

COUNCIL ASSESSMENT REPORT - S4.55(2) – MDA0072-26
SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSTH-564 – MDA0072/26
PROPOSAL	<p>S4.55(2) to Modification to DA0593/23 – modification to increase basement, car parking, amend unit configuration and sewer/stormwater design to create:</p> <p><i>Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 13 x 2 bed; 42 x 3 bed and 4 5 x 4 bed) including basement car parking for 88 vehicles 107 vehicles (plus 3 car wash bays)</i></p> <p>To approved development: <i>Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 x 2 bed; 42 x 3 bed and 4 x 4 bed) including basement car parking for 88 vehicles (plus 3 car wash bays)</i></p>
ADDRESS	Lot 1 DP 1135117 [20 Heradale Parade Batemans Bay]
APPLICANT	M Alexander-Hatziplis
OWNER	Edam Properties Pty Ltd
LODGEMENT DATE	19/11/25
APPLICATION TYPE (DA, Concept DA, CROWN DA, INTEGRATED, DESIGNATED)	Nominated Integrated (Water NSW)
REGIONALLY SIGNIFICANT CRITERIA	<p>Clause 4, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i>:</p> <p>Regionally significant development – General development where the CIV exceeds \$30,000,000</p> <p><u>Modification</u>: The application is referred to the Regional Planning given the additional height increased that results in the proposal further exceeding the height development standard by 10%. Minor changes are made to panel conditions, however the changes that panel made were administrative only.</p>
CIV	\$37,267,709 (incl. GST); \$33,879,736 (excl. GST)
CLAUSE 4.6 REQUESTS	<p><u>Cl.4.3. Height of Buildings</u></p> <p>The approved development has building heights varying between 12.18m – 14.141m (Building A); 13.2m – 13.88m (Building B); 11.92m – 14.6m (Building C) on a site with a height limit of between 11.5m and 12.5m.</p>

	<u>Modification:</u> Each building increased by 0.4m to accommodate additional 100mm in the floor to ceiling heights for each level. <i>Note - A clause 4.6 variation request is not required for a modification application.</i>
KEY SEPP/LEP	SEPP Housing 2021, SEPP Transport and Infrastructure, SEPP Biodiversity and Conservation, SEPP Resilience and Hazards, SEPP Planning Systems; SEPP Sustainable Buildings SEPP; Eurobodalla LEP 2012
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Two (2) submissions in response to modification. Issues raised: <ul style="list-style-type: none"> - Bulk and scale - Parking impacts
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Statement of Environmental Effects • Updated Archectural Plans • Updated BASIX Certificate • Updated Access Report • Supporting letter from arborist • Updated Stormwater Plans • Updated Landscape Plans • Updated Traffic Report • Updated Waste Management Plan
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval – Subject to amended conditions
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	14 April 2026
PLAN VERSION	Various
PREPARED BY	Jordan Davies – Specialist Development Planner
DATE OF REPORT	7 April 2026

EXECUTIVE SUMMARY

This s4.55(2) modification seeks to amend a number of aspects of the proposal including an increase to the size of the basement to accommodate an additional 19 parking spaces, reconfiguration of the unit mix (with no increase to the overall number of units), removal of building structure from an existing water supply easement, overall height increase to 0.4m to accommodate 100mm increase of floor to floor heights across each level, change to the roof design to framed metal sheet roof and other general refinements arising from the development of the construction documentation.

PPSSTH-24 / DA0593/23 was approved on 13 February 2025 by the Southern Regional Planning Panel, granting consent for *Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 x 2 bed; 42 x 3 bed and 4 x 4 bed) including basement car parking for 88 vehicles (plus 3 car wash bays).*

Pursuant to Section 2.19(1) and Clause 4 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* the modification application is declared to be regionally significant development on the basis of the increased building height which results in the proposal further exceeding the height development standard by 10%. Minor changes are made to panel conditions, however the changes that panel made were administrative only. The specific amendments to the conditions are discussed in detail in the body of this report.

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

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

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

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

The principal planning controls relevant to the proposal include *State Environmental Planning Policy Housing (Design Quality of Residential Apartment Development)* and *Eurobodalla Local Environmental Plan 2012* associated State Planning Policies and Batemans Bay Regional Centre Development Control Plan.

The original proposal was supported by a Clause 4.6 variation request in relation to the building height. The modified proposal includes an overall building height increase of 0.4m across each building due to an increased floor to floor level of 100mm across each level (now 3.25m) as a result of the detailed construction design. This assessment report finds that the development remains substantially the same, despite the minor increase in building height and there are no unreasonable impacts to the surrounding properties as a result of the increase to building height.

The original proposal was integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') under s.90 *Water Management Act 2000*. Due to the increased size of the basement, amended General Terms of Approval have been issued by Water NSW. A referral to Essential Energy pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') raised no objections to the modified proposal. A referral to Heritage NSW was undertaken in relation to Aboriginal Heritage and they confirmed the proposal is not integrated development in relation to heritage and conditions are maintained regarding unexpected finds.

The application was placed on public exhibition from 25/11/2025 to 14/01/2026 (28 days and extended due to Christmas blackout period) and two (2) submissions were received. One submission continued to raise concern regarding the height, bulk and scale of the development and the other continued to raise concern about parking impacts.

The modifications to the proposal result in the development being 'substantially the same development' as required by Section 4.55 of the EP&A Act. Following consideration of the matters under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, and applicable environmental planning instruments the modified proposal is recommended for approval subject to the conditions contained at **Attachment A** of this report.

1. DETAILED PROPOSAL

Approval history

Application	Approval date	Approval body
PPSSTH-24 / DA0593/23	13 February 2025	SRPP

PPSSTH-24 / DA0593/23 was approved on 13 February 2025 by the Southern Regional Planning Panel, granting consent for *Demolition and construction of a Residential Flat Building (60) units (2 x 1 bed; 12 x 2 bed; 42 x 3 bed and 4 x 4 bed) including basement car parking for 88 vehicles (plus 3 car wash bays)*.

DA0593/23 was approved for the following detailed works:

Buildings/works

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

No staging.

No subdivision.

Building layout:

In detail, the proposed development comprised (key buildings):

Building A – GF - 5 units; L1 – 5 units; Level 2 – 5 units; Level 3 – 5 units (Total 20 units)
 Building B – GF - 4 units; L1 – 6 units; Level 2 – 6 units; Level 3 – 5 units (Total 21 units)
 Building C - GF - 6 units; L1 – 6 units; Level 2 – 5 units; Level 3 – 2 units (Total 19 units)
Total: 60 apartment units

Each building is accessed via pedestrian entries from Bavarde Avenue or Heradale Parade.

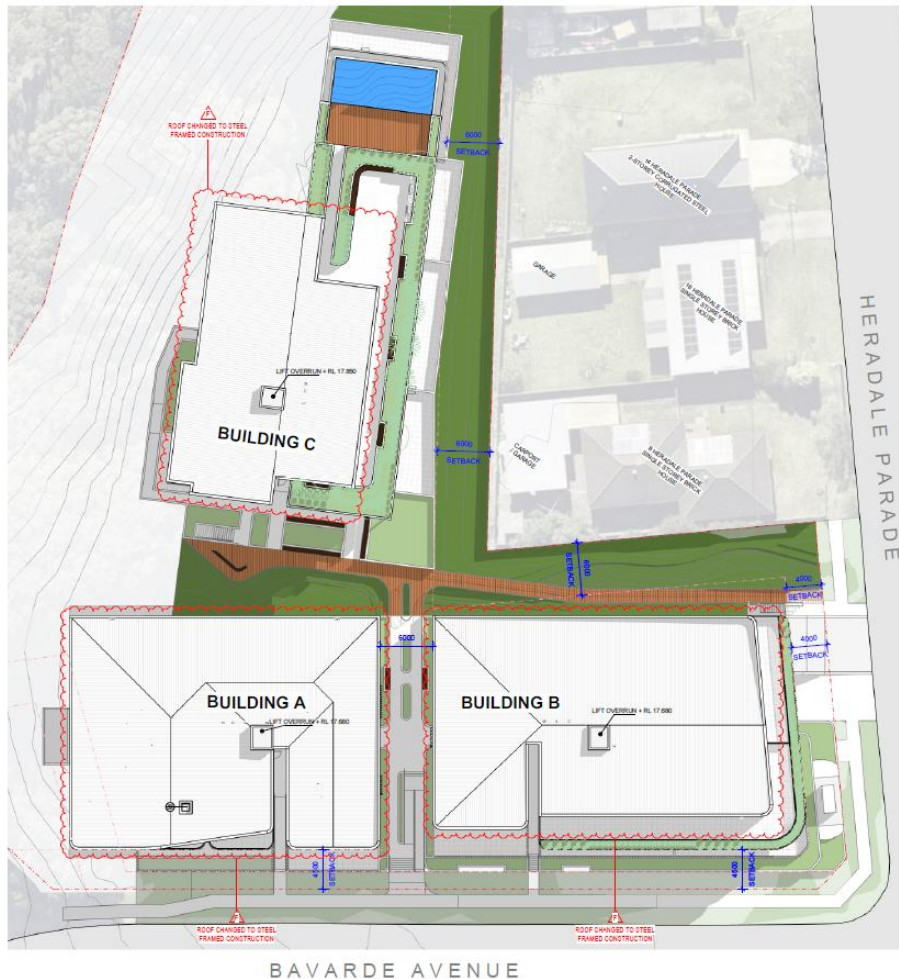


Figure 1 - Site layout – building locations – Plan revision F.

Current application (modification)

This application seeks consent for expanded basement car parking including excavation, reconfiguration of unit mix, increased car parking provision, changes to built form and associated works resulting in a modified proposal description of:

Demolition and construction of a Residential Flat Building (60) units (13 x 2 bed; 42 x 3 bed and 5 x 4 bed) including basement car parking for 107 vehicles (plus 3 car wash bays)

The proposal results in no change to the total number of units.

As per the SEE dated 18 May 2025 submitted with the modified proposal, the application proposes to make the following modifications to the proposal:

- Proposed amendment of existing water supply easement to follow projected location of asset onsite permitting continuation of building structure to ground level of Building

A to the south-west.

- Removal of building structure from existing water supply easement along the Bavarde Ave frontage, including a 1m setback to the sewer to address a consent condition.
- Modification of the proposed apartment mix in the development removing 2x 1 bed units and providing an additional 1x 2 bed and 1x 4 bed units.
- Reduction of 18 adaptable units to 15 adaptable units to meet the 25% DCP requirement.
- Amendments to the basement envelope aligning the perimeter walls to the building line over and subsequent increase in total parking provided.
- Provide additional 100mm in design floor to floor levels and subsequently an additional 0.4m total increase to overall building height. Lift overrun increase 450mm for each building.
- Change DA flat roof design to framed metal sheet roof with new roofing pitch to be concealed to street frontages via parapet structure.
- General refinements arising within construction documentation design development from initial DA proposal.

Table 1: Development Data

Control	PPSSTH-24 / DA0593/23	MDA0072/26
Site area	8409m ² (survey)	8409m ² (survey)
Gross Floor Area	8670m ² (FSR 1.03:1)	8783m ² (FSR 1.04:1)
Clause 4.6 Requests	Yes – Height of buildings Proposed: Building A: 618mm – 3.75m (lift) (<i>within 11.5m HOB</i>) 5.3% – 32.6% Building B: 1.7m – 2.96m (lift) (<i>within 12.5m HOB</i>) 13.6% - 23.68% Building C: 420mm – 4.15m (lift) (<i>within 11.5m HOB</i>) 3.7% - 36%	Each building increased by 0.4m (100mm increase to each floor-to- floor height) across Buildings A to C. No Clause 4.6 variation request is required given the proposal is considered under S4.55 (2). Proposal is substantially the same development and the increased height will not give rise to unreasonable impacts in relation to overshadowing or visual impact.
Maximum Height LEP	11.5m and 12.5m	11.5m and 12.5m
Setbacks	North – 25m	North – 25m
	South – 4.5m (frontage to Bavarde Ave)	South – 4.5m (frontage to Bavarde Ave)
	East – 4m – 6m	East – 4m – 6m

	West – 18m	West – 18m (Ground floor moved to align with existing upper levels)
Earthworks	Proposed for basement car parking	Basement footprint increased however will align with approved footprint of residential levels above.
Tree removal	48 trees assessed. Tree Nos. 1- 17; 18, 19, 20, 21, 22, 23, 24, 27, 29 and 40 (27 trees) to be removed. Tree Nos. 25 and 26; 28, 30 – 48 to be retained (22 trees) Additional trees to be retained (sloped area to be retained)	No additional tree removal requested as confirmed by the addendum arborist report.
Landscaping	Communal open space/landscaped areas 4802m ² /57%	Maintained as per existing approval.
Car Parking	91 vehicles (including 3 car wash bays)	110 vehicles (including 3 car wash bays)
Services	Water, sewer and stormwater connection. Connection to electricity.	Remains the same
Hours of Operation	N/A Residential component. Conditions of consent imposed regarding acoustic requirements (swimming pool, plant/machinery, garbage trucks)	Remains the same



Figure 2 - DA approved - Perspective View – looking south- west along Bavarde Avenue (corner of Heradale Parade). Visual appearance of modified proposal generally consistent with this image.

The modification seeks to amend the following consent conditions (some of which were recommended by the Panel:

Condition	PPSSTH-24 / DA0593/23	MDA0072/26
1	Approved Plans a Documents List of approved plans and documents.	Condition to be amended to reflect approved plans and documents under the modified proposal.
2	Concurrence and Referral – Water NSW – Water NSW GTA's dated 26 July 2023 referred to in condition.	Condition updated to refer to updated GTA's provided by WNSW.
14	Recommendations of reports – Arborist	The updated arborist report adopts the same recommendations, no need to change this condition. This condition was amended by the panel but only limited to deleting a 'note' to avoid confusion.
15	Access for people with disabilities (residential) Current condition refers to access report dated 03-09-2024.	Updated access report submitted in support of the modified plans. Condition to be updated to refer to the updated access report dated 23-10-2025. Applicant has requested deletion of the second paragraph based on advice from their access consultant that there is no NCC requirement for provision of accessible egress from the basement in the scenario of lift outages. This was a condition amended by the panel due to a typo only.
40	Concurrence and Referral – Water NSW – Water NSW GTA's dated 26 July 2023 referred to in condition.	Condition updated to refer to updated GTA's provided by WNSW.
73	Number of car spaces – Condition currently reflects 88 spaces	Condition to be amended to reflect the proposed new number of parking spaces.
82	Payment of Section 7.11 Contributions – Currently reflects approved apartment mix	To be amended to reflect the new apartment mix.
83	Water/Sewer Developer Contributions	To be amended to reflect the new apartment mix.
91	Concurrence and Referral – Water NSW – Water NSW GTA's dated 26 July 2023 referred to in condition.	Condition updated to refer to updated GTA's provided by WNSW.
103	Certification Height of Building – Currently reflects the approved RL's of the building roof height.	To be amended to reflect the new building height.

104	Concurrence and Referral – Water NSW – Water NSW GTA’s dated 26 July 2023 referred to in condition.	Condition updated to refer to updated GTA’s provided by WNSW.
132	Concurrence and Referral – Water NSW – Water NSW GTA’s dated 26 July 2023 referred to in condition.	Condition updated to refer to updated GTA’s provided by WNSW.

2. BACKGROUND/HISTORY

The subject modification application is the first modification application lodged in relation to the approved development.

2.1 Site History

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

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

Council records indicate:

- *Building Application 24/69 for a hospital was approved on 3 March 1969.*
- *Building Application 313/80 for brick additions and extension to hospital was approved 19 May 1980.*
- *Building Application 576/84 for a relocation of house for community centre was approved 17 July 1984.*
- *Building Application 153/86 for dwelling was approved 7 March 1986.*
- *Building Application 552/86 for a garage was approved 18 July 1986.*
- *Building Application 1336/89 for a community centre was approved 20 December 1989.*
- *Development Application for additions and alterations to the existing hospital was approved 21 January 1993.*
- *Building Application 63/94 for a commercial building alteration was approved 3 February 1994.*
- *Building Application 513/94 for commercial building additions was approved 3 June 1994.*
- *Development Application 154/03 for a 4 bed accommodation unit was approved 27 August 2002.*
- *Development Application 270/05 for alterations & additions to existing emergency department was approved 3 November 2004.*
- *Development Application 809/07 for a 2 lot subdivision was approved 14 August 2007.*

Planner comment: The current DP1135117 is dated 22.4.2009. i.e. this site was originally part of a larger site which contains the Batemans Bay hospital (Lot 2) cited upslope. This resulted in creation of the subject site Lot 1.

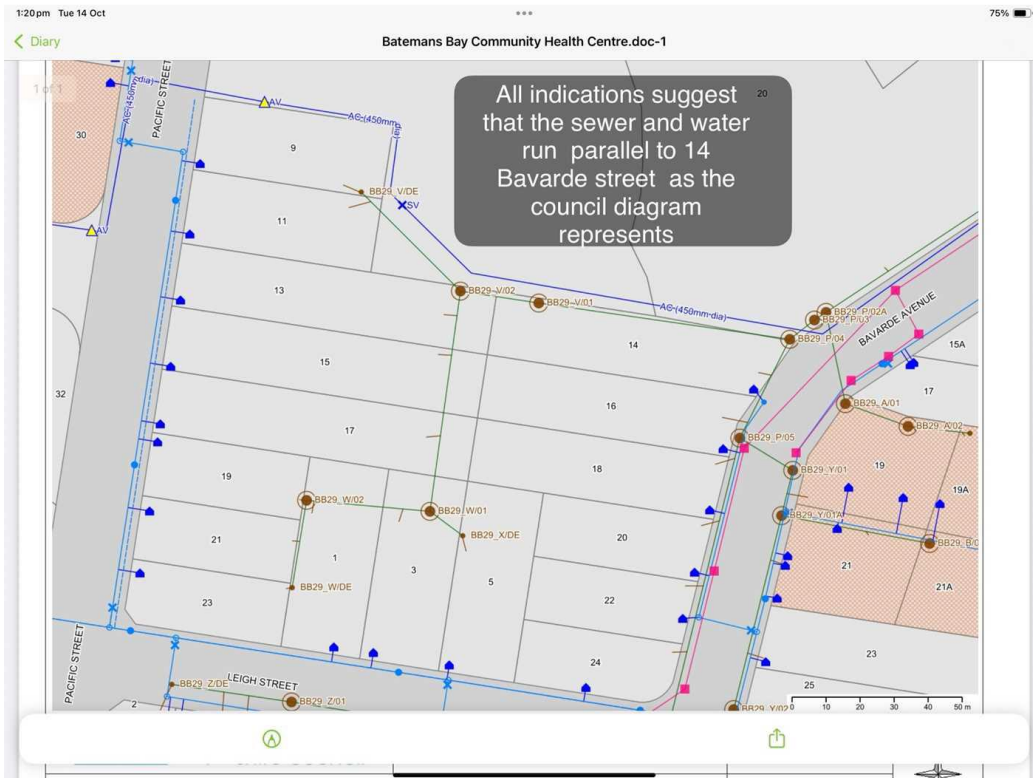


Figure 4 - Council infrastructure map. Water (blue), sewer (green) and stormwater (pink).

As such, this has given the applicant an opportunity to extend the ground floor and basement footprint to the west (to align with the floor above) in the location of the existing easement. The existing development consent contains condition 44 which requires the existing water main to be surveyed and Condition 134 which requires the easement to be realigned consistent with the exact pipe location. Subject to these conditions, the proposal will be clear of the new easement 'M' to be realigned.

THE SITE AND LOCALITY

2.2 The Site

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

The site is an irregular shaped allotment with site area of 8409m².

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

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

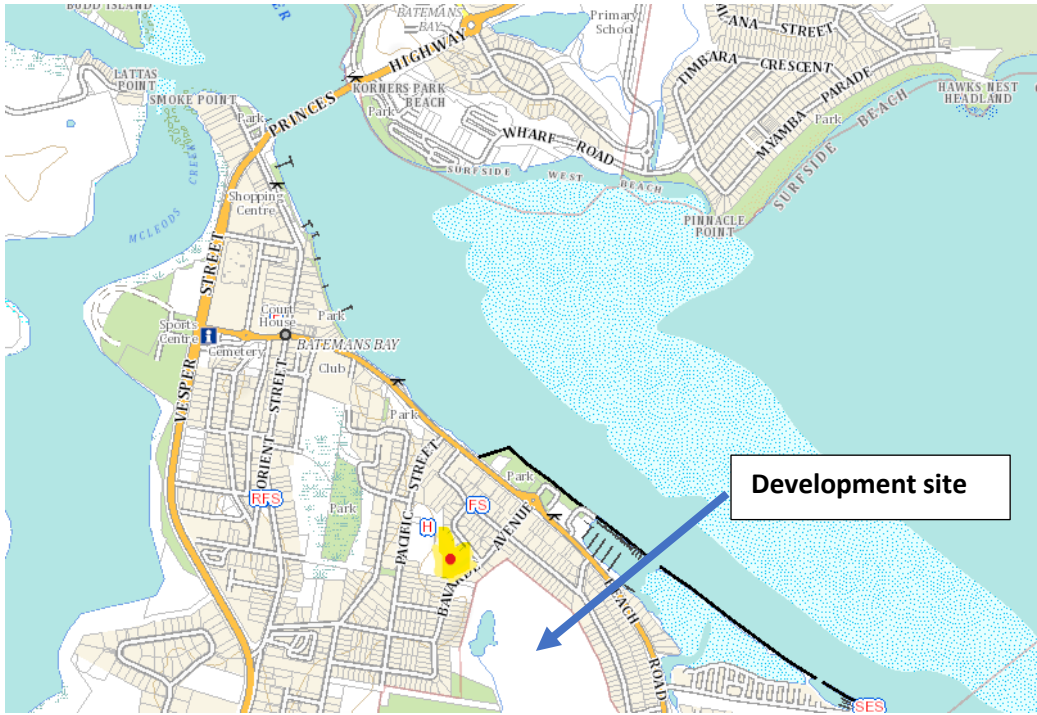


Figure 5 - Location map.



Figure 6 - Aerial Photograph of Development Site.

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



Figure 7 - Mapped Acid Sulfate Soils (NSW Planning Portal)



Figure 8 - Mapped Flood affected areas (Council GIS mapping)

CONSULTATION AND REFERRALS

Internal Referrals	
Referral	Comments
Development Engineers	Changes supported with no new conditions required.

External Referrals	
Referral	Comments
Essential Energy	No concerns raised, conditions remain as per existing consent.
Heritage NSW	Confirmed that the proposed is not 'integrated development' for the purpose of aboriginal heritage. No changes to conditions of consent.

Integrated Development	
Agency	Recommendation
Water NSW	The development application was integrated development under Section 90 (2) of the Water Management Act 2000 and General Terms of Approval (GTAs) were issued. The modified proposal was forwarded to Water NSW and they have issued updated GTAs based on the revised plans.

STATUTORY CONSIDERATIONS

2.3 Section 4.55(2) Other modifications

The proposed modification is considered a s4.55(2) modification. The following provides an assessment of the submitted application against the matters for consideration under Section 4.55(2) and Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is the same or substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Council is satisfied that the proposed modification would be substantially the same as the development which was originally approved.

The modified development will result in no significant changes and the proposal is considered to be quantitatively and qualitatively the same as the development as originally approved for the following reasons:

- Despite the 0.4m height increase across the proposal, the change to the bulk and scale will not be visually discernible or significantly change the outcome of the development;
- The overall GFA of the building has increased less than 1% and this is due to the extension of the ground floor of Building A towards the west due to the relocation of the easement following the location of the water main being surveyed;
- The location of the vehicular and pedestrian access remains unchanged;
- The impact of the development is only increased by a marginal degree due to the 0.4m height increase, however, does not result in adjoining properties having any unreasonable loss of sunlight or outlook.
- The number of units (60 unit) remains the same and therefore the intensity of the development is consistent with the original approval.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

The proposed modification was renotified to Water NSW and amended general terms of approval were issued.

***(c) it has notified the application in accordance with—
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

The application was notified for 28 days as 'nominated integrated development. Two (2) submissions were received however they did not raise any new or significant issues.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

The submissions raised the issue of bulk and scale and suggested there was a lack of parking being proposed. Noting the above commentary that the 0.4m height increase will not be visually discernible when compared to the existing approval and the amended basement increases the parking supply by 19 spaces, there are no reasons why Council would recommend refusal of the modified proposal as a result of the public submissions.

2.4 Section 4.55(3) – Matters Relevant to the Application

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must

also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Reasons for granting consent provided under DA0593/23:

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to building height and approve the application for the reasons outlined in the Council Assessment Report subject to several minor amendments to the recommended conditions of consent as outlined below.

In particular, the Panel agreed with Council's assessment that:

- The proposal is permissible in the R3 Medium Density zone under the Eurobodalla LEP 2012 and is consistent with the zone objectives which include the need to provide a variety of housing types and to provide for the housing needs of the community.
- The development will result in a sound planning outcome and the site of the proposed development is well suited for the intended use.
- The clause 4.6 contravention is justified on planning grounds having regard to both the built form outcomes and the positive social outcomes.
- Adequate services are available to the site.
- The proposal promotes good residential amenity and will provide for a diversity of housing throughout Eurobodalla.
- The Panel has considered all the relevant issues raised in submissions and concludes they have been resolved through design and by the conditions of consent as imposed.

During its deliberations, the Panel noted a discrepancy between car parking arrangements contained in the Council assessment report and the traffic and car parking report submitted in support of the application, which specified a reduction of car parking spaces proposed. The Panel agreed with the advice provided by Council assessment staff during the final briefing that the proposed parking spaces and updated arrangements were suitable and comply with Council's car parking controls.

The Panel also noted clarification provided by Council assessment staff during the final briefing regarding the management of stormwater and In-ground water and noted that the GTAs from WaterNSW included conditions to ensure stormwater and pump out water is managed appropriately.

The modifications to the proposal do not result in a development that will be inconsistent with the reasons for the determination of the original DA.

Section 4.15 of the Environmental Planning and Assessment Act 1979

The following section of the report considers the proposal against the heads of consideration under S4.15 of the Environmental Planning Assessment Act.

2.5 Biodiversity Conservation Act 2016

The amended proposal does not require additional tree or vegetation clearing beyond the existing approval. The same outcome is maintained in relation to biodiversity and tree clearing.

2.6 Water Management Act 2000

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

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

2.7 Coastal Management Act 2016

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

2.8 Marine Estate Management Act 2014

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

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

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

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

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

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

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

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

The following Environmental Planning Instruments are relevant to this application:


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

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

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	MDA0072/26	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 2: Vegetation in non-rural areas The proposed development is not mapped on the BV Map. The land is zoned R3. The proposed development does not require clearing that exceeds the 2500m² threshold. As such a BDAR is not required.</p> <p>The proposal involves the removal of selected trees and vegetation works within the site for building construction and associated works. Please refer to Biodiversity Conservation Act 2016, above.</p> <p>Chapter 3 – Koala Habitat Protection 2020 This Chapter does not apply to the proposed development. The land is not zoned RU1, RU2 or RU3.</p> <p>Chapter 4 – Koala Habitat Protection 2021 The land is zoned R3. The land is not contained within any approved</p>	No additional tree clearing	Y

	koala plan of management. The land area is less than 1Ha. The proposed development does not involve the removal of any feed trees listed in schedule 3. As such, the proposed development is unlikely to result in any detrimental impact to koalas.		
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 4 of Schedule 6 as it comprises General Development where the CIV exceeds \$30,000,000. 	The application is referred to the Regional Planning given the additional height increased that results in the proposal further exceeding the height development standard by 10%. Minor changes are made to panel conditions, however the changes that panel made were administrative only.	Y
SEPP (Resilience & Hazards)	<p>Chapter 2 – Coastal Management</p> <p>The SEPP aims to manage development in the coastal zone, protect environmental assets of the coast, establish a framework and guide to land use planning decision making and provides mapping for the coastal management areas. Refer detailed comments below.</p>	The northern corner of the site is mapped under the 'Coastal Environment Area' however no development is occurring within this part of the site. The development footprint is clear of any areas mapped under Chapter 2 Coastal Management.	Y
	<p>Chapter 4 – Remediation of contaminated land</p> <p>The development application as accompanied by a Preliminary Site Investigation prepared in accordance with the contaminated land planning guidelines. The conclusions of the PSI found that there was no evidence of contaminating land uses and the site was suitable for the proposed development.</p>	The proposal does not introduce any further land uses that would change the original assessment in relation to contaminated land and the site remains suitable for the proposed development.	Y
State Environmental	Chapter 2: Infrastructure	Modified proposal was referred to Essential	Y

<p>Planning Policy (Transport and Infrastructure) 2021</p>	<ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. <p>Clause 3.58 Traffic Generating Development of the Infrastructure SEPP does not apply to the development. Residential accommodation of 300 or more dwellings or with access to a classified road (or within 90m of a classified road) requires referral to Transport for New South Wales (TfNSW). The site is located approximately 220m south-west of the closest classified road (Beach Road).</p>	<p>Energy and their conditions remain unchanged.</p> <p>The increase to a total 110 parking spaces does not trigger traffic generating development.</p>					
<p>SEPP (Sustainable Buildings) 2022</p>	<p>A BASIX Certificate is provided No. 1377657M_02 dated 27 November 2024.</p>	<p>An updated BASIX certificate was submitted with the modified proposal that is less than 3 months old upon lodgement date.</p>	<p>Y</p>				
<p>State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)</p>	<p>Note: SEPP 65 applies due to date of lodgement.</p> <ul style="list-style-type: none"> A design verification statement has been submitted. <p><i>Cl.29 EP&A Regs. 2021</i></p> <p>Yours sincerely,</p>  <p>James Alexander- Hatziplis NSW Reg. No. 10535 Managing Director BDesArch MArch Place Studio</p> <p>Dated 14/01/25.</p> <p>In accordance with clause 28 (2) of SEPP 65 the consent authority has considered:</p> <table border="1" data-bbox="496 1774 933 2016"> <tr> <td>(a) the advice (if any) obtained from the design review panel</td> <td>Not applicable.</td> </tr> <tr> <td>(b) the design quality of the</td> <td>Refer detailed</td> </tr> </table>	(a) the advice (if any) obtained from the design review panel	Not applicable.	(b) the design quality of the	Refer detailed	<p>The original development application was accompanied by a design verification statement. There is no requirement for a Design Statement to be submitted with a modification application. Council has considered the amended plans, which include some internal layout changes to the apartments, against the Apartment Design Guidelines. The proposal continues to perform well against the design criteria and the design principles in the SEPP/ADG.</p>	<p>Y</p>
(a) the advice (if any) obtained from the design review panel	Not applicable.						
(b) the design quality of the	Refer detailed						

	<table border="1"> <tr> <td>development when evaluated in accordance with the design quality principles, and</td> <td>review in Attachment B – compliance table.</td> </tr> <tr> <td>(c) the Apartment Design Guide.</td> <td>Refer detailed review in Attachment B – compliance table.</td> </tr> </table> <p>Following detailed assessment of the proposal it is considered the proposal provides a built form and design that responds positively to the context and character of the area, providing a design that has considered housing diversity and potential environmental impacts and the amenity of occupants and neighbours.</p>	development when evaluated in accordance with the design quality principles, and	review in Attachment B – compliance table.	(c) the Apartment Design Guide.	Refer detailed review in Attachment B – compliance table.		
development when evaluated in accordance with the design quality principles, and	review in Attachment B – compliance table.						
(c) the Apartment Design Guide.	Refer detailed review in Attachment B – compliance table.						
Proposed Instruments	None identified.	None identified.	N/A				
LEP	<p>Eurobodalla LEP 2012</p> <ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 - Height of buildings • Clause 4.6 – Variation to development standards • Clause 5.10 – heritage • Clause 5.21 – flood planning • Clause 6.3 – acid sulfate soil • Clause 6.4 – Earthworks • Clause 6.9 – Stormwater management 	The proposal remains consistent with the LEP provisions, with the exception to an increase to the building height by a further 0.4m. This is considered in detail below, along with the relevant LEP clauses.	Y				
DCP	<p>Batemans Bay Regional Centre Development Control Plan</p> <p>The DCP provisions apply where not excluded by ADG provisions.</p>	The proposal remains consistent with the setbacks, design outcomes, waste management strategy, stormwater management and landscape outcome when assessed against the DCP. No new DCP variations are introduced because of the modified proposal.	Y				

Eurobodalla Local Environmental Plan 2012

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

The relevant clauses to the assessment of the modification are discussed below, with the remaining matters remaining consistent with the original assessment.

Building Height (Cl 4.3)

Required: Height of Buildings Limit: 11.5m and 12.5m across the site. The site contains 2 differing height limits that split the site.



Figure 9 - Extract from Height of buildings map (NSW Planning Portal).

Approved Development

The development application was approved with the following departure from the building height standard and the subsequent departure (in %) from the development standard:

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

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

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

The approved buildings height variation is illustrated below:

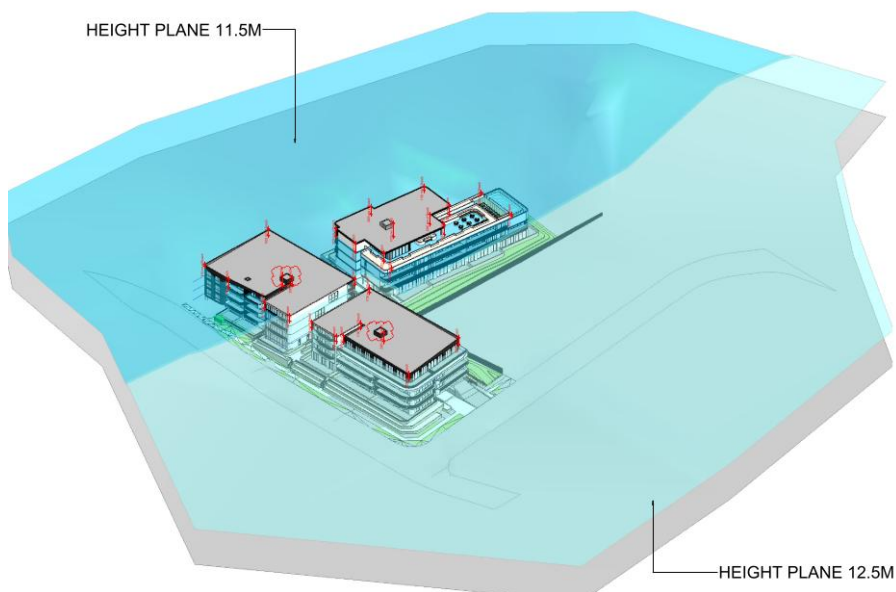


Figure 10 - Approved development height plane – zoomed out showing slip height zone.

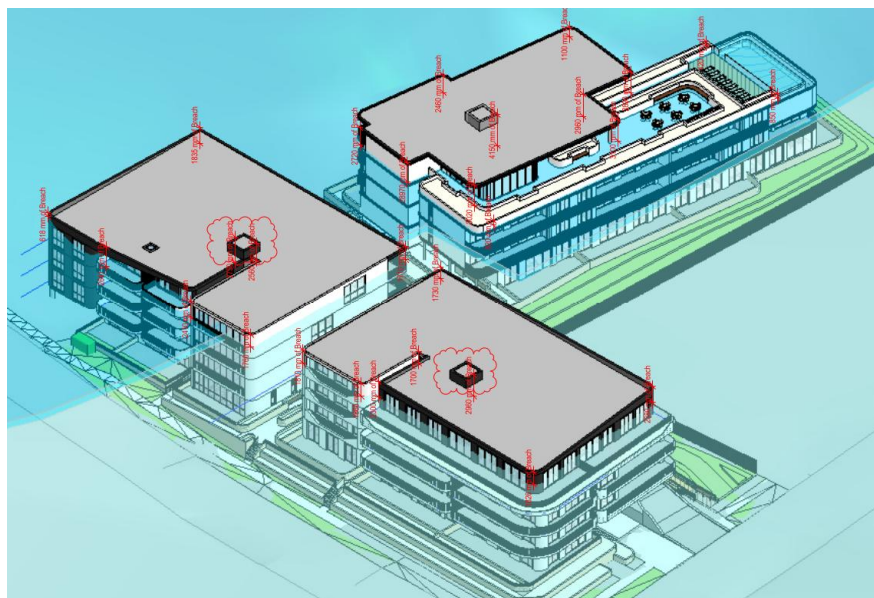


Figure 11 – Zoomed in approved development height plane.

Modified proposal

The proposed modification application seeks to increase the building height of each building by 400mm in total due to an increase to the floor-to-floor level for each storey by 100mm to accommodate changes arising from the detailed construction drawings. The amended design also includes a new steel framed roof construction, however, the does not exceed the height of the approved parapet. The lift overrun increased by 450mm from the previous proposal for each building.

The proposed building height relative to the height plane is shown in the below image:



Figure 12 - Modified development height plane.

The amended building height variation is outlined below:

- Building A: 1020mm – 4.10m (lift) (*within 11.5m HOB*) 8.9% – 36%
- Building B: 2.3m – 3.31m (lift) (*within 12.5m HOB*) 18.4% - 26.5%
- Building C: 1150mm – 4.58m (lift) (*within 11.5m HOB*) 10% - 39.8%

Clause 4.6 – Exceptions to Development Standards

The development application was approved pursuant to Clause 4.6 'Exceptions to Development Standards' and the SNPP was satisfied of the applicant's written request to vary the standard. The panel's reasons for determination are replicated below:

Application to vary a development standard:

Following consideration of a written request from the Applicant, made under cl 4.6 (3) of the *Eurobodalla Local Environmental Plan 2012* (LEP), that has demonstrated that:

- a) compliance with clause 4.3 Height of Buildings (development standard) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- a) the Applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 Height of Buildings of the Eurobodalla LEP and the objectives for development in the R3 Medium Density zone; and
- c) the concurrence of the Secretary has been assumed.

Whilst the modification application will result in a building that further exceeds the maximum permitted height under Clause 4.3 of the ELEP 2012 (additional 400mm), the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own

stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R3 Medium Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment: The objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard (As detailed below). Demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

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

Comment: The development was approved as a four (4) storey building within the medium density zone which is currently undergoing transition to provide further density in proximity to the town centre. As contemplated in the assessment of the original application and confirmed in the determination by the Panel, the four (4) storey form was considered appropriate for the context and emerging character of the area. The amendment to the proposal results in a building height increase of 0.4m will not dramatically change the visual outcome of the development or render the development incompatible with the emerging context of the medium density zone. The additional 100mm of floor-to-floor height across the building will enable an improved outcome in terms of constructability and quality of construction (i.e to assist waterproofing and services).

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

Comment: Discussion in relation to visual impact is outlined in the above paragraph.

Updated solar access analysis has been provided with the modified application, and it demonstrates the property at 14 Bavarde Avenue will retain the required amount of solar access in accordance with the DCP, see below.

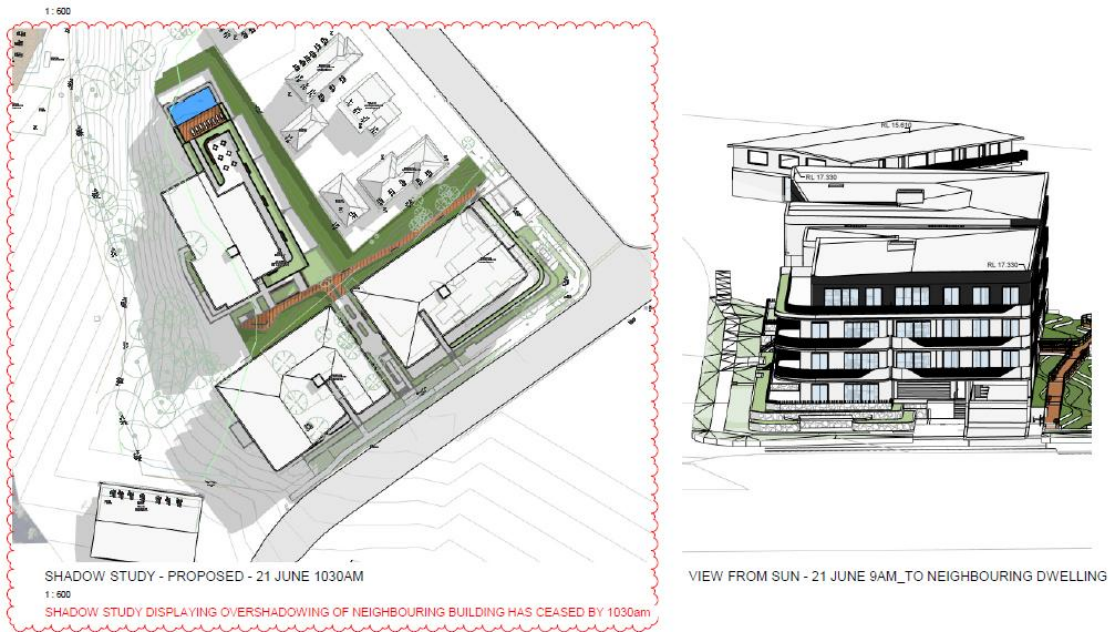


Figure 13 - Updated view from sun and shadow diagrams for the modified plans.

The amendment to the building height will not result in further adverse impacts in relation to privacy given the floor planning and location of balconies remains unchanged.

A view analysis was provided with the original application including montages from the public domain along Bavarde Avenue to the south-west of the site (see below extract). It is not considered that the 0.4m increase in height will result in a significant impact or will significantly change the outcome in relation to view sharing. A view corridor to the east of the building will be maintained.

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



1.1 EXISTING



1.2 MODEL VIEW ALIGNMENT



1.3 PROPOSED



Figure 14 - View sharing montage provided with the original DA.

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



Figure 15 - View sharing montage provided with the original DA.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment: The development promotes good design and amenity of the built environment, noting that the proposed alterations will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties. The increased floor-to-floor levels to 3.25m will allow improved building maintenance constructability of the building and have resulted from development of the construction drawings. An objective of the EP&A Act 1979 is to *(g) to promote good design, amenity and the proper construction and maintenance of built environments, including the protection of the health and safety of the occupants of buildings*. The improved floor to floor heights assist in the constructability of the building and long term building maintenance.

Public interest/Zone objectives

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

Zone Objectives – R3 Medium Density Residential

The underlying objectives of the R3 zone are:

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

- *To encourage walking, cycling and the use of public transport.*

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

The proposal is not considered to be inconsistent with the objectives of the R3 Medium Density Residential Zone.

The amended application, whilst not strictly required to be assessed against Clause 4.6 of the LEP, continues to demonstrate that there are sufficient environmental planning grounds and compliance is 'unreasonable and unnecessary in the circumstances of the case'. The proposal is consistent with the reasons for the Panel's determination and is considered to be 'substantially the same development' as required under S.455 of the EP&A Act. For these reasons, the additional 0.4m of building height is supported.

Clause 5.10 Heritage

The proposal does not result in any further impact to European or Aboriginal Heritage, with conditions of consent remaining for unexpected finds.

Clause 5.21 Flood planning

The site is identified as flood prone land and this was addressed in the determination of the original application, including, requirements for the habitable floor levels and basement crest to be set at the appropriate flood planning level to prevent inundation. Conditions will remain on the consent in relation to flood emergency planning. The minor changes to the footprint of Building A will not significantly change the flood behaviour of the site or cause additional flood risk, with the floor level set to the flood planning level consistent with the remainder of the building.

Acid sulfate soils (Cl 6.3)

There is additional excavation included as a result of the basement extension, however, not beyond the depth of the existing approved basement level. An Acid Sulphate Soils report was provided with the original application and forms part of the conditions of consent. Compliance with the plan of management for acid sulphate soils will remain.

Earthworks (Cl 6.4)

There are additional earthworks proposed to be undertaken to facilitate the extension of the basement level.

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

Council engineers have reviewed the proposal and provided conditions of consent in relation to earthworks. The application was also referred by to Water NSW and amended GTA's were provided in relation to the management of groundwater.

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

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*

- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development

Stormwater Management (Cl 6.9)

An updated stormwater management has been submitted with the application to account for the amended plans, however, has not fundamentally changed the outcome which was considered acceptable subject to conditions of consent which will remain in place.

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

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

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

The following Development Control Plan is relevant to this application:

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

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

The proposal is considered to have satisfied the intent and controls in the DCP and not new variations are introduced.

Contribution Plans

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

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

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

The site is located in the northern district. The available Council records for the original development on this site do not indicate that contributions were paid for residential dwellings i.e. existing hospital site. Therefore, no existing credits (ETs) for residential accommodation are applied for existing development.

Even though the proposal maintains the existing approved overall number of units (being 60 units) the unit mix has changed and therefore, re-calculation of the S7.11 contributions is necessary under this modification application. Furthermore, the contributions are subject to indexation each financial year which will be reflected in the updated condition:

Northern District

Facility	Per lot or 3+ bedroom dwelling	Per 2 bedroom dwelling	Per 0 or 1 bedroom dwelling	Per seniors living self contained unit or boarding house room	Total 13 x 2 bedroom 42 x 3 bedroom 5 x 4 bedroom

Open Space and Recreation	\$546.70	\$312.45	\$253.85	\$273.35	13 x 2 bedroom 47 x 3+ bedroom
Community and Cultural	\$158.50	\$90.55	\$73.60	\$79.20	13 x 2 bedroom 47 x 3+ bedroom
Arterial Roads	\$5,455.20	\$3,117.30	\$2,532.80	\$2,727.60	13 x 2 bedroom 47 x 3+ bedroom
Paths and Cycleways	\$727.80	\$415.85	\$337.90	\$363.85	13 x 2 bedroom 47 x 3+ bedroom
Stormwater	\$1,467.85	\$838.80	\$681.50	\$734.00	13 x 2 bedroom 47 x 3+ bedroom
Marine	\$220.65	\$126.10	\$102.45	\$110.35	13 x 2 bedroom 47 x 3+ bedroom
Plan Preparation and Administration	\$128.65	\$73.55	\$59.70	\$64.30	13 x 2 bedroom 47 x 3+ bedroom
Total	\$8,705.35	\$4,974.60	\$4,041.80	\$4,352.65	13 x \$4,974.60 47 x \$8,705.35 Total = \$473,821.25

Total payable: \$473,821.25

- *Eurobodalla S7.12 Contributions Plan 2022*

This plan does not apply in the circumstances where S7.11 contributions are charged on the development.

WATER & SEWER HEADWORKS

The proposal is subject to contributions under Section 64 Local Government Act. Conditions were applied based on the unit mix of the original proposal. As a result of the amended unit mix and indexation, the contributions condition is to be updated as per the below table.

Water	
13 x 2 bed = 0.6 ET 47 x 3+ bed = 0.8 ET	7.8 + 37.6 = 45.4 ETs
Sewer	
13 x 2 bed = 0.75 ET 47 x 3+ bed = 1 ET	9.75 + 47 = 56.75 ETs

Contributions	ET applicable to this DA	Rate FY25/26 per ET	Total Amount
Water Headworks	45.4 ET	\$8,025	\$364,335
Sewer Headworks (DSP2 – MO, BB)	56.75 ET	\$10,135	\$575,161.25

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

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

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

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

- Demolition - provisions of AS 2601;

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

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

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

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

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

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

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

- **Access and traffic** – The proposal incorporates appropriate off-street car parking for the site including for residents and visitors. A Traffic and Parking Assessment has been lodged in support of the application which identifies the proposal is suitable in relation to potential impacts on traffic demand, parking spaces, traffic generation and that the capacity of road network is suitable. The amended proposal provides additional parking within the basement level and as such, no additional impacts are anticipated for on-street parking. The number of units remains the same and as such, the traffic generation is not increased.
- **Public Domain** –the proposal does not impact on the public domain in relation to the vicinity of open space areas or pedestrian linkages in the area. The proposal addresses both street frontages of Heradale Parade and Bavarde Avenue in relation to built form and building setbacks including provision of landscaping to the front setback areas.
- **Utilities** – the proposal will connect to existing utilities which are available at the site. Conditions of consent have been imposed in relation to requirements and clearances in response to Council and agency comments.
- **Heritage** – the site does not contain a heritage item or Heritage conservation area. The potential impacts on Aboriginal heritage have been considered and Heritage NSW have provided recommendations in relation to construction site management including unexpected finds during construction. It is considered this matter can be managed subject to imposition of recommended conditions.
- **Other land resources** – the site is located within a residential zoned area and is not within the vicinity of intense land uses such as mining or agricultural land.
- **Water/air/soils impacts** – the applicant has submitted a preliminary site investigation report in relation to potential contamination which has identified the site is suitable subject to imposition of conditions during construction.
- **Flora and fauna impacts** - tree and vegetation removal is proposed to the minimum extent necessary. The site is not mapped as containing threatened species or mapped areas of biodiversity. It is considered the proposal has adequately considered the potential impacts on

the natural environment, providing a built form that has considered retention of the vegetated treed areas located in the western portion of the site.

- **Natural environment** – the proposal involves excavation to provide basement car parking which results in a change to the natural environment due to excavation. The proposed finished floor levels result from provision of a finished floor area above flood planning levels, which does not significantly change the natural contours of the site. Stormwater management and mitigation measures and groundwater management measures are proposed to minimise any potential impacts on the environment. Tree and vegetation removal is proposed to the minimum extent necessary. The proposed development will not have a significant adverse impact on the natural environment and the proposal is considered appropriate for the locality.
- **Noise and vibration** – the applicant has submitted an acoustic report in relation to construction measures to be incorporated in to the design of the development. A condition of consent has been recommended in relation to noise management during construction.
- **Natural hazards** –the site affected by natural hazards including flooding and the proposal includes potential impacts on groundwater. The hazards have been adequately addressed by the proposal including via specialist consultant reports and GTAs by Water NSW.
- **Safety, security and crime prevention** – CPTED Principles have been considered in the design of the built form including street facing balconies and entry ways and separation of the buildings. It is considered the communal open space areas of the site can be managed for safety and security of residents.
- **Social impact** – the proposal provides positive social impacts through provision of residential accommodation that meets the housing needs of the community in a manner the considers the existing residential environment and the developing area of Batemans Bay.
- **Economic impact** – employment generation is provided through the construction phase of the development, with additional housing provision contributing economic benefits to the wider community.
- **Construction** –the potential impacts from construction been considered and mitigation measures imposed in the recommended conditions. A construction management plan will be required to be implemented during construction and hours of construction are proposed to limit construction hours during weekends and public holidays.
- **Cumulative impacts** – it is considered the proposal will not result in significant adverse cumulative impacts. The proposal involves construction of residential housing within a residential zoned area and is generally consistent with the planning controls and subject to imposition of conditions will not result in adverse cumulative impact.

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

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

The site is suitable for the proposed development.

- The development is permissible with Council consent within the zone.
- The proposal is consistent with the R3 Medium Density Residential zone objectives.
- The proposal is consistent with the objectives and requirements of the applicable environmental planning instruments including *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* for residential flat buildings and the relevant objectives within the Apartment Design Guidelines
- The proposal is consistent with the objectives and requirements of the *Eurobodalla Local Environmental Plan 2012*.
- The proposal is consistent with the objectives and requirements of the *Batemans Bay Regional Centre Development Control Plan*.

- The proposal adequately addresses the natural hazards that affect the land including flooding
- The intended use is compatible with surrounding/adjoining land uses with sufficient justification provided regarding the variation to the Height of Buildings control in relation to the surrounding topography and developing character of this area of Batemans Bay

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

The modification application was notified for 28 days in accordance with the EP&A Regulations and Council's community participation plan. As a result, two (2) submissions were received.

The issues raised are considered in the below table:

Issue Raised	Consideration of issue
<p>Bulk/Scale/Height The size, height and bulkiness of the development is too much for this area which is surrounded by mainly single story houses. Reduce the height to be more sympathetic with the surrounding properties.</p>	<p>The application was approved by the Southern Regional Planning Panel having regard to the emerging character of the R3 Medium Density Zone and the Panel formed the view that the proposed four (4) storey building form was appropriate for the emerging character of the area. The subject modification application seeks to increase each building by 0.4m to accommodate increased floor-to-floor heights (100mm per level) to improved constructability and servicing of the development. Council has formed the view that the increase to the building height by 0.4m will not significant change the visual outcome of the development, with the four (4) storey appearance maintained as originally supported by the regional planning panel.</p>
<p>Parking and Traffic I am becoming increasingly concerned about the traffic or rather parking congestion that will be generated by this development. My objection is that there are not enough spaces on site for probable number of cars per unit taking into account the significant increase in the number of cars per household over the last ten or more years.</p>	<p>The application seeks to maintain the current quantum of units (total 60 units) and increase the number of off-street parking spaces by 19 spaces by increasing the footprint of the basement to align with the external walls of the building. As such, the modified proposal will not result in further demand for the use of parking in the street.</p>

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

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

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

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

The additional 0.4m of building height is not considered to result in unreasonable impacts in relation to views, overshadowing or visual bulk and scale when compared to the existing approved development.

The proposal will provide a range of economic and social benefits including ongoing construction works providing economic benefit and provision of a mix of dwelling types contributing social benefits due to provision of housing to the community.

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

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

2.15 Sewer and Stormwater

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

The modified proposal also responds to the development consent conditions by removing any permanent structures (being the stairs and retaining walls) within the sewer alignment along Bavarde Avenue and setting back permanent structures at least 1m from the sewer. The condition will remain, however, to re-enforce no permanent structures are permitted over the sewer easement along Bavarde Avenue.

There remains a condition that prior to any construction certificate being issued the applicant must accurately locate the water main and then realign the water supply easement (that is identified on Title running between Pacific Street upslope to the west (the ‘hospital site’) and Heradale Parade to the east) prior to issue of any construction certificate to ensure that any structures are clear of identified easements and that the water main is consistent with the easement location.

Conditions are maintained in relation to stormwater on site detention, treatment and management to minimise potential impacts on residents and adjoining properties.

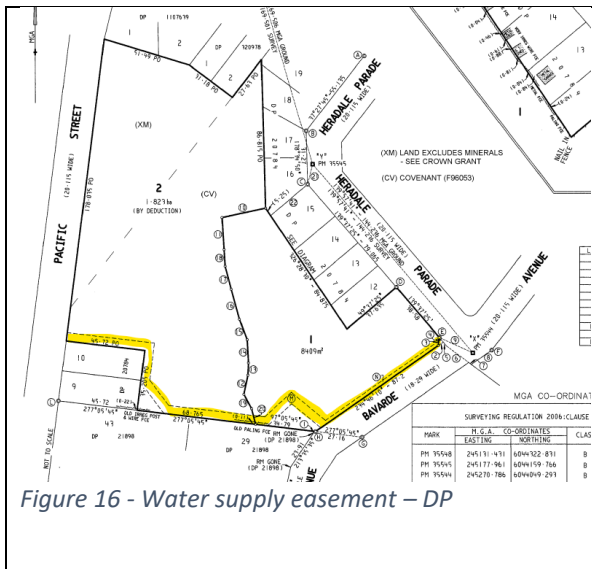


Figure 16 - Water supply easement – DP

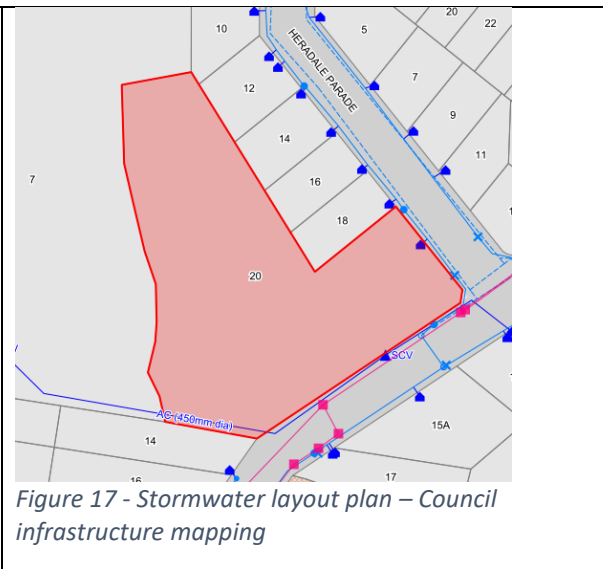


Figure 17 - Stormwater layout plan – Council infrastructure mapping

2.16 Traffic and Parking

The applicant has submitted an updated traffic and parking assessment in support of the modified proposal (prepared by CJP Consulting Engineers dated 19 October 2025). The report notes the

approved quantum of parking spaces and the proposed number of parking spaces under the modified proposal as a result of the increased size of the basement level. The below table outlines the parking arrangement of the approved and modified proposal:

Table 1 – Existing & Proposed Apartment Mix		
	Approved DA0593/23 Scheme	Proposed s4.55(2) Scheme
No. of storeys	4 storeys	4 storeys
Basement levels	1 level	1 level
Residential units	2 x 1 bedroom 12 x 2 bedroom (including 7 adaptable) 42 x 3 bedroom (including 10 adaptable) 4 x 4 bedroom Total 60 residential units	0 x 1 bedroom 13 x 2 bedroom (including 3 adaptable) 42 x 3 bedroom (including 12 adaptable) 5 x Four Bedroom Total 60 residential units

Table 2 – Existing & Proposed Parking Mix		
	Approved DA0593/23 Scheme	Proposed s4.55(2) Scheme
Car parking	16 adaptable spaces 72 standard spaces 3 car wash bays Total 91 spaces	17 adaptable spaces 90 standard spaces 3 car wash bays Total 110 spaces
Bicycle parking	29 spaces	29 spaces
Vehicular access	Heradale Parade	Heradale Parade (unchanged)
Loading	Heradale Parade (reverse-in/forward-out)	Heradale Parade (reverse-in/forward-out)

Figure 18 - Parking rates generated approved and modified proposal.

The Traffic Report considered the traffic impacts arising from the proposal and identified the proposal is supportable in terms of traffic impacts, with no changes under the modified proposal:

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

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

Table 3 – Off-Street Car Parking Requirements of Proposed s4.55(2) Scheme						
	Use	Rate	Quantity	No. of Car Spaces	Parking Required	Parking Proposed
Proposed s4.55(2) car space provision	1 bedroom	0.6 spaces/unit	0	1.2	89.5 spaces plus 3 car wash bays	107 spaces (inc. 17 accessible spaces) plus 3 car wash bays
	2 bedroom	0.9 spaces/unit	13	11.7		
	3 bedroom	1.4 spaces/unit	42	56.0		
	4 bedroom	1.4 spaces/unit	5	7.0		
	Visitors	1 space/5 units	60	12.0		

*rates are from the GTIA – Category 2

The assessment of the approved development adopted the rates within the guide to traffic generating development and the same rates have been adopted in the above table taken from the traffic report. As a result of the increased basement footprint there is now parking provided in excess of the required rates. As such, the proposal continues to comply with the required parking rates.

Accessible parking:

Accessible parking is provided for 17 spaces. The DCP requires 25% of the development to be consists of adaptable units, equating to 15 units. The conditions have been updated to reflect the minimum number of parking spaces and accessible parking spaces to be provided within the basement.

In relation to waste collection, the proposal provides an on-site waste collection bay. The waste collection has been conditioned to be undertaken by a private waste contractor. Council does not undertake on-site collection of waste bins. There is no change under the modified proposal.

2.17 Access

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

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

3. CONCLUSION

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

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

The increased size of the basement provides for additional off-street parking and the amended unit mix does not significantly change the outcome of the development.

The additional building height of 400mm does not result in any significant impacts to the surrounding properties and results in a visual outcome that is substantially the same as the original approval.

4. RECOMMENDATION

That the Modification Application No. PPSSTH-564 – MDA0072/26 for the Modification to DA0593/23 for the *Demolition and construction of a Residential Flat Building (60) units (13 x 2 bed; 42 x 3 bed and 5 x 4 bed) including basement car parking for 107 vehicles (plus 3 car wash bays) at 20 Heradale Parade Batemans Bay (Lot 1 DP 1135117) be APPROVED* pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

• Attachment A	Draft Conditions of consent
• Attachment B	Updated Architectural Plans
• Attachment C	Updated Landscape Plans
• Attachment D	Updated Access Report
• Attachment E	Updated Engineering Plans (stormwater)
• Attachment F	Statement of Modificaiton
• Attachment G	Updated BASIX Certificate
• Attachment H	Updated Nathers Certificate and summary
• Attachment I	Updated Traffic Report
• Attachment J	Updated General Terms of Approval – Water NSW