impact Assessment reports. The applicant's response that no additional information would be provided means that, based on the information available, the Panel cannot be satisfied the proposal will maintain terrestrial biodiversity by protecting flora and fauna or any dependent ecological processes or encourage the conservation and recovery of native flora and fauna or their habitats.	
6.19 Diverse Housing	<p>Clause 6.19 was gazetted into BVLEP 2013 on 5 July 2024. The application proposes:</p> <ul style="list-style-type: none"> • 13 x 1 Bedroom Apartments (23%) • 38 x 2 Bedroom Apartments (67%) • 6 x 3 Bedroom Apartments (10%) <p>Will at least 20% of the dwellings be studio dwellings or have 1 bedroom and 1 bathroom, and have a maximum GFA of 55m²?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>While 23% are single bedroom dwellings, all exceed the GFA, with the smallest being 70m².</p> <p>Will at least 20% of the dwellings have 2 bedrooms and 1 bathroom, and have a maximum GFA of 75m²?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>While 67% are 2 bedroom dwellings, all except one dwelling (Unit 105) exceed the GFA, with the smallest non-compliant dwelling being 76m².</p> <p>Noncompliance with the GFA does not necessarily mean that the dwellings do not meet the housing needs of current and future residents of Bega Valley, however larger dwellings, particularly in locations with ocean views typically command a higher price, which may not be within the reach of residents.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
6.20 Adaptable Housing	<p>Clause 6.20 was gazetted into BVLEP on 5 July 2024.</p> <p>Cl. 6.20(3) applies to "prescribed residential flat building". Accordingly, at least 25% (or 14) dwellings</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

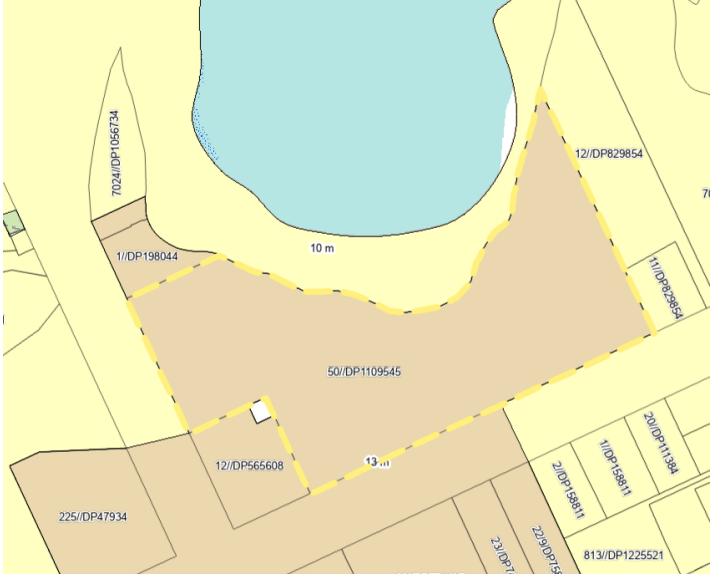
	should meet the silver performance level. The application however does not comply, proposing only 12 adaptable dwellings (21%).	
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TABLE 3 – CLAUSE 4.6 ASSESSMENT

Considerable caselaw has evolved around Clause 4.6 with changes implemented by the Department of Planning on 1 November 2023. Given the lodgement date, the Clause 4.6 submission must address the revised statutory requirements. Table 3 has been prepared to assess the submitted variation in line with the Department of Planning and Environment's *Guide to Varying Development Standards* (November 2023).

Table 3:

Relevant Consideration:	Response:
Has a written request been submitted as per Cl. 35B of the EP&A Regulation 2021?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Is the control to which the variation relates, a development standard?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Does the development standard specifically exclude the operation of Cl. 4.6?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
What is the development standard being varied?	Clause 4.3 – Height of Buildings – Bega Valley LEP 2013
What is the numerical value of the development standard?	Maximum permitted height: 13m

Relevant Consideration:	Response:
	
<p>What is the difference between the development standard and the proposal?</p>	<p>Maximum permitted height: 13m</p> <p>Proposed (as per the SEE): 4.39m or 33.8% (17.39m)</p> <p>Proposed (as per plans): 6.31m or 48.5% (19.31m)</p> <p>The majority of the northern tower exceeds the 13m height limit while the NW portion of the southern tower is in breach.</p>
<p>Has the submission provided a visual representation of the variation?</p> <p>Are the details legible?</p>	<p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The scale of the building height planes and elevations as presented on the plans obscures much of the detail and the lack of sufficient levels or dimensions means that verifying the accuracy of the applicant's claim is difficult. The statements made in the SEE regarding the exceedance of the maximum building height cannot be supported when the levels provided are examined.</p> <p>Further, the 3D drawings demonstrating the application of the height plane across the Site do not appear to correlate to the height plan shown dotted in red on the elevations and in Figure 32 above.</p> <p>Additionally, the height plane shown dotted in red on the elevations does not appear to correlate with the adjoining</p>

Relevant Consideration:	Response:
	<p>elevations – for example the northern and western elevations. The lack of adequate supporting drawings means that the Panel cannot be satisfied that the applicant has fulfilled its obligations with respect to Cl. 4.6(3)</p>
<p>What are the objectives of the development standard being varied?</p>	<p>(a) to ensure new development is appropriate in the context of the predominant form and scale of surrounding development, including present and likely future development, surrounding landforms and the visual setting,</p> <p>(b) to protect residential amenity, views, privacy and solar access.</p> <p>The applicant's submission misquotes Objective (a) of Cl. 4.3(1), stating instead that it is:</p> <p><i>“(a) to retain the existing character and landscape of the locality and to encourage a low-set building form”.</i></p>
<p>Does the proposed variation satisfy the Objectives?</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The proposal is inconsistent with the existing built form and desired future character, as expressed in the area-specific Snug Cove Masterplan with respect to building height, bulk, mass and scale. The proposal has not been formulated using accurate or consistent documentation and lacks significant information to demonstrate how it will operate in the context of the surrounding development.</p> <p>The proposal also requires significant modification of the Site in order to be built and will result in the loss of vegetation identified for protection. The proposal also fails to demonstrate that it will provide adequate levels of internal amenity or that it will not adversely affect the views and privacy of adjoining properties.</p> <p>The information provided also fails to accurately and adequately demonstrate the impact on the landform of the coastline or views of and to the foreshore from the public domain. Overall, the information provided only serves to</p>

Relevant Consideration:	Response:
	<p>demonstrate negative impacts in this respect.</p> <p>As noted above, the applicant's submission misquotes Objective (a) of Cl. 4.3(1). The applicant's submission approaches this objective incorrectly as the objective is specifically worded to ensure that new development is <i>"appropriate in the context of the predominant form and scale of surrounding development, including present and likely future development, surrounding landforms and the visual setting"</i>.</p> <p>The submission argues that <i>"...objective (a) is irreconcilably incompatible with the development standard"</i> because of the steep slope of the Site. It also submits that the objectives are achieved because <i>"the proposed development delivers lower scale built form adjacent to and opposite existing lower scale residential development and the public domain along Weecoon Street, while on balance providing a range of 2 to 5 storeys across the site in response to the severe slope."</i></p> <p>The proposal's failure to respond to the site itself and the surrounding context is evident in the Information Request. Critically, this identifies:</p> <ul style="list-style-type: none"> • Significant disparities between the supporting documents. • Numerous areas where information is missing/ in error/ or the architectural plans contradict supporting studies. • That the visual impact assessment fails to consider views from the water at all or reflect the Planning Principles established in <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140 and <i>Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor</i> [2013] NSWLEC 1046. • Multiple aspects of the development that demonstrate the proposal's incompatibility with the surrounding area including, height, setbacks, inadequacy of the landscaping, excessive cut and fill

Relevant Consideration:	Response:
	<p>and placement of retaining structures within the road reserve, vegetation removal, the relationship between finished ground level and site boundaries, or the proximity of the works to the MHWM.</p> <p>As demonstrated by the extent of non-compliances, information, amendments, corrections and revisions required in the Information Request, the proposal falls well short of being able to demonstrate an acceptable level of compatibility with the surrounding area, as required by the objectives. Furthermore, while Drawing DA003 'Site Analysis' provides sketches regarding 'Public Domain and Access', 'Land Use and Interface' and 'Built Form and Urban Design', there is little evidence of how these were identified, analysed and applied to the design, as would be expected when undertaking a Site and Context Analysis. Rather, these diagrams appear to be a "tick a box" exercise, lacking any evidence of how they were applied to derive the design presented with the DA.</p>
Relevant Provision:	Response:
<p>Is Council satisfied the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances?</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The <i>Guide to Varying Development Standards</i> (November 2023) notes that the "unreasonable or unnecessary" test was established in <i>Wehbe v Pittwater Council</i> [2007] NSWLEC 827) and can be summarised as follows:</p> <p><i>Compliance with the development standard is unreasonable or unnecessary if the:</i></p> <ol style="list-style-type: none"> 1. <i>objectives of the development standard are achieved notwithstanding the non-compliance</i> 2. <i>underlying objective or purpose is not relevant to the development</i> 3. <i>underlying objective or purpose would be defeated or thwarted if compliance was required</i> 4. <i>development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard</i>

Relevant Consideration:	Response:
	<p>5. <i>zoning of the land on which the development is proposed was unreasonable or inappropriate.</i></p> <p>The applicant's submission follows the 'First Wehbe way' in the 5-Part Test, claiming that the proposal is not inconsistent with the objectives of the development standard because <i>"there is no compatibility between development standard objective (a) and the development standard itself."</i></p> <p>The justification submitted by the applicant is provided as follows:</p> <p><i>The proposal achieves the objectives of the Zone.</i></p> <p><i>As detailed above, this proposal achieves the objectives of the zone. That is, proposed development contributes the desired residential component of the future mixed-use development, enabling the supporting of the future centre consistent with Council's strategic planning for residential development in the area.</i></p> <p><i>The proposed mix of apartment sizes in the form of 1, 2 and 3 bedroom apartments including adaptable units will aid in providing broader housing choice for the local community and further opportunities for an integrated mix of housing and household types, within walking distance of a future centre and improved public transport which will increase commensurately to the growth of the centre.</i></p> <p><i>The proposal achieves the objective of clause 4.3</i></p> <p><i>As detailed above, this proposal achieves the objectives of the development standard to the extent that objective (a) is irreconcilably incompatible with the development standard. Notwithstanding, the proposed development delivers lower scale built form adjacent to and opposite existing lower scale residential development and the public domain along Weecoon Street, while on balance providing a range of 2 to 5 storeys across the site in response to the</i></p>

Relevant Consideration:	Response:
	<p><i>severe slope.</i></p> <p><i>Otherwise, the proposal is designed to be compatible with the desired future character of the locality, does not unreasonably impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises.</i></p> <p>In responding to the claim that the height variation should be permitted because the development achieves the objectives of the zone, this is not supported. The proposal is inconsistent with the strategic planning that has been undertaken for residential development in the area via the Snug Cove Masterplan. The Masterplan provides details controls relating to the height and number of storeys, bulk, scale, building footprints, retention of vegetation and view corridors.</p> <p>The applicant's submission also infers that the zone objectives include providing improved housing choice. This is not an explicitly stated objective in the BVLEP and while this may be a worthy aspiration, it is not an objective of the MU1 Mixed Use Zone. Further, the provision of an adequate dwelling mix is not dependent on exceeding the building height standard.</p> <p>Lastly, with respect to the claims made that the proposal achieves the objectives of the Height of Buildings Development Standard, this has already been discussed in the preceding sections of this Table.</p> <p>As noted above, based on the significant lack of information, the conflicting documentation provided to date, non-compliance with the relevant planning controls in force and failure to identify the correct objectives relevant to the development standard, the Panel cannot be satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary.</p> <p>The applicant's submission does not identify or rely on any other Wehbe method with respect to Cl. 4.6(3)(a) of the</p>

Relevant Consideration:	Response:
	BVLEP2013.
<p>Is Council satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard.</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The applicant's submission provides an explanation of what they perceive environmental planning grounds to be, stating:</p> <p><i>In the absence of a legislative or other definition we adopt a definition for "environmental planning grounds" as 'any matter arising from consideration of either Section 4.15 of the EP&A Act 1979 or its Objectives which in the circumstances of the particular development on the particular site, warrants variation from the development standard'.</i></p> <p>The applicant's position is not supported. Section 2.6 of the <i>Guide to Varying Development Standards (November 2023)</i> states that environmental planning grounds "refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act." The Guide further states that the grounds must:</p> <ul style="list-style-type: none"> • be established by the facts of the request. • be sufficient to justify the contravention. • focus on the aspect of the development that contravenes the development standard, not the development as a whole. <p>The justification submitted by the applicant is provided as follows, with a response provided after each ground:</p> <p><u><i>Environmental Planning Ground 1 – Street Character</i></u></p> <p><i>The proposed development represents an excellent design outcome. The particular design, in the context of this particular site means that the excess height will not easily be perceived from the public domain given that the majority of the exceedance is well setback from the road and is essentially obscured by the compliant and significantly lower built form than which is allowable, and which is oriented to address the street and which appears as mostly</i></p>

Relevant Consideration:	Response:
	<p><i>a 2 / 3 storey building due to the severe cross-slope affecting the site.</i></p> <p><i>Furthermore, the environmental planning grounds which support variation to the standard in this instance are that the particular design in the context of this particular site means that the non-complying building height is not obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls.</i></p> <p><u>Comment</u></p> <p>The claim that the proposal represents an excellent design outcome is roundly disputed. As demonstrated above, the proposal does not appear to have undertaken a sufficiently detailed context and site analysis and the plans do not provide a suitable level of detail. The design ignores many elements of the Snug Cover Masterplan such as building height, massing and siting and accordingly, fails to provide an appropriate street character. Further, the proposal fails to provide adequate or accurate information such as the relationship between the building and the setbacks.</p> <p><u>Environmental Planning Ground 2 – Accessibility</u></p> <p><i>The proposed development contains eleven (11) adaptable units and provides accessibility across the development from outside of the site to within, including the basement, podium communal open space and each residential floor despite the severe slope which falls approximately 20m from east to north-west within the building footprint. Each residential tower is serviced by a lift, and it is considered that an alternative design would result in an inefficient (stepped down) design both from east to west and north-west, making the development unreasonably less accessible, and likely to need to contribute more site coverage through greater circulation areas. As compliance with the national building and accessibility standards are a prerequisite for this form of development it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional height, which is</i></p>

Relevant Consideration:	Response:
	<p><i>proposed and which arises as a result.</i></p> <p><u>Comment</u></p> <p>Firstly, the applicant's justification appears to confuse the provision of disabled access with the provision of adaptable housing. Regardless of whatever design is put forward by an applicant, it must satisfy the BCA requirements for disabled access. Compliance with mandatory provisions is not a justifiable reason for breaching a height control.</p> <p>Secondly, the proposal fails to comply with Cl. 6.20(3) of the BVLEP as it does not meet the minimum of 25% of all dwellings achieving the silver performance standard.</p> <p>Thirdly, the submission tries to argue that adequate (horizontal) access could not be achieved unless the building breached a vertical standard. The height exceedance is exacerbated because the proposal ignores the constraints of the Site through extensive excavation, instead of adapting the design to the topography.</p> <p><u>Environmental Planning Ground 3 - Negligible amenity or visual impacts</u></p> <p><i>Numerically, the maximum building height exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given that the overall scheme provides an appropriately sized building complying with setbacks and with a lower than anticipated built form along Weecoon Street, significantly lower than the allowable 13m maximum height.</i></p> <p><i>It is argued that the exceedance in height does not cause unreasonable impact especially with respect to visual impact and overshadowing which satisfies objective (b) of the standard, and any impact on the adjoining land to the east is demonstrated in accompanying shadow diagrams, to be reasonable and not unanticipated. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional</i></p>

Relevant Consideration:	Response:
	<p><i>height, which is proposed.</i></p> <p><u>Comment</u></p> <p>As discussed previously, the claims made by the applicant with respect to the compatibility of the proposal with the surrounding context are not supported. The proposal is not supported by adequately detailed drawings, consistent documentation or assessment that meets the recognised standards. The Information Request identified a significant quantum of information was necessary to accurately form the conclusion that the proposal had negligible amenity or visual impacts. Given that the applicant has declined to provide any of the requested information, the Panel cannot be satisfied that adequate environmental planning grounds have been established.</p> <p><u>Environmental Planning Ground 4 – Site topography affectation</u></p> <p><i>The proposed development is viable despite the severe slope towards the west and north-west and south falling from the adjoining site to the east and the Weecoon Street frontage along the southern boundary of the site towards Yallumgo Cove.</i></p> <p><i>The proposed design and built form provides a positive response to the slope which effects the entirety of the site. That is, although complying in the majority with the allowable maximum height, the upper level exceeds this along primarily to the west and north of the site. The site topography is the major contributing factor in the development standard exceedance, of a development which manages to resolve the difficult issues of access into the site (both pedestrian and vehicular) while managing to respond to the scale of adjoining land building forms along Weecoon Street. In this instance, the design response to the site constraint although minor, positively resolves the consideration of those site affectations.</i></p> <p><i>It is argued that to not respond in this manner would undermine the intent of the key principles of the SEPP No.65 and the ADG, and would result in a more impoverished built</i></p>

Relevant Consideration:	Response:
	<p><i>form from that proposed. The outcome would result in adverse environmental planning consequences being that of less housing development yield, where the zoning objectives seek more opportunities for that form of development and where the development controls seek them to be located within the site.</i></p> <p><u>Comment</u></p> <p>The design and built form of the proposal does not have a “positive response to the slope” – the response is to excavate almost the entire footprint and fill that which is not excavated. The development makes no attempt to step down Weecoon Street from east to west and it maintains the levels across the entire build, making no attempt to establish different podium or tower levels. Although lacking in adequate detail, Figure 32 above demonstrates how the red dashed building height plane follows the topography, which the built form itself does not.</p> <p>The proposal also fails to adequately address the movement of people and vehicles across the Site. It lacks adequate details on how the public, communal and private spaces are to be managed. It lacks any details on how public access to the foreshore will be provided (both through the staging and in final occupation). It also lacks adequate wayfinding measures to enable residents, visitors and the public to move safely and efficiently through the Site – for example, the route that pedestrian visitors and emergency service personnel (such as paramedics with a stretcher) would take when accessing the ground floor apartments 01-04 or if visitors to these units sought access to any of the visitor parking spaces on the Site. The proposal also fails to adequately demonstrate the extent to which the central stairs along the proposed western boundary would be constructed in Stage 1 or how patrons of the restaurant/ café would move between these spaces and the allocated car parking.</p> <p>In terms of parking and vehicular access, the Traffic and</p>

Relevant Consideration:	Response:
	<p>Parking Assessment contains significant omissions in the dataset of traffic movements, leading to a poor understanding of the existing and likely future traffic patterns and demands. The proposal also seeks a reduction in the commercial parking allocation (notwithstanding that approval of the restaurant and café are not specifically sought in this DA), claiming without substantiation, that at least 50% of the patrons would come from the proposed development.</p> <p>Vehicular access for all resident, commercial tenant/ restaurant staff and patrons, as well as visitors and maintenance vehicles for the entire development is based on a singular access point. The awkward alignment of the access, lack of safety devices, potential for conflict with reversing cars and physical disconnect between the restaurant parking and pedestrian access is such that the proposal offers substandard and unacceptable access to the Site. Furthermore, the lower level delivery area implies that deliveries for the future restaurant must enter (and then leave) the secured car park, potentially causing conflict or delays between residents and delivery drivers.</p> <p>There is also a significant discrepancy between the Traffic and Parking Assessment and the Operational Waste Management Plan (OWMP) in terms of waste collection. The Traffic Assessment claims this will be done from the kerbside, while the OWMP states that a HRV would access both basement levels to collect bins. Neither report demonstrates that access to the basement levels by a HRV is possible or resolves how access through the private residential parking area would be obtained.</p> <p>In terms of inference that a compliant development would undermine SEPP No.65 and the ADG and create an "impoverished built form" caused by less yield, this is not supported. The submission puts forward no evidence that a compliant development would have such outcomes and in fact ignores some of the fundamental aims of planning controls to provide for sustainable development that protects the environment, promotes good design and</p>

Relevant Consideration:	Response:
	<p>amenity and promotes the orderly and economic use of the land by respecting its constraints and values.</p> <p>Overall, the applicant's submission fails to provide sufficient environmental planning grounds. Those that have been advanced are not established by any factual evidence. They do not demonstrate they provide any greater benefit other than what is normally expected of development and they do not relate in any significant capacity to the particular aspects of the height non-compliance. There has also been no attempt to relate the variation to the objects in section 1.3 of the EP&A Act.</p> <p>The submission also fails to justify the variation by demonstrating how it might respond to coastal hazards or inundation, provide or improve public benefits, such as reducing the footprint to provide a taller building to provide foreshore access, or to retain the important coastal vegetation which has biodiversity value.</p> <p>Accordingly, the Panel cannot be satisfied that the variation of the height standard meets the applicable statutory test.</p>
Is the "Public Interest Test" applicable?	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Development Applications submitted after 1 November 2023 no longer need to demonstrate the variation is in the public interest. Changes to the Standard Instrument have removed the "public interest test". Even though the submission addresses the public interest, no consideration of this element has been undertaken in this instance.</p>

5.2. DRAFT EPIs (s. 4.15(1)(a)(ii))

YES ☒ NO ☐ N/A ☐

Housing Diversity Planning Proposal – various additions to BVLEP 2013 resulting from Amendment No 43, which was gazetted (notified) on 5 July 2024 and introduced Clause 6.19 and Clause 6.20 in relation to Diverse Housing and Adaptable Housing, respectively.

5.3. DEVELOPMENT CONTROL PLAN (s. 4.15(1)(a)(iii))

Overview and General Comment:

From a statutory perspective, while not holding the same power of an LEP or SEPP, a DCP has an important role to play in the assessment and determination of a development

application. DCP's provide the guidance and controls necessary to effect the aims of the SEPPs and LEPs, they facilitate permissible development by helping to shape the space in which that development can be undertaken in a manner that ideally will not cause adverse impacts, and they seek to fulfill the particular objectives of each zone.

In this instance, the Bega Valley Development Control Plan 2013 (BVDCP) applies. An assessment of the relevant DCP provisions is provided in Table 4 below. The residential provisions are tempered somewhat by the relevant provisions of the Housing SEPP and the ADG and accordingly, the assessment below only addresses those provisions within the BVDCP that are not superseded by a higher order planning Instrument.


TABLE 4 – COMPLIANCE ASSESSMENT - BEGA VALLEY DEVELOPMENT CONTROL PLAN 2013 (BVDCP):

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Section 2 – Commercial and Industrial Development		
2.3 Eden Town Centre	<p>The site is not located within the Eden Town Centre, however Figure 2.4 refers to the Snug Cove Masterplan.</p> <p>An assessment against the Snug Cove Masterplan is provided further below.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input checked="" type="checkbox"/></p>
Section 3 – Residential Development		
<p>3.1 – Residential Character Statements</p> <p>3.1.7 - Eden</p>	<p>Is the proposal consistent with the Existing Character Statement?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Is the proposal consistent with the Desired Future Character Statement?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The proposal results in a bulk, scale and height that is inconsistent with the existing coastal setting and well beyond that to be expected as a result of the Snug Cove Masterplan.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
3.2 – General Requirements	<p>Is the proposal consistent with the general objectives for residential development?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>As stated above, the proposal will have adverse</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
	impacts on the character of the area, conservation of the scenic qualities of the coastal landscape and foreshore, conservation of important views, vistas, landscapes and the relationships between places and the Harbour and visual impacts. The proposal lacks sufficient details to demonstrate that it is compatible with the surrounding context and is capable of being undertaken and operated in a manner that will not adversely affect the amenity of the surrounding area or residents of the buildings. The proposal has not adequately demonstrated the dwellings will achieve the required levels of amenity by way of solar access, private and communal open space, access control, acoustic and visual privacy and passive security and surveillance.	
3.3 Specific Requirements – Mixed Use Development 3.3.1 Design	Refer to assessment against the Housing SEPP and Apartment Design Guide, as well as the Information Request, which outlines the proposal's significant failures in this regard.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
3.3.2 Amenity	The proposal does not provide adequate information regarding the interface between residential units and the proposed restaurant and café, nor does it provide sufficient operating details of the proposed activities. Overall, as documented in the Information Request, the proposal fails to provide adequate or accurate information to enable a positive determination with respect to the provisions of S.3.3.2.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
3.3.3 Environment	Refer to assessment against the Housing SEPP and Apartment Design Guide, as well as the Information Request, which outlines the proposal's significant failures in this regard.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
3.3.4 Accessibility	The submitted BCA and Access reports are inadequate, in that they provide a detailed assessment of a component of the building (the restaurant) for which	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
	development consent is not sought under this application. The BCA report also fails to refer to the correct legislation and identifies a potential access restriction with non-compliant travel distances.	N/A <input type="checkbox"/>
3.4 Summary of Requirements	<p>Does the proposal achieve the relevant requirements?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p><u>Areas of noncompliance:</u></p> <p>External Wall – max. unbroken length exceeds 10m but plans lack adequate dimensions</p> <p>Fences – No details provided</p> <p>Open Space – the lack of adequate dimensions on the plans mean that compliance cannot be verified.</p> <p>Other requirements are already covered by the Housing SEPP and ADG.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
Section 5 – General Development		
5.1 Aboriginal Heritage	Refer to LEP assessment above.	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
5.2 Non-Aboriginal Heritage	Refer to LEP assessment above.	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
5.3 Access and Mobility	Refer to comments in relation to S. 3.3.4 above.	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
5.4 Social and Economic Impacts	The proposal triggers the need for a Social Impact Assessment to be prepared as the development proposes more than 20 dwellings. The application has not included an SIA and accordingly, fails to	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

	demonstrate that it will have acceptable social or economic impacts.	
5.5 Sustainable Design Principles	<p>The proposal triggers the need for a Sustainable Design Management Plan (SDMP) as the proposal is for a building of 4 or more storeys in height. The DA includes a Sustainable Design Management Plan that generally addresses the matters identified in the Table to S.5.5.1.1 of the BVDCP, however the disclaimer infers that there is no surety the SDMP will be implemented, stating:</p> <p><i>"The intent of the Sustainable design strategy is to demonstrate possible ESD strategies or targets that could be achieved based on further discussions with service consultants, performance modelling and a cost/benefit analysis of all items for consideration. It is not the intent of the strategy to provide certainty of performance instead identify sustainable opportunities that may be integrated in the design to increase benefits of design and provide higher performing buildings."</i></p> <p>The lack of any real commitment to ESD principles is also reflected in the failure of the proposal to reflect the Site's constraints.</p>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
5.6 Tree and Vegetation Preservation	<p>The Site is located within a non-rural zone and is greater than 1 Ha in area. The Flora and Fauna Report states that:</p> <p><i>"With regards to the Study Area, the Proposal does not meet condition one or two. As shown in the BVMTR, the minimum native vegetation clearing threshold for BAM entry for the Study Area is 0.25 ha. As discussed in Section 4.3 above, the Proposal does not exceed this level of native vegetation clearing. Also, with reference to the BVMTR, no part of the Study Area is mapped in the BVM. Finally, as discussed in Section 4.4, the Proposal is not considered likely to have a significant impact on any TEC, threatened species or threatened population listed under the BC Act and therefore would not trigger entry into the BOS under this pathway."</i></p>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>

	<p><i>Based on this assessment, the Proposal is not required to be assessed through a BDAR in accordance with the BAM."</i></p> <p>Notwithstanding the assessment provided, the proposal has not demonstrated the actual extent of vegetation to be removed. Given the inconsistencies identified between the Flora and Fauna Report and the Arboricultural Impact Assessment and lack of complete details on the architectural plans, it is possible that the extent of clearing is far greater than the report estimates.</p>	
<p>5.8 Planning for Hazards:</p> <p>5.8.1 – Flood Planning and 5.8.2 – Coastal Hazards</p>	<p>The Site is not mapped as being flood-prone land however the Coastal Risk Assessment indicates a portion of the Site is subject to coastal inundation and wave impacts. As noted above, the submitted documentation does not provide adequate information in relation to the nature of any proposed coastal management works, the expected impacts, or even the actual design solutions proposed.</p> <p><i>Extract from Bega Valley Shire Coastal Processes and Hazards Definition Study 2015 – 2050 and 2100 hazard extents</i></p> 	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
<p>5.8.3 – Contaminated Land</p>	<p>Refer to previous assessment above.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

5.8.5 – Climate Change	<p>The applicant has not provided any discussion with respect to climate change, although it is noted that the BVDCP contains no performance criteria with respect to this matter.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
5.9 Off Street Car and Bicycle Parking	<p>As noted above, the proposal does not provide adequate documentation with respect to the provision of car and bicycle parking. The submitted Traffic and Parking Assessment is significantly flawed and the request for a reduction in car parking for the restaurant/ café cannot be justified in any rational manner. Furthermore, the proposal has not demonstrated that:</p> <ul style="list-style-type: none"> • The car parking areas are well lit and visible to allow for surveillance. • Bicycle storage facilities are provided in a convenient location and be clearly visible and accessible. The facilities are provided on the First Floor however there is no clear way to access the street without potential conflict with cars entering or leaving the singular driveway. <p>The proposed commercial car parking spaces are not acceptable as they are located either side of the singular site entry point, are deficient in the overall number of spaces and lack any direct pedestrian access to the commercial tenancies.</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
5.10 – Subdivision Standards	<p>The application proposes three allotments which satisfy the minimum allotment size specified in the BVLEP.</p> <p>In terms of access, while Lots 2 and 3 are essentially residual allotments, each lot will be provided with an appropriate standard of legal and practical access.</p> <p>The proposal does not provide adequate information with respect to access and ownership of the foreshore. As identified in the assessment above, the proposal does not provide an adequate assessment of risks and natural hazards to the Site or adjoining properties as a result of this development.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

5.11 – Signage and Advertising	Refer to discussion above in the SEPP assessment.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
6 – Engineering requirements	<p>The development will impact public infrastructure and the environment and proposes mitigating works including road upgrades, new access, stormwater, water, sewer, and landscaping. Development Engineering have been unable to complete the assessment of the proposed development due to incomplete and inconsistent information within the development application. Further information relating to infrastructure (and other) issues was requested from the applicant on 31 July 2024.</p> <p>There is not sufficient information to fully understand the proposed developments impacts on public infrastructure and the environment. Nor is there enough information for development engineering be satisfied that these impacts can be appropriately managed.</p> <p>The following sections provide a summary of the unresolved engineering issues raised with the applicant to date. For all items further information was requested and has not been provided.</p> <p>Stormwater/ foreshore</p> <ul style="list-style-type: none"> • The Concept External Works Plan indicates 2.7m x 0.6m box culvert with an outlet and tidal gate is to be provided on the foreshore. These works appear to be at 0.6m AHD and it is noted that the Mean High Water Mark (MHW) is at 0.38m AHD. Notwithstanding that there are no details of any erosion/ scour prevention/ protection, the proposed works appear to be partly outside the Site and accordingly, consent from the Transport for New south Wales as the landowner is required but not provided. • The extent of foreshore works proposed as part of stage 1 (subject DA) is unclear. • Sheet 2 of 25 of the Civil Works Plan drawing set identifies a stormwater line passing through pits G4 to G9 with the section to the west of Pit G7 appearing to be outside of the Stage 1 area to 	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <input type="checkbox"/>

	<p>which this application relates, although appearing to serve the proposed building.</p> <ul style="list-style-type: none"> • Sheet 23 of 25 (Soil and Water Management Plan) indicates an energy dissipator is to be constructed as part of the temporary stormwater management measures. However, this structure appears to be outside the subject Site and below the MHWL, for which landowners consent from Transport for New South Wales is required. • Details of the measures to prevent the escape of pollutants and sediments from the temporary energy dissipator and sediment basin into Yallungo Cove during design storm events have not been provided. • The Civil Engineering Plans also indicate a level spreader is to be constructed in the northern corner of the Site, within the existing coastal cliff-top vegetation to be retained. Based on the detail provided on sheets 5 and 20 of 25, the level spreader is approximately 20m long by 2m wide with the surrounding ground level filled to a depth of approximately 1.34m surface. Given that it is to be nestled in amongst trees, the installation will result in these few remaining trees being removed. The submitted supporting documents do not provide any assessment of the potential impact on that vegetation, changed hydrological regimes or stability of the nearby cliff face. • The Stormwater Management Study does not appear to take into account the functioning of the rain gardens or level spreader, their role in achieving water quality and quantity objectives or factor in maintenance activities, unlike the Stormfilter and Oceanguard devices. <p>Subdivision/ staging</p> <ul style="list-style-type: none"> • The Plan of Subdivision does not demonstrate how public access to and along the foreshore is to be achieved (e.g. dedication of land, creation of a ROW etc). • The staging is unclear. A staging plan was requested that clearly identifies the entire area encapsulated in Stage 1 of the development and identifies any ancillary works such as stormwater drainage and water quality works, public access, augmentation of utilities, street tree planting, footpath and kerb and guttering and the like. 	
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	<p>Public traffic and transport impacts in construction and operation</p> <ul style="list-style-type: none"> • The submitted Traffic and Parking Assessment refers to a proposed restaurant, however this does not form part of the subject application and the report should be revised accordingly. • The Civil Works Plan identifies a minimum of 10,048m³ of excavated material to be carted off-site and depending on suitability of this material as fill, potentially 2,653m³ of incoming fill material. The submitted Traffic and Parking Assessment provides very little assessment of the potential impacts of trucks on the local road network with respect to the volume of excavated material going to or from the Site or other construction traffic. Further, there has been no consideration of the potential haul route through the Eden town centre and beyond, no details of the destination of the fill material (whether the material is contaminated or not) or potential sources of imported fill material and potential haulage routes. • Consideration of the impacts of construction activities at the development assessment stage is required. The assumption that operational traffic numbers would be greater than construction traffic and therefore construction vehicles would not have significant adverse impacts is not supported. The position taken of the Traffic Consultant fails to recognise, for example, the inherent difference between a truck and dog combination taking excavation off the Site or cement trucks queuing prior to a major concrete pour and regular traffic. • The Traffic and Parking Assessment does not take into account peak times and events such as the arrival of cruise liners and the increased use of coaches and charter buses or peak weekly times such as on weekends. Further, it would appear that the modelling undertaken has been based on traffic counts obtained on only two weekdays with a single hour in the morning between 8am and 9am and a single hour in the afternoon between 3pm and 4pm. This is not considered to be sufficient in the context of the development proposed and the restricted access to the Site via Imlay Street. Accordingly, a significantly broader dataset of traffic movements is necessary, 	
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	<p>providing a more comprehensive understanding of the local network throughout the week, including weekends. Ideally, this should also be undertaken when a cruise ship is using the facilities at the adjacent wharf and/ or when public transport is operating in peak times.</p> <ul style="list-style-type: none"> • The Traffic and Parking Assessment states that the lack of significant public transport services is justification for not expanding or making provisions for additional services. However, taking into consideration the additional residential units and likely commercial facilities (as well as future stages), the argument presented cannot be supported. The application is not supported with any evidence such as liaison with public transport providers, taxi companies or community transport services or community surveys. • No SWEPT path analysis for access to the site and manoeuvring within the site, has been provided. <p>Resident and commercial access</p> <ul style="list-style-type: none"> • Vehicular access for all resident, commercial tenant/ restaurant staff and patrons, as well as visitors and maintenance vehicles for the entire development is based on a singular access point which incorporates a hard righthand bend that has to be negotiated just inside threshold of the driveway. There does not appear to be any devices such as mirrors, flashing lights or traffic lights to warn of on-coming vehicles or physical separation to prevent vehicles from drifting onto the wrong side of the driveway and causing collisions. No SWEPT path analysis has been provided to support the proposed configuration, • Immediately adjacent to the entry point a car space no. 1 for "restaurant use". All 10 of the "restaurant car parking spaces" are located in the vicinity of the single access point for residents and visitors on this and the lower level. Patrons using the restaurant parking, who are likely to be relatively unfamiliar with the access arrangements, will have to manoeuvre in or out of these spaces, which could occur blind of the operation of the security gates, especially in peak times. This restaurant parking is disconnected from the restaurant with pedestrian access arrangements unclear. It would appear that restaurant patrons 	
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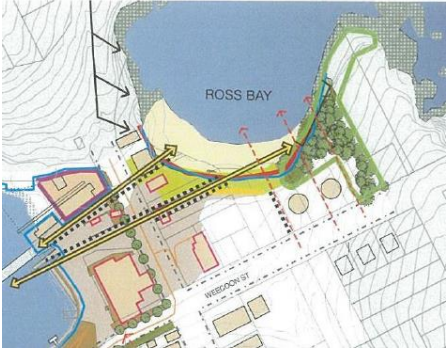

	<p>would have to exit the building onto the footpath (potentially via the driveway, causing conflict with vehicles) and then use a series of stairs and ramps, which is undesirable. Experience has shown that patrons will look for alternative parking closer to their destination or with a less complicated path of travel.</p> <p>Waste and service access</p> <ul style="list-style-type: none"> • The Traffic and Parking Assessment does not take into account the multiple times a week that resident and commercial waste vehicles and sanitary/ washroom servicing vehicles will need to access the Site, the potential impact on the functioning of the building and it's car parking areas while trucks are collecting waste or waiting to collect or the impact on the local road network by the additional HRVs/ service vans or pantechs. Access for emergency services also appears to have been overlooked. There is inconsistency between documents and access and servicing arrangements are unclear. Issues as follows: <ul style="list-style-type: none"> ○ Traffic and Parking Assessment states: <p>"Servicing of the Restaurant and Café will be undertaken either kerbside from Weecon Street for vehicles larger than an SRV vehicle able to enter the car park and utilise the deliveries bay within the car park. It is estimated that 80% of deliveries will be able to use the on-site delivery bay.</p> <p>Waste collection will be undertaken kerbside in Weecon (sic) Street by both Council and a private contractor once a week on alternating weeks."</p> <p>This is contrary to the Operational Waste Management Plan. The OWMP provides two options for the design and servicing residential waste bins, resulting in either a weekly or twice a week collection by a mix of Council and private contractors (3 times a week for food waste). The OWMP states that a 12.5m long HRV would access the sole access point and enter the "loading bay".</p> <ul style="list-style-type: none"> ○ On closer examination of the report and plans, it appears that both Council and 	
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	<p>private contractor's trucks are intended to enter into both levels of car parking, traverse through the residential parking area, reverse into the two pick up areas (both not much bigger than a standard car space) and then leave the building. No details are provided on where the trucks would park when accessing the eastern waste storage area.</p> <ul style="list-style-type: none"> ○ The OWMP suggests that a building manager would be responsible for collecting bins from the waste rooms on each level and transporting them to the loading bay on multiple occasions each week. The TPA indicates the bins are to be placed kerbside but no details of bin location or if all bins can be accommodated, have been provided. ○ No HRV or other SWEPT path analysis has been provided to support the proposed configuration 9 which is unclear). ○ Section 3.0 of the submitted Operational Waste Management Plan (OWMP) refers to the Bega Valley LEP 2015 which does not exist and incorrectly states that the OWMP is a requirement of the BVLEP 2013 (which it is not). <ul style="list-style-type: none"> • In effect: a coordinated traffic/ waste/ architectural solution to site servicing has not been provided. <p>Public utility impacts</p> <ul style="list-style-type: none"> • The development (both as individual stages and in its overall concept) has the potential to have a significant adverse impact on local utility networks and require augmentation works well beyond the immediate area. The Services Assessment undertaken by Accor notes that it is limited in its scope and that it does not provide any assessment of the capacity of the relevant network in the context of the proposal. <p>Civil works</p> <ul style="list-style-type: none"> • The Civil Works drawings Drawing No. 22214.DA.C01 Sheets 1 to 25 prepared by Site Plus details the civil works to be undertaken for the 	
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	<p>entire development, not just Stage 1 for which the subject DA relates. It is unclear the extent of foreshore works that are proposed for stage 1.</p> <ul style="list-style-type: none"> • Sheet 1 of 25, "Title Page" of the submitted Civil Works drawings refers to several authorities and their requirements that are not relevant to the Bega Valley (Sydney Water, Endeavour Energy). <p>Sewer</p> <ul style="list-style-type: none"> • Design of the augmentation of Council's existing sewerage pump station adjacent the site is required. Upgrades to the pump station well and the wet weather emergency storage are required. The pump station will be required to contain storage for a minimum of 4 hours peak dry weather flow, and the wet weather storage is required to accommodate a minimum of 8 hours storage at peak wet weather flow for the entire catchment area. • Existing sewer in the southeastern corner may impact the site. Detailed understanding of the proximity to the retaining walls and other works in this corner of the development are to be provided. <p>External lighting</p> <ul style="list-style-type: none"> • No lighting concept has been provided to demonstrate how the communal areas will be illuminated in a manner that facilitates the safety of residents and minimises light spill onto Yarramalong Cove and the properties to the east. <p>Public roads</p> <ul style="list-style-type: none"> • The full extent of impact to public roads from site excavation/ retaining walls has not been identified or addressed. 	
7.6 – Snug Cove	<p>The Site is within the Snug Cove Masterplan 2005 area, which has been approved by the Minister for Planning. Refer to the detailed assessment in Table 5 below.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

TABLE 5 – COMPLIANCE ASSESSMENT – SNUG COVE MASTERPLAN:

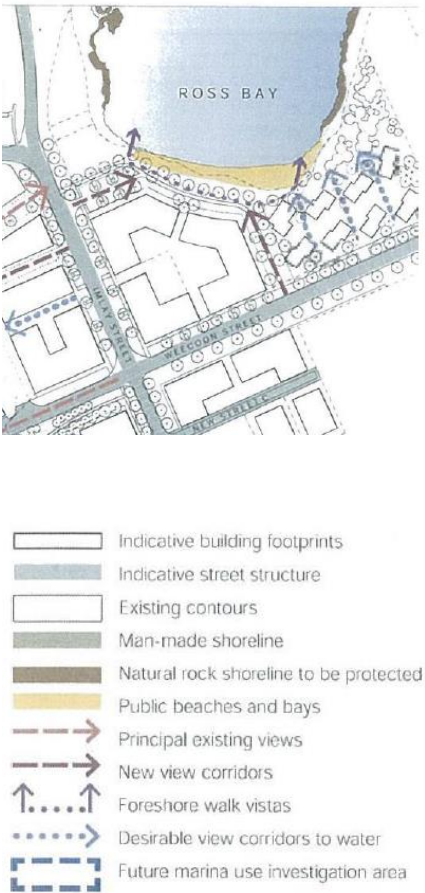
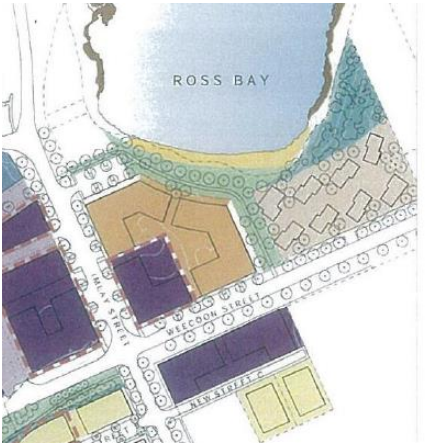
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
OBJECTIVES AND CONCEPT PLAN		
Objectives:	<p>The proposal is inconsistent with the stated objectives in the following manner:</p> <ul style="list-style-type: none"> Although access to the foreshore of Yallumgo Cove is proposed, the proposal lacks any detail as to how this is to be provided. The proposal does not result in the existing vegetation in the northern portion of the Site being retained. The Proposal does not adequately take into account coastal processes and does not enhance the relationship between the water and foreshore activities given the lack of adequate information. 	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
Section 1 – Analysis:		
<p>Existing Context Plan:</p> 	<p>Is the Existing Context Plan relevant?</p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>Although the Site no longer contains the two oil storage tanks (14) or the depot (13) and the vegetation has reduced in size, it still provides the basis of the context of the area. The original Masterplan, prepared in 2005, was updated last in 2013.</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>



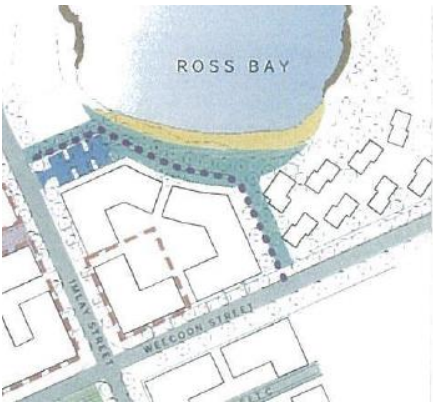

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
<p>Opportunities and Constraints: Masterplan Extract -</p>  <p>Proposed Public Domain and Public Access Plan –</p>  <p>Proposed Land Use and Site Interface –</p> 	<p>Has the Site Analysis and proposed design identified and incorporated the elements from the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Drawing No. DA003 of the architectural plans shows some effort to apply some elements as they apply to the land such as the “Magnificent views across the bay” and the “Existing views from the street and houses”, but these have been somewhat modified in an attempt to justify the proposal. The view corridors from the street/ dwellings on the upper portion of Weecoon Street have essentially been lost by the proposed towers, the vegetation in the NE portion has been removed, as has the opportunity of providing a public park and beach with access to Imlay Street. The “Waterfront Reserve” denoted as (2) by the applicant appears to be land below the MHWM (i.e. the waters of Yallungo Cove) while the yellow and purple dotted lines indicate public waterfront access and pathways respectively. The proposal as presented in the applicant’s submission provides no clarity on how the public access is to be achieved. Land Use and Site Interface drawing also identifies new elements – a viewing platform and jetty that extend into the Cove. While the architectural plans do not show these, other documents indicate these have been considered or are intended as part of the wider development concept for the Site. Significantly, the clear objective of increasing public access to the foreshore</p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

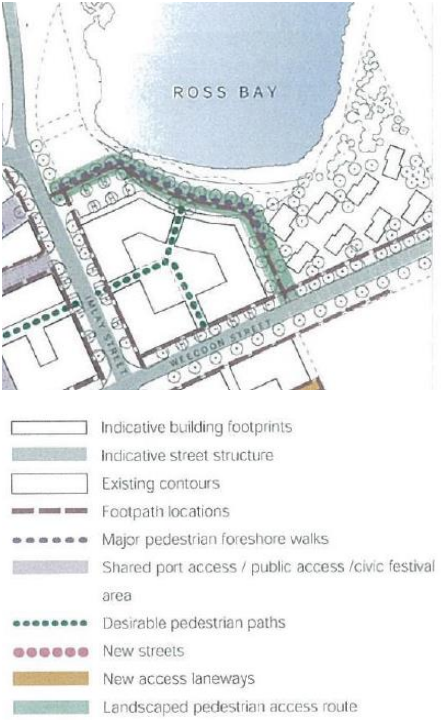
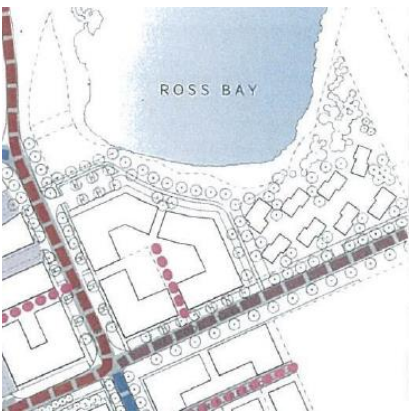
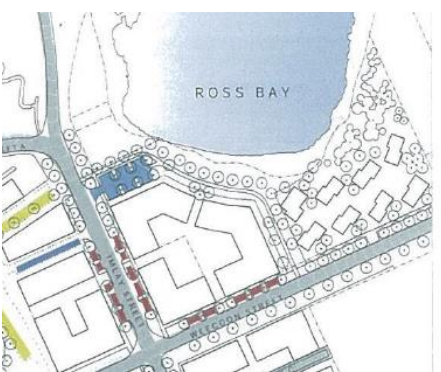
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
	and retaining natural vegetation and landforms – a hallmark of almost any coastal planning strategy in NSW, has been ignored.	
Section 2 – Planning Principles and Controls		
Existing Character and Future Character Statement:	<p>Is the proposal consistent with the Existing Character Statement?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Is the proposal consistent with the Future Character Statement?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The proposal results in a bulk, scale and height and development footprint that is inconsistent with the existing coastal setting and well beyond that to be expected as a result of the Snug Cove Masterplan.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
Principles and Controls: Natural Setting, Views and Foreshore links	<p>Is the proposal consistent with the Principles?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The proposal lacks sufficient clarity and appears to propose works that are not well documented. The proposed excavation and loss of vegetation, as well as provision of temporary and permanent works within the foreshore without adequate information. The excessive height of the proposal results in an unacceptable loss of views of the water from the public domain and likewise dominates the views from the water and other public domain areas to the Site and its vegetated area.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>


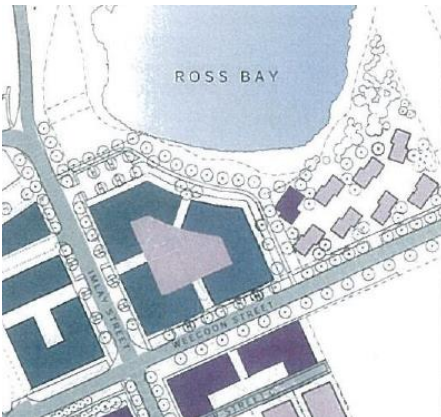
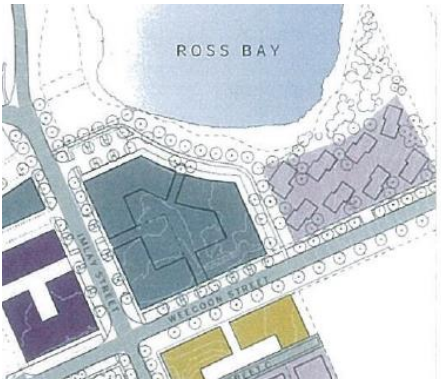
RELEVANT PROVISION	COMMENT:	COMPLIANCE:
Pedestrian & vehicular access & circulation linkages:	<p>Is the proposal consistent with the Principles?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The proposal has a singular vehicular access point that is intended to service the entire building for not only resident cars, but commercial patrons, delivery vehicles and waste collection. The access is awkward and will potentially cause conflict between users.</p> <p>As noted previously, works to the foreshore are proposed however the details and extent are vague.</p> <p>The proposal lacks adequate details with regards to wayfaring and the delineation of public/ communal and private areas with some ground floor units directly accessible from the public domain.</p> <p>In terms of providing footpaths along Weecoon Street, while this is to be encouraged, the proposed design relies on extensive filling within the road reserve and a footpath system that is not intended to facilitate pedestrian movement along Weecoon Street but from the Site to new on-street parking bays.</p> <p>With regard to creating clear boundaries between public and private areas to increase security and privacy, the applicant has not provided sufficient details and has not provided a CEPTD report.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
Character Statement – Future: <ul style="list-style-type: none"> • Foreshore access 	<p>Is the proposal consistent with the Character Statement?</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p>











RELEVANT PROVISION	COMMENT:	COMPLIANCE:
<ul style="list-style-type: none"> Public park and car park Ground floor commercial/ retail with residential/ tourist accommodation above Upper Weecoon Street to have residential accommodation similar scale to existing houses – ensures buildings do not dominate Remnant vegetation protected. 	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Insufficient details provided and incompatible scale of development that is not consistent with scale/ massing of adjoining houses.</p>	<p>N/A <input type="checkbox"/></p>
<p>Natural Setting:</p>	<p>Is the proposal consistent with the Principles and Controls?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Coastal Risk Assessment is incomplete and does not evaluate the current iteration of the plans.</p> <p>No assessment of impacts on the marine environment. Proposal will result in most of the coastal heath vegetation being removed, defeating the objective of maintaining and enhancing The Lookout as a vegetated promontory when viewed from Albert Terrace including protecting and restoring remnant coastal foreshore vegetation.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
<p>Views and Visual Character:</p>	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Proposal does not achieve the massing, footprint, form or scale as shown on the plan. View corridors are not achieved/ protected. The submitted Visual Amenity and Impact Assessment does not provide an adequate assessment of the impact of</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
	<p>the proposal of views and vistas obtained from both private residences and the public domain and lacks an assessment in line with the established caselaw and Planning Principles.</p> <p>The Visual Amenity and Impact Assessment also omits any evaluation of the proposal from the water to demonstrate that the development is sympathetic to the character of existing development as viewed from the water and with the character of the surrounding foreshores.</p> <p>The View Loss Diagrams appear to be somewhat restrictive and do not show the full context. There is no correlation to where on the adjoining property the view is supposedly taken from and in the case of No. 8 Weecoon Street, the "40% view loss in fact appears to be almost 100% loss of the critical views of the water within the Cove and the opposite vegetated headland. View loss diagrams must be addressed in the context of a "Tenacity" assessment.</p>	
<p>Activities and Uses:</p> 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The proposal does not include adequate details of the foreshore access, landscaping to the northern corner or public open space/ foreshore access.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
 <p>Public beach New public open space / recreation Public open space coastal vegetation Natural rock shoreline to be protected PORT Port commercial uses, boat building and repair facilities, boat launching ramps, marina, commercial boating facilities retail and cafes. Tourist accommodation permitted above the ground floor. Port commercial uses / offices, authorities, marine related light industrial, marine related businesses, restaurants and cafes, marine related shops Port area hard stand Port and Civic shared access hardstand</p>	 <p>Private open space / coastal vegetation (Extent subject to environmental studies) Mixed use: marine related shops, restaurants and cafes, and offices. Tourist and visitor accommodation / hotel permitted above the ground floor Mixed use: marine related shops, restaurants and cafes, offices and tourist, visitor accommodation / hotel/ motel Permanent residential, tourist and visitor accommodation CIVIC Additional uses permitted: civic, educational, cultural, public, research, marine discovery centre</p>	
<p>Open Space and Public Facilities:</p>   <p>Indicative building footprints Indicative street structure Public beach New public open space / recreation Public open space coastal vegetation Natural rock shoreline to be protected Shared port access / public access /civic festival area Potential locations for public buildings or cultural/ research facilities Foreshore walk Access to boat ramp Foreshore lookout Potential boardwalk and public viewing / fishing platform Public Car Park Future marina use investigation area</p>	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Insufficient details of the public access/ open space, coastal protection works.</p> <p>No plan of Management prepared given a mixed use building proposed.</p> <p>Coastal heathland vegetation is to be largely removed, contrary to the Masterplan. Proposal does not incorporate the intended public park/ beach and open space linkages to Imlay and Weecoon Street. The Weecoon Street linkage has been substituted with an elaborate stair and ramp configuration between the proposed building and the future supermarket/ retail complex contemplated over proposed lot 2. Depending on what drawing is being reviewed, there is no certainty that access to the foreshore will be provided as part of Stage 1. The northern section of the linkage appears to be outside Proposed Lot 1, and therefore not part of the proposal.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
<p>Pedestrian Access and Circulation:</p> 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Inadequate information on public access arrangements. Proposed footpath along Weecoon St not in accordance with plan. While the pedestrian linkage between Weecoon Street and the Foreshore is provided, it appears to be complex consisting of numerous stairs and ramps. The northern section of the linkage also appears to be outside Stage 1 and outside Proposed Lot 1, meaning that there is no guarantee of actual access to the foreshore being provided.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
<p>Vehicular Access and Circulation:</p> 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p>	<p>YES <input checked="" type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
<p>Car Parking and Parking Provision:</p> 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>On-street parking is proposed along upper portion of Weecoon Street and different plans show parallel and 90 degree parking.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
 <ul style="list-style-type: none"> Indicative building footprints Indicative street structure Indicative location for 90 degree or angled on street parking Indicative location for parallel on street parking Indicative location for trailer parking Permanent bus stop and taxi rank Temporary bus stops and taxi rank for use during 		
<p>Built Form and Building Heights:</p>  <ul style="list-style-type: none"> Indicative building footprints Indicative street structure Future built form: total building height maximum 3 storeys Future built form: total building height maximum three storeys with maximum 2 storeys relative to southern boundary Future Built form: total building height maximum 2 storeys 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Proposal fails to achieve the maximum number of 2 storeys or 3 storeys in the NE corner. Bulk, scale, building width and compatibility with adjoining development all inconsistent with the Masterplan.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
<p>Built Form Building Footprints:</p> 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Completely inconsistent with footprint controls.</p> <ul style="list-style-type: none"> Indicative street structure Indicative built form - Building type 1: Maximum 100% site coverage floors 1 and 2 subject to achieving adequate daylight access and outlook for occupied spaces, aligns to street frontages Indicative built form - Building Type 2: 20m footprint depth and aligns to street frontages, setbacks may be required Indicative built form - Building Type 3: for new commercial building use maximum building depth is 30m Indicative built form: Building Type 4: Lots where smaller building footprints are required to provide views through sites and open space and, where residential buildings have a maximum 20m depth and a maximum 4 dwellings per floor 	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

RELEVANT PROVISION	COMMENT:	COMPLIANCE:
<p>Active Ground Level, Setbacks, Alignment & Articulation:</p>  <ul style="list-style-type: none">  Indicative street structure  Indicative building footprints  Active uses at ground level  Suggested locations for vehicular access  Zero setback with no articulation required  Zero setback build to street alignment with articulation in facades to provide visual interest  Consistent building forward alignment with articulation in facades to provide visual interest  5m Setback 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Plans do not provide accurate dimensions and unable to determine if setbacks have been achieved.</p> <p>Weecoon Street frontage is not considered to be active and pedestrian access unclear. Does not include a foreshore park so active from control has not complied.</p> <p>Building alignments have not been met, given the footprint.</p> <p>Proposal has not demonstrated that articulation/ 40% enclosure has been achieved.</p> <p>Acid sulfate soils risk has not been identified or investigated by the applicant.</p> <p>Open space dimensions cannot be confirmed due to a lack of adequate details/ dimensions.</p> <p>The development does not maximise infiltration areas due to the excessive footprint</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>
<p>Landscape Character:</p> 	<p>Is the proposal consistent with the Principles, Controls and the Plan?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>The proposal does not protect or enhance the existing coastal heathland vegetation. The landscape plan lacks significant details as documented and is inconsistent with the Map and Controls.</p>	<p>YES <input type="checkbox"/></p> <p>NO <input checked="" type="checkbox"/></p> <p>N/A <input type="checkbox"/></p>

1979. Given the Applicant has declined to provide the additional information identified in the Information Request (which included matters pertaining to Integrated Development), Council has been unable to fulfill the Integrated Development obligations in Division 3 of the Regulation.

- Clause 29(2)(b) - the Design Verification Statement does not adequately address the Design Principles or confirm how the development addresses the objectives in Parts 3 and 4 of the Apartment Design Guide.

5.6. THE LIKELY IMPACTS OF THE DEVELOPMENT (s. 4.15(1)(b)(i))

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the Bega Valley Local Environmental Plan 2013, Bega Valley Development Control Plan 2013 and applicable State Environmental Planning Policies and associated guidelines. The impacts associated with this development have been identified through extensive desktop and field inspections of the Site and surrounding area, a review of the proposal against the applicable planning and environmental controls, formal comment and feedback by the relevant stakeholders and a review of the submissions received as a consequence of the public exhibition period.

As demonstrated in this assessment, the proposal's core failure lies in the following:

- a) The failure to undertake an appropriate and deep enough analysis of the surrounding landforms and built environment to understand the Site and its constraints or to understand the surrounding context that the development must be compatible with.
- b) The failure to clearly define the proposal – both in a statutory context and in terms of providing a consistent scope of works and baseline for all of the consultants involved in the proposal. The proposal suffers from a lack of consistency across the board, leading to inconsistent statements and outcomes.
- c) The failure to understand and design to the statutory planning controls that apply to the Site. This has resulted in the gross overdevelopment of the Site with a built form that is highly inappropriate for the Site and its topography, leading to unacceptable consequences for the natural environment, the future residents and patrons and the surrounding community.

Additionally, the application is compromised by the failure to understand and respond to the relevant statutory and policy provisions that apply to the Site. Various supporting documents including the SEE, the Aboriginal Due Diligence Report, the Civil Works drawings, the Cost Summary Report, the Flora and Fauna Assessment and the Operational Waste Management Plan all refer to superseded or non-existent legislation/ provisions. Further, the failure to understand and demonstrate the visual impact of the development also forms part of the accumulated negative outcomes this development will have. Consequently, when coupled with the matters raised in respect to the Regulation, the only foreseeable outcome is a

development that will have unacceptable impacts on the surrounding biophysical and human environments.

Based on the information submitted, the assessment of the application has identified the following key impacts, that, in the view of the Council, warrant its refusal:

Contamination Impacts:

- The proposal has not demonstrated that the land is not affected by acid sulfate soils. In the event that such soils are exposed to the atmosphere, severe environmental harm could occur to the surrounding waterbodies.
- The soil and groundwater of the Site is presently impacted by contaminants that pose a risk to human health and/ or the environment and requires remediation. The application has not adequately demonstrated remediation could occur without serious harm to the surrounding environment or that any-off-site disposal-related activities could be undertaken in an appropriate and safe manner.

Vegetation Impacts:

- The proposal has not adequately documented the potential impacts on marine vegetation within Yallumgo Cove that may be affected by the proposed stormwater and temporary sediment control infrastructure.
- The proposal will result in the total loss of a plant community that is associated with a Threatened Ecological Community that is listed as “Endangered” and the majority of significant coastal heath vegetation identified in the relevant planning controls to be retained and protected. The removal of the vegetation, through poor siting and design, will result in significant adverse visual impacts of and to the Site from the public domain, including surrounding streets, public reserves and the waters of Yallumgo Cove and Twofold Bay.
- The removal of the vegetation means that the terrestrial biodiversity value of the Site will not be maintained by protecting flora and fauna or any dependent ecological processes, nor will it encourage the conservation and recovery of native flora and fauna or their habitats.
- The removal of the vegetation would also fragment and diminish the scenic, landscape and amenity value of the Site.

Coastal Processes and Risks:

- The proposal in its current form fails to demonstrate the extent of coastal protection works involved and has not demonstrated:
 - That it will not cause detrimental increases in coastal risks to other development or properties.

- That it is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.
- That it incorporates appropriate measures to manage risk to life from coastal risks.
- That it is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.
- That it provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.
- The proposal in its current form fails to demonstrate the extent of coastal protection works involved and has not demonstrated whether any such works will adversely affect adjoining properties.

Earthworks Impacts:

- The proposal in its current form fails to demonstrate that the construction can occur without adversely affecting the adjacent marine environment, given that both temporary and permanent measures to treat stormwater and runoff are to be located within the foreshore and the MHWL.
- The footprint of the development, which is contrary to the built form controls in the Snug Cove Masterplan, will result in significant and unnecessary excavation and filling to occur, which will adversely affect ground water and surface water flows, cause the loss of important coastal vegetation that has high amenity and potential biodiversity value.
- The extent of excavation proposed is excessive and results in unnecessary bulk earthworks and retaining walls beyond the boundaries of the Site, demonstrating that the design is inappropriate for the constraints posed by the topography in such a sensitive location. The drawings indicate excavation to an approximate depth of 9.51m below existing ground level in the eastern corner and filling in places of up to 2.99m. The proposal is not consistent with the established planning controls and the proposed earthworks are inconsistent with good planning outcomes for development on this Site.
- Excavated material from the Site is to be used as fill in areas that include the Weecoon Street road reserve. Given the extent of contamination on the Site and the lack of an approved Remediation Action Plan, there is potential for contaminated material to be spread to areas that are not contaminated with the public exposed to both legacy contamination and additional financial risk.
- The excessive excavation will result in large numbers of trucks being used to remove excess spoil to off-site disposal areas that may be well beyond the local government area, resulting in a large area of road network potentially exposed to increased heavy vehicle numbers. The significant truck numbers through the local road network would

cause adverse impacts to the road pavements and amenity, as well as a greater risk of conflict with pedestrians and other road users for an extended period of time.

- The proximity to Yallumgo Cove means that the earthworks pose a significant risk of contaminated stormwater, silt and sediment washing into Yallumgo Cove in the event of a storm event, causing significant adverse impacts on the marine life and habitats.

Impacts on Infrastructure:

- The proposal has not demonstrated that it will not encroach upon the electricity network operated by Essential Energy, which may in turn jeopardise the supply of electricity to the surrounding area.
- The proposal has not demonstrated it will not adversely affect the provision of sewer services to the surrounding area because no information has been provided with respect to the upgrade of the adjacent sewer infrastructure.
- The EV charging stations and any associated infrastructure are not identified and no indication has been provided on whether the electrical design can adequately meet the expected charging loads.
- The proposal has not demonstrated that it can be adequately accessed and protected in the event of a fire or that sufficient water storage and associated infrastructure such as water storage tanks, hydrants and pumps is available to protect the Site, the occupants within, or the adjoining properties, which may adversely impact on the resources of Fire and Rescue NSW.
- The proposal has not demonstrated that it will be able to provide the infrastructure to store and treat all of the water required for the maintenance of landscaping, washing residents cars and other needs to prevent adverse impacts on the town water supply network.

Stormwater Impacts:

- The proposal has not demonstrated that the proposed stormwater infrastructure will be adequately designed or located so as not to have an adverse impact on existing terrestrial or marine vegetation or coastal processes, with elements of the proposed stormwater management system appearing to be located below the MHWL and outside the Site's boundaries or within vegetation identified to be retained where the works associated with the device causing significant additional vegetation removal.

Built Environment Impacts:

- The excessive excavation and height, with the resultant bulk and scale of the proposal results in a development that is inconsistent with the existing coastal setting, built form and character and well beyond that to be expected as a result of the Snug Cove Masterplan.

- The massing, scale and built form of the proposal fails to ensure conservation of the scenic qualities of the coastal landscape and foreshore, conservation of important views, vistas, landscapes and the relationships between places and the Harbour. The proposal lacks sufficient details to demonstrate that it is compatible with the surrounding context and is capable of being undertaken and operated in a manner that will not adversely affect the amenity of the surrounding area or residents of the buildings.
- The development results in excessive site coverage, limiting the ability of the Site to allow the infiltration of stormwater and the provision of deep soil zones that are capable of growing substantial vegetation. The Site coverage does not reflect the small-scale footprint that is envisaged in the Snug Cove Masterplan.

Residential Apartment Design and Amenity:

- The proposal does not provide an adequate interface between the residential and commercial elements or the ground floor / podium level apartments which have an interface with communal areas of the development and has not been able to demonstrate suitable means to provide an adequate level of internal visual and acoustic privacy.
- The proposal does not achieve adequate separation distances either internally between apartments, between the two towers or between the apartments and adjoining residential development to prevent an adverse loss of privacy.
- The proposal has not demonstrated that adequate functional private open space is provided, given that a number of the balconies contain spaces that are too narrow to be effectively used.
- The proposal has not demonstrated that adequate functional communal open space is provided that achieves the required solar access. Much of the communal open space appears to be pathways for movement and is lacking in any deep soil zones that are capable of growing large trees and other substantial vegetation to enhance the overall amenity of the development.
- The development does not provide adequate internal amenity in terms of a minimum of 3 hours of solar access into the private open space areas and living rooms. A number of the apartments have deep, recessed balconies and blade walls for privacy that prevent sunlight from penetrating into the living rooms.
- The proposal does not demonstrate that adequate storage facilities have been provided, despite the majority of the units exceeding the maximum dwelling size stipulated in the BVLEP.
- The proposal has not demonstrated that overshadowing on adjoining properties and within the Site will ensure an adequate level of solar access to private open space areas,

living rooms and the communal open space areas to provide an acceptable level of residential amenity.

View Loss and Visual Impacts:

- The submitted Visual Impact Assessment fails to provide an adequate assessment of the impact of the proposal of views and vistas obtained from both private residences and the public domain. In this regard, it is noted that the view corridors identified on the Snug Cove Masterplan have been altered to fit the proposed development, without any qualitative assessment of any loss or gain of views as a consequence.
- The visual impact assessment fails to demonstrate that the proposal's impact on views and vistas will be acceptable, or consider views from the water at the Site, or reflect the Planning Principles established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 and *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046.
- The proposal will result in the loss of most of the vegetation on the Site and defeating the objective of maintaining and enhancing The Lookout as a vegetated promontory when viewed from Albert Terrace.
- The Snug Cove Masterplan seeks to have smaller buildings with a maximum height of 2 storeys on the upper portion of the Site, so as to provide a more compatible built form with adjoining residences. This in turn allows for greater opportunities for landscaping in deep soil areas, as well as greater permeability which maintains a visual connection with the foreshore.

Access, Parking and Transport Impacts:

- The proposal does not provide adequate storage facilities for the storage of the required number of bicycles. Those facilities that are provided are on the First Floor where there is no clear way to access the street without potential conflict with cars entering or leaving the singular driveway.
- The proposal does not provide adequate documentation with respect to the provision of car and bicycle parking. The submitted Traffic and Parking Assessment is significantly flawed, making major omissions in the dataset of traffic movements and the request for a reduction in car parking for the restaurant/ café cannot be justified in any rational manner. The omissions in the dataset of traffic movements lead to a poor understanding of the existing and likely future traffic patterns and demands.
- The proposal seeks a reduction in the commercial parking allocation (notwithstanding that approval of the restaurant and café are not specifically sought in this DA). In justifying the proposal, claiming without substantiation, that at least 50% of the patrons would come from the proposed development.

- The commercial car parking has not been allocated or sited in a manner that is convenient to access. The location will not minimise conflict with traffic entering and leaving the building. will adversely affect the access to and from the Site and public safety.
- Vehicular access for all resident, commercial tenant/ restaurant staff and patrons, as well as visitors and maintenance vehicles for the entire development is based on a singular access point. This access point has a 90 degree bend close to the entry point, making access difficult.
- The awkward alignment of the access, lack of safety devices, potential for conflict with reversing cars and physical disconnect between the restaurant parking and pedestrian access is such that the proposal offers substandard and unacceptable access to the Site.
- The proposal fails to demonstrate how service and garbage vehicles will service the Site, including access to the basement car park.

Alienation of Future Public Land:

- The proposal will alienate a significant tract of the coastline from public use, which is in direct conflict with identified planning principles and strategies.

Heritage Impacts:

- The application does not provide accurate or complete information upon which the assessment of the proposal has been based in the context of the impact on the Items of Local Significance in the southern end of Imlay Street and the South Imlay Street Heritage Conservation Area.

Access, Wayfinding and Safety by Design:

- The application fails to provide adequate information to demonstrate the separation of public, communal and private spaces, including the means to provide access control, passive security and surveillance.
- The application fails to provide adequate information to demonstrate the means by which emergency services could reach the ground and first floor residential apartments.
- The application fails to provide adequate information to demonstrate how public access through the Site and to the foreshore of Yallumgo Cove will be provided in the subdivision of the Site or on Stage 1 or how the foreshore parkland and public beach will be identified in accordance with the Snug Cove Masterplan.
- The proposal has failed to demonstrate adequate access will be provided in relation to travel distances in accordance with the Building Code of Australia.
- The layout of the car parking area does not enable the safe, functional or efficient movement of pedestrians, creating a disconnect between the commercial spaces and

the allocated car parking. The proposal also creates a disconnect between allocated visitor parking or the street and the ground floor and lower ground floor units.

Social and Economic Impacts:

- The proposal has not provided a Social Impact Assessment to demonstrate that the potential social impacts on the community or that sufficient support services and resources will be available in the community to cater for the needs of the future residents.
- The application has not demonstrated that the proposal will protect and improve the economic, natural and social resources of the Bega Valley. No evidence has been provided to even demonstrate the likely economic impacts (positive or negative) of the proposal, which includes a restaurant outside of the town centre where it is assumed 50% of the patrons will come from the residents of the towers.
- The application also fails to adequately demonstrate how the proposal will impact on local community facilities or services, public transport (especially during peak times) or whether the future restaurant and café will impact on the existing town centre. No evidence has been provided to even demonstrate the likely economic impacts (positive or negative) of a restaurant outside of the town centre.

Sustainability:

- The application has not demonstrated it provides adequate sustainability measures by failing to document the proposed air conditioning system. Further, it does not demonstrate that waste management during construction and on-going operations is appropriate and practical or that the design of the proposal will ensure a reduction in the peak demand for electricity and potable water resources.
- The proposal has not demonstrated it incorporates adequate or sufficient sustainability measures, with the following elements identified in the Sustainable Design Strategy Report to be provided, but not identified on the submitted plans:
 - A 25KL water tank.
 - The spatial extent of proposed solar panels/ photovoltaic cells, which appear to be diagrammatic, lacking any quantification.
 - The EV charging stations and any associated infrastructure.
 - Separate waste stores for Buildings A and B, which are not identified on the plans or in the OWMP.
- The application has not demonstrated a commitment to sustainability, given the disclaimer in the Sustainable Design Strategy Report that it only demonstrates possible ESD strategies or targets that could be achieved.

Housing Diversity and Adaptability:

- The proposal does not provide sufficient adaptable housing to meet the future needs of the Eden community. The lack of adequate housing that is able to be adaptable reduces the equitable access to appropriate housing for less mobile members of the community.
- The proposal does not provide housing of a size and quantum necessary to meet the needs of the community. This then denies the community access into the local housing market and fails to promote affordable local housing options.

6. SUITABILITY OF THE SITE (s. 4.15(1)(c))

The assessment of this application has demonstrated that the Site is not suitable for the proposed development and that the impacts on the surrounding area cannot be sufficiently mitigated. Suitability has not been demonstrated given the failure to address and comply with the applicable statutory and policy controls intended to ensure development is designed, located and operated in a manner that does not adversely affect the amenity of the surrounding biophysical environment.

7. REFERRALS AND STAKEHOLDER ENGAGEMENT (s. 4.15(1)(d))

7.1. EXTERNAL AGENCIES:

Consultation was also undertaken with relevant agencies and approval bodies. A summary of these submissions is provided below.

7.1.1. ESSENTIAL ENERGY

Comment was sought from Essential Energy in relation to the proposed development at the above property as the development triggers a referral pursuant to Clause 2.48 of the Transport and Infrastructure SEPP 2021. This is because the proposal will involve the excavation of the ground within 2m of an electricity distribution pole.

"Strictly based on the documents submitted, Essential Energy has the following comments to make as to potential safety risks arising from the proposed development:

- *As the plans provided do not show the distances from Essential Energy's infrastructure and the development, there may be a safety risk. A distance of 5.1m from the nearest part the development to Essential Energy's underground HV and LV infrastructure (nearest conductor) is required to ensure that there is no safety risk.*
- *As the plans provided do not show the distances from Essential Energy's infrastructure and the development, there may be a safety risk. HV AND LV EARTHS FROM TRANSFORMER 15-1073 MUST BE LOCATED AND NOT COME WITHIN 2M FROM THE BUILDINGS EDGE*
- *It is also essential that all works comply with SafeWork clearance requirements. In this regard it is the responsibility of the person/s completing any works to understand their safety responsibilities. The applicant will need to submit a Request*

for Safety Advice if works cannot maintain the safe working clearances set out in the Working Near Overhead Powerlines Code of Practice, or CEOP8041 - Work Near Essential Energy 's Underground Assets.

Information relating to developments near electrical infrastructure is available on our website Development Applications (essentialenergy.com.au). If the applicant believes the development complies with safe distances or would like to submit a request to encroach then they will need to complete a Network Encroachment Form via Essential Energy's website

Encroachments (essentialenergy.com.au) and provide supporting documentation. Applicants are advised that fees and charges will apply where Essential Energy provides this service.

Council's and the applicant's attention is also drawn to Section 49 of the Electricity Supply Act 1995 (NSW). Relevantly, Essential Energy may require structures or things that could destroy, damage or interfere with electricity works, or could make those works become a potential cause of bush fire or a risk to public safety, to be modified or removed.

Essential Energy makes the following general comments:

- If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment;*
- Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with;*
- Any activities in proximity to electrical infrastructure must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure;*
- Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW); the location of overhead and underground powerlines are also shown in the Look Up and Live app essentialenergy.com.au/lookupandlive."*

The additional information identified by Essential Energy was included in the Information Request. Given the applicant's response that no information was to be provided, Essential Energy's final position cannot be determined.

7.1.2. Department of Lands

No comments have been received by Council from the NSW Department of Lands. It is not uncommon for the agency not to make a submission unless assets are directly impacted.

7.1.3. Eden Local Aboriginal Land Corporation

No comments have been received by Council from the Eden Local Aboriginal Land Corporation. Likewise, it is not uncommon for the Corporation to not make a submission unless assets are directly impacted or specific concerns are raised.

8. SUBMISSIONS

The proposed development was notified in accordance with the BVDCP for the required period of twenty eight (28) days commencing on 21 February 2024. Within the specified time period, Council received the following submissions in relation to the proposal:

- 19 in objection.
- Nil in support however several objections stated that they had no objection in principle to new development but only on the basis of compliance with the applicable planning controls.

The key issues in Table 6 below have been distilled from the objections and are deemed to represent the valid concerns of the community. Although a public meeting will form part of the Panel's proceedings, a summary response is provided to the issues raised by the community.

Additionally, the issues raised by the community have been reflected in the assessment of the proposal provided in this report. They do not alter Council's view that the proposal will have a significant adverse impact on the natural and built environments or alter the position that the Panel cannot be satisfied sufficient, accurate information has been provided to enable a conclusion to the contrary.

TABLE 6 - PUBLIC SUBMISSIONS:

ISSUE	RESPONSE:
Compliance with Snug Cove Masterplan re quality/ access to public domain, height/ scale of development/ Building Type, car parking,	Agreed. Refer to assessment provided in Section 5.3 of this report.
Visual impact – on coastline/ the Lookout Residences and loss of village character.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
View loss/ inadequate assessment of impacts / visual permeability.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.

Request for height poles to be erected to show the building height at various locations including the change between 13m height limit and height proposed.	This request was not undertaken as significant change was required to the proposal, including a reduction in the height.
Impact / reliance on on-street car parking and lack of details regarding footpath provision and treatment, spatial extent of new on-street car parking, future parking/ time restrictions and impact on residents.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Traffic assessment done on a Monday outside weekend/ peak holiday times/ when cruise ship at the terminal when traffic is higher than usual.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Traffic assessment does not take into account construction traffic or natural growth as the development is occupied or alternate routes taken around the steep part of Weecoon Street.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Inconsistencies in Traffic assessment re increased traffic/ impact on existing poor road condition, non-existent kerbside waste collection, car parking requirements not met and reliance on concessions in parking rates.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Existing choke point created by row of trees along Imlay Street and narrowing of road outside 108 Imlay Street causes vehicles to cross dividing line – proposal will increase the risk of collision.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.

Height of the development is excessive and not low scale. 13m limit over the Mixed Use zones – application proposes 17m.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Noise and length of time surrounding residences impacted by construction activities and disruption during road works.	Although Construction Management Plans (CMP's) can address these issues, in this case, the duration of construction, access constraints, haulage route limitations and intensity of various phases warranted the provision of a CMP upfront. The applicant failed to provide adequate information in this regard.
A second access road to the peninsula should be built by extending Imlay Street through Warrens Walk to the wharf area.	Access to the peninsula is restricted however the construction of a road via Warrens Walk is not deemed to be a practical outcome.
The proposal will not alleviate the housing crisis in the LGA and the units will only be purchased by investors.	There are no restrictions on the ownership of unit accommodation and likewise, no mandatory requirement that all the apartments are to be under separate title.
Inadequate details of various elements – only detail provided for the first stage but holistic approach needed for the whole of the Site in terms of stormwater management/ wave attenuation and flood risk/ contamination and remediation/ utilities (power/ water/ sewer/ communications).	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Interface with adjoining properties regarding retaining walls.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Insufficient geotechnical assessment.	The submitted Geotechnical Assessment was deemed to be sufficient for the purposes of this assessment. The deficiencies in the application however included a number of unknown elements with the extent of bulk earthworks and retaining walls, the depth of excavation and provisions for the

	management of stormwater.
Incompatible with plans to turn the Port into a 24 hour operation.	The inclusion of residential accommodation is not necessarily incompatible with the operation of the port, although acoustic considerations are taken into account in the design of such proposals.
The proposal will stimulate other sites to redevelop which will have significant consequences for traffic, infrastructure, fire safety, and the environment of "the Lookout".	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Compatibility with existing residential development in terms of density and coastal character.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Impacts on coastal environment from stormwater runoff and increased flooding.	Agreed. The applicant failed to provide adequate information in this regard.
Public access to the foreshore and Ross' Bay Beach/ Yallungo Cove – not reflected on Subdivision Plan.	Agreed. The applicant failed to provide adequate information in this regard.
Significant upgrade is required to Weecoon Street to provide adequate stormwater drainage.	Agreed. The applicant failed to provide adequate information in this regard.
The Wharf is a fire and evacuation centre and became overcrowded in the 2019/2020 bushfires. The proposal will exacerbate overcrowding in similar situations.	Liaison with the relevant authorities does not appear to have been undertaken by the applicant and accordingly, an assessment of the likely impacts in this regard could not be undertaken.
No assessment of the interface with the marine environment.	Agreed. The applicant failed to provide adequate information in this regard.
No Aboriginal Cultural Heritage assessment available.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Lack of referral to a range of	All relevant agencies have been consulted by

government agencies and Ministries.	Council as required by the Environmental Planning and Assessment Act, 1979 and the associated Regulation. The obligation to identify whether other approvals are required by other government agencies lies with the applicant who, in this instance, failed to do. The proposal is deemed to be "Integrated Development" as approvals are required under S.219 (1)(c) of the Fisheries Management Act 1994 and S. 91 of the Water Management Act 2000. Given the applicant's decision not to respond to the Information Request (which deals with this matter), the necessary referrals to the relevant agencies cannot be undertaken.
Amplification of existing WWPS adjacent to the Site by 35,000 ltr has not been demonstrated.	Agreed. Refer to assessment provided in Section 5 of this report. The applicant failed to provide adequate information in this regard.
Compatibility with and future conflict between residential uses and existing fish processing facility on adjoining property.	Agreed. The applicant failed to provide adequate information in this regard.
Inadequate assessment or demonstration of impact on ability of existing facilities and services to support the proposal (eg, health care, essential services).	Agreed. The applicant failed to provide adequate information in this regard.
Lack of assessment of impact on public transport and pedestrian network/ facilities associated with cruise-liners – many more buses and people walking around the area when a cruise-liner is docked.	Agreed. The applicant failed to provide adequate information in this regard.
Sooty Oystercatchers have been observed along the shoreline of the Site – listed as Vulnerable but no assessment of the impact on these species.	Claim not supported. Section 3.3.2 of the Flora and Fauna Assessment identifies the observations of Sooty Oystercatchers within the Study Area along the rocky foreshore of Yallumgo Cove. Section 4.4 of that report does contain a Five-part Test for the species while a Test of Significance under the

	Biodiversity Conservation Act 2016 is provided in Appendix H of the report.
Subdivision will facilitate three separate development sites that could end up having very different built forms that lack consistency and uniformity.	Agreed. The applicant failed to provide adequate information in this regard.
Any variation of building height in Stage 1 could set a precedence/ baseline for stages 2 and 3.	Agreed. The variation is not supported. Refer to the assessment of the Clause 4.6 submission in Table 3. Drawing DA-300 of the architectural plans indicates that future stages also contemplate major variations to the building height controls.
Overshadowing from the development onto adjoining residential properties.	The submitted shadow diagrams are drawn at too small a scale to determine their accuracy with any certainty. However, in the author's experience, the shadow diagrams do not appear to accurately project the full extent of the shadows cast, notwithstanding the topography.
Remediation of contaminants should be undertaken before any development of the Site.	Agreed. Refer to assessment provided in Table 1 of Section 5.1 of this report. The applicant failed to provide adequate information in this regard.
Previous investigations suggest the shoreline could be impacted by coastal erosion by up to 55m. No details on how the shoreline is to be protected or risk to developing within this zone.	Agreed. The applicant failed to provide adequate information in this regard.
Potential impact on Southern Wright Whales and their calves that use Yallungo Cove to rest in during annual migration.	Noted - The Flora and Fauna Assessment notes four whale species as "likely to occur" in Table 22 but does not include Southern Right Whales. Substantial anecdotal evidence indicates that Twofold Bay (of which Yallungo Cove forms part of) is frequently used by Southern Right Whales during their migration. It is listed as a threatened species under the Biodiversity Conservation Act 2016.
Potential impact on known Little	Noted - Neither the Site nor adjoining foreshore

Penguin breeding site with a breeding program operating for over 30 years.	contain a Little Penguin breeding site or program. External evidence indicates that Eden's Little Penguin colony died out in the 1990's. In 2023, a breeding pair were found in the Wheel Cove area in the Eagles Claw Nature Reserve to the east of the Site with a joint community and government program established to reintroduce the penguin colony.
Loss of mature foreshore trees and lack of accurate identification of vegetation impacted.	Agreed. The applicant failed to provide adequate information in this regard or amend the design to retain the coastal heathland vegetation.
Potential economic impacts on existing businesses as a result of the proposed café and lack of assessment to determine impacts/ viability with two other incomplete developments in the town creating a negative perception.	Agreed. The applicant failed to provide adequate information in this regard.

9. DEVELOPER CONTRIBUTIONS

Given the application is lacking in adequate documentation, requires significant amendment and has ultimately been recommended for refusal, Contributions have not been calculated.

10. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

11. CONCLUSION

The application proposes to undertake a 3-lot subdivision with a mixed use development on proposed Lot 1 and associated stormwater works on 19-21 Weecoon Street, Eden. The Southern Regional Planning Panel is the Consent Authority in this instance as the proposal is classified as Regionally Significant Development as the CIV exceeds \$30M.

The assessment of the proposal has identified a wide number of concerns that cannot justify approval being granted in the application's current form. These issues all stem from the following fundamental failures:

- The failure to undertake an appropriate and deep enough analysis of the surrounding landforms and built environment to understand the Site and its constraints or to understand the surrounding context that the development must be compatible with.
- The failure to clearly define the proposal – both in a statutory context and in terms of

providing a consistent scope of works and baseline for all of the consultants involved in the proposal. The proposal suffers from a lack of consistency across the board, leading to inconsistent statements and outcomes.

- The failure to understand and design to the statutory planning controls that apply to the Site. This has resulted in a built form that is highly inappropriate for the Site and will have unacceptable consequences for the natural environment, the future residents and patrons and the surrounding community.
- Lastly, owner's consent remains unclear with respect to the subject Site and adjoining properties. Without the relevant parties providing written consent, the Panel's ability to grant approval is somewhat restricted.

The applicant has declined to address these issues, which were detailed in the Information Request dated 31 July 2024, requesting instead that the DA be determined as submitted.

Having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 and considered the information submitted (or lack thereof), as well as having given due regard to all of the submissions received, it is considered that in the particular circumstances of the case, the Panel cannot be satisfied that the proposal:

- (i) Has been adequately delineated in the context of the Site, the extent of works within the Coastal Zone or the extent of works within Stage 1 of the development.
- (j) Has provided adequate information to demonstrate that all relevant statutory provisions have been addressed.
- (k) Is consistent with the applicable statutory and policy controls related to the Site and the development contemplated.
- (l) Has demonstrated that it will not have a significant adverse impact on the biophysical environment.
- (m) Can be adequately serviced in terms of potable water, sewer and stormwater.
- (n) Has demonstrated that the subject Site is appropriate or suitable.
- (o) Has sufficient planning merit to warrant approval.
- (p) Is a development that would be in the public interest, given the above matters.

The proposal would have unacceptable and irreversible outcomes that would be adverse to the environment and the community and cannot be mitigated or modified to deliver acceptable or desirable environmental planning outcomes. Notwithstanding this, the consent of adjoining landowners has not been obtained for works outside the subject land that are an integral part of the proposal.

The application is not supported and accordingly, refusal is recommended.

12. RECOMMENDATION

That pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979, the Southern Regional Planning Panel:

- A. Not support the variation to the Height of Buildings Development Standard contained in Clause 4.3 of the Bega Valley Local Environmental Plan 2013 as the applicant has failed to satisfy the consent authority that the relevant matters contained in Clause 4.6 have been demonstrated.
- B. Refuse consent for Development Application No. 2023.338 for a 3-lot subdivision with a mixed use development on proposed Lot 1 and associated stormwater works on 19-21 Weecoon Street, Eden for the following reasons:
 1. The proposed development does not satisfy the provisions of the following clauses of the Environmental Planning and Assessment Regulation 2021:
 - Clause 23 – The application has not demonstrated that the consent of all owners of the subject land have consented to the application being made.
 - Clause 23 – The development is Integrated Development and proposes works outside the subject Site and has not demonstrated that owner's consent has been obtained from the relevant agencies or landowners.
 - Clause 25 - The application fails to provide the mandatory list of all authorities from which concurrence is required or the approvals required under Section. 4.46 of the Environmental Planning and Assessment Act 1979.
 - Clause 29(2)(b) - the Design Verification Statement does not adequately address the Design Principles or confirm how the development addresses the objectives in Parts 3 and 4 of the Apartment Design Guide.
 2. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of State Environmental Planning Policy (Housing) 2021 in that it does not:
 - (a) demonstrate the relevant Design Quality Principles have been effectively considered and applied to deliver a high quality residential apartment development.
 - (b) demonstrate the Apartment Design Guide provisions relevant to Building Height, Building Depth, Building Separation, Communal Open Space, Solar Access to Communal Open Space, Deep Soil Zones, Visual Privacy, Bicycle Parking, Solar Access, Minimum Apartment Size, Minimum Private Open Space Size and Storage have been achieved.
 3. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the

applicable provisions of State Environmental Planning Policy (Industry and Employment) 2021 in that sufficient, adequate and accurate information has been provided to demonstrate the provisions of *Cl.3.11 - Matters for Consideration* have been effectively considered and the proposed signage will have an acceptable level of impact.

4. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of *Cl. 2.10(1) – Development on Land Within the Coastal Environment Area* of State Environmental Planning Policy (Resilience and Hazards) 2021 in that it does not adequately demonstrate the proposal will not have an adverse impact on:
 - The integrity and resilience of the biophysical, hydrological and ecological environment.
 - Coastal environmental values and natural processes.
 - The water quality in the marine estate.
 - Marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms.
 - Existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.
 - Aboriginal cultural heritage, practices and places.
 - the use of the surf zone.
5. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of *Cl. 2.10 (2) – Development on Land Within the Coastal Environment Area* of State Environmental Planning Policy (Resilience and Hazards) 2021 in that the lack of sufficient, adequate and accurate information does not allow the consent authority to be satisfied:
 - The development has been designed, sited and will be managed to avoid an adverse impact on the surrounding built and natural environments.
 - That where an impact cannot be reasonably avoided, that the development has been designed, sited and can be managed to minimise that impact.
 - That where an impact cannot be minimised, the development can be managed to minimise that impact.
6. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the

applicable provisions of *Cl. 2.11(1) – Development on Land Within the Coastal Use Area* of State Environmental Planning Policy (Resilience and Hazards) 2021 in that it does not adequately demonstrate the proposal will not cause an adverse impact on:

- Ensuring safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, in accordance with the established strategic planning framework and development controls for the Site.
 - The loss of views from public places to the foreshore.
 - Visual amenity and scenic qualities of the coast when viewed from adjoining properties and public spaces.
 - Aboriginal cultural heritage.
 - European cultural and built environment heritage
7. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of *Cl. 2.11 (2) – Development on Land Within the Coastal Environment Area* of State Environmental Planning Policy (Resilience and Hazards) 2021 in that the lack of sufficient, adequate and accurate information does not allow the consent authority to be satisfied:
- The development has been designed, sited and will be managed to avoid an adverse impact on the surrounding built and natural environments.
 - That where an impact cannot be reasonably avoided, that the development has been designed, sited and can be managed to minimise that impact.
 - That where an impact cannot be minimised, the development can be managed to minimise that impact.
 - That the proposal does not achieve a visual form that is consistent with the character and values of the surrounding coastal environment or adjoining built form in accordance with the established strategic planning framework and development controls for the Site.
8. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of *Cl. 2.12 – Development in Coastal Zone Generally—Development Not to Increase Risk of Coastal Hazards* of State Environmental Planning Policy (Resilience and Hazards) 2021 in that the proposal has not provided sufficient, adequate and accurate information regarding any proposed coastal protection works or adequately demonstrated either the subject Site or adjoining land will not be subject to an increased risk of coastal hazards.

9. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of *Cl. 4.6(1) – Contamination and Remediation to be Considered in Determining Development Application* of State Environmental Planning Policy (Resilience and Hazards) 2021 in that the proposal has not demonstrated that it is suitable in its present, contaminated state, for the purpose for the intended use, or that the land will be remediated in a suitable manner before the intended use occurs without causing environmental harm, given the land requires remediation.
10. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of *Cl. 2.1 – Standards for BASIX development and BASIX optional development* of State Environmental Planning Policy (Sustainable Buildings) 2022 in that there has been no verification that the submitted BASIX Certificate satisfies the prescribed standards contained in Schedule 2 or that it relates to the submitted plans, or that the single phase air conditioning units with a 3.5 star rating stated in the Certificate are to be provided, given the omission of any relevant details on the plans.
11. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the applicable provisions of *Cl. 3.2 – Development consent for non-residential development* of State Environmental Planning Policy (Sustainable Buildings) 2022 in that the proposal does not demonstrate how the following matters prescribed in subclause (1) have been considered and addressed:
 - (a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials.
 - (b) a reduction in peak demand for electricity, including through the use of energy efficient technology.
 - (c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design.
 - (d) the generation and storage of renewable energy.
 - (e) the metering and monitoring of energy consumption.
 - (f) the minimisation of the consumption of potable water.
12. The proposed development does not satisfy the applicable provisions of *Chapter 2 - Infrastructure* of State Environmental Planning Policy (Transport and Infrastructure) 2022 in that it does not demonstrate the proposal will satisfy the relevant provisions relating to *Subdivision 2 - Development Likely to Affect an Electricity Transmission or Distribution Network* of *Division 5 - Electricity*

Transmission or Distribution in that the applicant has not complied with the request from Essential Energy as the electricity supply authority to submit a Network Encroachment Form for approval.

13. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it is incompatible with the general character and amenity of the surrounding locality, which does not satisfy the following specific aims of the Bega Valley Local Environmental Plan 2013:
 - (a) *to protect and improve the economic, natural and social resources of Bega Valley through the principles of ecologically sustainable development, including conservation of biodiversity, energy efficiency and taking into account projected changes as a result of climate change.*
 - (b) *to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, that respond to lifestyle choices, emerging markets and changes in technology.*
 - (c) *to conserve and enhance environmental assets, including estuaries, rivers, wetlands, remnant native vegetation, soils and wildlife corridors.*
 - (e) *to ensure that development contributes to the natural landscape and built form environments that make up the character of Bega Valley.*
 - (f) *to provide opportunities for a range of housing choices, including affordable and adaptive housing, in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities.*
 - (h) *to identify and conserve the Aboriginal and European cultural heritage of Bega Valley.*
 - (i) *to restrict development on land that is subject to natural hazards.*
 - (j) *to ensure that development has minimal impact on water quality and environmental flows of receiving waters.*
14. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it does not satisfy the objectives of the MU1 Mixed Use zone under the Bega Valley Local Environmental Plan 2013 as the application proposes land uses (a restaurant and a café) for which adequate and accurate information has not been provided to determine whether such uses will be contrary to the zone objectives, whether they will adversely affect the amenity of the existing surrounding development or the residential development proposed in this application, or that their operation will not be adverse to other such similar premises within the Eden Town Centre.

15. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 4.3 – Height of Buildings, in that the proposed height of the development is excessive and inappropriate in the context of the predominant form and scale of surrounding development, and is inconsistent and incompatible with the present and likely future development, surrounding landforms and the visual setting, as well as the expressed desired future character and will not protect residential amenity, views, privacy and solar access both to and of adjoining development and within the proposal..
16. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 4.6 – Exceptions to Development Standards in that the consent authority is not satisfied the applicant has demonstrated:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
17. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 5.10 – Heritage Conservation as the proposal will have an unacceptable adverse impact on the surrounding Heritage Items, the character of the South Imlay Street Heritage Conservation Area or that adequate due diligence has been undertaken with respect to the potential for places of Aboriginal cultural heritage.
18. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 5.21 – Flood Planning as the application does not provide sufficient, adequate and accurate information to allow the consent authority to be satisfied the Site will not be adversely affected by coastal inundation or that any works will not adversely impact on adjoining properties.
19. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 6.1 – Acid Sulfate Soils as the application does not provide sufficient, adequate and accurate information to allow the consent authority to be satisfied

the Site is not affected by acid sulfate soils, which have been identified in the Snug Cove Masterplan as potentially being present.

20. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 6.2 – Earthworks in that it fails to provide sufficient, adequate and accurate information in order for the Consent Authority to be satisfied that the proposal will not have an adverse effect on the soils and groundwater flows of the surrounding area.
21. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 6.4 – Coastal Risk in that it fails to provide fails to provide sufficient, adequate and accurate information in order for the Consent Authority to be satisfied that the proposal will not be exposed to coastal risks or cause adjoining properties to likewise be exposed or alter coastal processes and the impacts of coastal hazards to the detriment of the environment.
22. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the Bega Valley Local Environmental Plan 2013 with respect to Clause 6.5 – Terrestrial Biodiversity in that it fails to provide fails to provide sufficient, adequate and accurate information in order for the Consent Authority to be satisfied that the proposal will not adverse impact on the condition, ecological value and significance of the fauna and flora on the land through the clearing of vegetation and that the proposal has not been designed, sited and managed to avoid, minimise or mitigate the impacts of the development.
23. The proposed development does not satisfy the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate compliance with the provisions of the Bega Valley Development Control Plan 2013 with respect to the following matters:
 - *Section 3.1.7 – Eden* in that the proposal results in a bulk, scale and height that is inconsistent with the existing coastal setting and well beyond that to be expected as a result of the Snug Cove Masterplan.
 - *Section 3.2 – General Requirements* in that the proposal does not satisfy the Objectives of the section, given the adverse impacts on the character of the area, conservation of the scenic qualities of the coastal landscape and foreshore, conservation of important views, vistas, landscapes and the relationships between places and the Harbour and visual impacts.

- *Section 3.3 Specific Requirements – Mixed Use Development* insofar as the proposal (notwithstanding the lack of sufficient, adequate and accurate information) presents an unsatisfactory outcome as a consequence of the bulk, scale, height, extent of excavation and poor internal amenity, which will not achieve the identified requirements specified in relation to:
 - 3.3.1 Design
 - 3.3.2 Amenity
 - 3.3.3 Environment
 - 3.3.4 Accessibility and Adaptability
- *Section 5 – General Development* insofar as the proposal (notwithstanding the lack of sufficient, adequate and accurate information) presents an unsatisfactory outcome as a consequence of the bulk, scale, height, extent of excavation and poor internal amenity, which will not achieve the identified requirements specified in relation to:
 - 5.1 Aboriginal Heritage
 - 5.2 Non-Aboriginal Heritage
 - 5.3 Access and Mobility
 - 5.4 Social and Economic Impacts
 - 5.5 Sustainable Design Principles
 - 5.6 Tree and Vegetation Preservation
 - 5.8 Planning for Hazards
 - 5.9 Off Street Car and Bicycle Parking
 - 5.10 – Subdivision Standards
 - 5.11 – Signage and Advertising
- *Section 5 – General Development (7.6 – Snug Cove)* insofar as the proposal (notwithstanding the lack of sufficient, adequate and accurate information) fails to comply with the following provisions of the Snug Cove Masterplan:
 - *Objectives* in that it does not provide access to the foreshore of Yallumgo Cove in the manner sought; retain the identified vegetation; or adequately take into account coastal processes.
 - Existing Character and Future Character Statement
 - Natural Setting, Views and Foreshore links – Principles and Controls
 - Pedestrian & vehicular access & circulation linkages - Principles and Controls

- Character Statement – Future
 - Natural Setting - Principles, Controls and the Plan
 - Views and Visual Character - Principles, Controls and the Plan
 - Activities and Uses - Principles, Controls and the Plan
 - Open Space and Public Facilities - Principles, Controls and the Plan
 - Pedestrian Access and Circulation - Principles, Controls and the Plan
 - Car Parking and Parking Provision - Principles, Controls and the Plan
 - Built Form and Building Heights - Principles, Controls and the Plan
 - Built Form Building Footprints - Principles, Controls and the Plan
 - Active Ground Level, Setbacks, Alignment & Articulation - Principles, Controls and the Plan
 - Landscape Character - Principles, Controls and the Plan
 - Subdivision - Principles, Controls and the Plan
24. The proposed development does not satisfy the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the impacts on the values of the adjacent heritage items and conservation areas have been adequately addressed in the relevant heritage management documents.
25. The proposed development does not satisfy the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as it will have significant adverse impacts on the built and natural environments and the social and economic impacts on the locality with respect to:
- Land and water contamination
 - The loss of coastal vegetation
 - Coastal processes and risks
 - Excessive earthworks
 - The provision and capacity of infrastructure networks and emergency services
 - Stormwater management
 - Residential amenity, including privacy, solar access, views and outlook, access to private and communal open space and access to residential facilities
 - Views and vistas
 - Landscaping
 - Access, parking and transport

- Land use conflict
 - Alienation of identified future public land
 - European and Aboriginal cultural heritage
 - Pedestrian access, wayfinding and public safety
 - Social impacts and the provision of community support services and resources
 - Economic impacts
 - Sustainability
26. The proposed development does not satisfy the provisions of Section 4.15(1)(c) in that the supporting documentation has not demonstrated the site is suitable the intended development given the failure to address and comply with the applicable statutory and policy controls intended to ensure development is designed, located and operated in a manner that does not adversely affect the amenity of the surrounding residential environment.
27. The proposed development does not satisfy the provisions of Section 4.15(1)(e) approval of a development that does not achieve good planning outcomes is contrary to the public interest, given the circumstances of the case`.

APPENDICES:

Appendix A – Information Request dated 31 July 2024

Appendix B – Site Photos

Appendix C – ADG Compliance Tables