



Visual Impact Assessment (VIA)

Seniors Housing (Self-Contained Dwellings – Multi-Storey Serviced Self-Care Housing)



118 and 118A Soldiers Point Road,
Soldiers Point, NSW, 2317

(LOT: 1 and 2 DP: 627638)

3 April 2020

Contact:

Erin Daniel
Senior Town Planner,
Perception Planning
PO Box 107, Clarence Town, NSW, 2321
0428 883 911
erin@perceptionplanning.com.au

Document Versions and Disclaimer				
No:	Date:	PP Ref:	Author:	Review by:
Version 1 (Draft)	27/03/20	VIA – Soldiers Point Seniors Housing	ED	MB/ Client
Version 2 (Final)	03/04/20	VIA – Soldiers Point Seniors Housing	ED	MB
Disclaimer: This document may only be used for the purpose for which it was commissioned and in accordance with the contract between Perception Planning and the client. The scope of services has been defined in consultation with the client with consideration to time, budgetary constraints and the availability of reports and other data relating to the site. Changes to information, legislation and schedule are made on an ongoing basis in consultation with the client. Stakeholders should therefore obtain up-to-date information. Perception Planning accepts no liability or responsibility whatsoever for, or in respect of, any use of or reliance upon this report and its supporting material by any third party. Information provided is not identified to be suitable for a site specific assessment or legal advice in relation to any matter. Unauthorised use of this report in any form is prohibited.				

EXECUTIVE SUMMARY

Perception Planning Pty Ltd has been engaged by Soldiers Point Bowling Club Pty Ltd (the client) to prepare a Visual Impact Assessment (VIA) for a proposed seniors housing development (self-contained dwellings – multi-storey serviced self-care housing) at 118 and 118A Soldiers Point Road, Soldiers Point, NSW, 2317 (**'the site'**). The site is an existing recreational zoned property, which is located on the eastern side of Soldiers Point Road, within the Port Stephens Local Government Area (LGA).

Visibility is a product of both how easily a site is seen and the number of viewers that see it. Visibility also relates to visual sensitivity and how the viewer is impacted by the development.

Given the subject site is located on a ridgeline with a higher elevation to its surrounding neighbours, seven prominent viewpoints / vistas have been chosen to capture the overall visual impact of the proposed development, looking from the neighbouring properties towards the development and looking from the road towards the development.

It is considered that the proposed development would have a low to medium visual effect on the existing visual catchment surrounding the subject site. Soldiers Point Road has a low – medium traffic volume, which lead the site to have medium visibility when in transit. Visibility of the development is most prominent from the immediate streets and residential properties; however, visibility quickly decreases when stepping away from the site due to the sloping ridgeline in all directions, which in turn screens the site with vegetation or existing structures and dwellings.

The VIA will expand on those matters that have been summarised above to assist Council and the Department of Planning, Industry and Environment in completing a detailed assessment of the proposed development.

TABLE OF CONTENTS

1	INTRODUCTION	4
1.1	PURPOSE AND METHODOLOGY	4
1.2	REPORT FORMAT	5
2	EXISTING ENVIRONMENT	6
2.1	SITE DETAILS	6
2.2	SITE DESCRIPTION	6
2.3	CHARACTER OF LOCALITY	7
3	DEVELOPMENT AND PLANNING CONTEXT	8
3.1	PROPOSED DEVELOPMENT	8
3.2	PLANNING CONTEXT	9
4	VIEWPOINTS AND IMPACT	11
4.0	SUMMARY	11
4.1	VIEWPOINT 1	13
4.2	VIEWPOINT 2 and 6	14
4.3	VIEWPOINT 3, 4 and 5	17
4.4	VIEWPOINT 7	21
5	KEY FINDINGS AND SOLUTIONS	22

1 INTRODUCTION

1.1 PURPOSE AND METHODOLOGY

The purpose of this Visual Impact Assessment (VIA) is to assist the Department of Planning, Infrastructure and Environment (DPI&E) and Council in their assessment and determination of the proposed development and to assist the community in understanding the development and associated visual impacts relating to scale, height, density and bulk from prominent vistas within the locality.

This VIA has been prepared in accordance with best practice principles, applicable aspects of the Development Assessment Framework and *Environmental Planning and Assessment Act* (EP&A Act) 1979 (s4.15). In the absence of national or state level guidelines for VIA preparation, an approach has been developed in accordance with the following best practice guidelines:

1. Guidelines for Landscape and Visual Impact Assessment (The Landscape Institute & The Institute of Environmental Management and Assessment, 3rd Edition, 2013)
2. Residential Visual Amenity Assessment (Landscape Institute Guidance Note, March 2019).

Changes in views and visual amenity are a consideration within the planning process under s4.15 of the EP&A Act. In respect of private views and visual amenity, it is widely known that no-one has a 'right to a view'. This includes situations where a residential's property outlook and/or visual amenity is judged to be 'significantly' affected by a proposed development.

The objectives and methodology of this VIA are as follows:

- To provide a description of the site, existing development and the surrounding locality,
- To provide a description and nature of the proposed development,
- To identify and provide a discussion on the prominent vistas towards the proposed development, and
- To provide an assessment of the impact of the development on the visual amenity of the surrounding locality.

For the purposes of the assessment, two key criteria; 'sensitivity to change' and 'magnitude of change' have been used to identify and assess the level of potential visual impact, as follows:

Criteria 1: Sensitivity

Sensitivity includes both the 'susceptibility' of the viewer or receptor, and also the 'value' of the landscape in which the viewer experiences change. These two concepts are co-dependent in determining the sensitivity of a landscape and the

extent to which it can accept change of a particular type and scale without adverse effects on its character. Generally, the key factors for consideration is based on the number of people affected, land use and the distance of the viewer from the proposal (EDAW, 2000).

For the purposes of this assessment, consideration of the private domain views from the immediately adjoining residences to the site and beyond and view from Soldiers Point Road towards the site has occurred.

In this case, sensitivity can be reasonably assumed in advance. Those living within view of the site are usually regarded as the highest sensitivity group, as it is recognised that in considering the likely effects on visual amenity experienced by residents that *'residents at home, especially using rooms normally occupied in walking or daylight hours, are likely to experience views for longer than those briefly passing through an area'* (GLVIA3 para 6.36).

Criteria 2: Magnitude of Change

The magnitude of change at any particular residential property depends on the nature, scale and duration of the particular change that is expected to occur and is described as substantial, moderate, slight or negligible based on interpretation of the following parameters:

- a. Distance of the property from the development
- b. Extent of the development in the view
- c. Angle of view in relation to orientation of the property
- d. Proportion of the view occupied by the development
- e. Local context in which the development is seen
- f. Extent of other built development visible, in particular vertical elements.

1.2 REPORT FORMAT

The principal tasks of the visual impact assessment process are reflected in the reports format, as follows:

- **Task 1:** Description of the existing environment and context of the site;
- **Task 2:** Identification of prominent viewpoints / vistas and a range of people and places that have visibility to the site;
- **Task 3:** Description of the proposal and associated materials, colours and design;
- **Task 4:** Determination of the likely visual impact for people and from places;
- **Task 5:** Assessment of significance associated with the visual impact and/or change;
- **Task 6:** Key findings and conclusion.

2 EXISTING ENVIRONMENT

2.1 SITE DETAILS

Site Characteristics	
Lot/DP	Lot 1 DP 627638 and Lot 2 DP 627638
Address	118 and 118A Soldiers Point Road, Soldiers Point, NSW, 2317
Area	Approximately 3.4 ha (combined). 1.61 ha (Lot 2).
Slope	Site slopes upwards to the northwest corner on the property.
Consent Authority	Port Stephens Council
Current Use	Soldiers Point Bowling Club (Lot 1) and Stage 1 of Seniors Living Development (Lot 2).
Site Constraints	Bushfire prone land – vegetation category 1, 2 and buffer; Acid sulfate soils – class 4 and 5; SEPP (Koala Habitat Protection) 2019; SEPP (Coastal Management) 2018.

2.2 SITE DESCRIPTION

The site is located at 118 and 118A Soldiers Point Road, Soldiers Point (**FIGURE 1**), which is situated within the Port Stephens Local Government Area (LGA). The site particulars are summarised in the table above, with site constraints obtained from the NSW Planning Portal. Access to the site is direct from Soldiers Point Road, via a battle-axe handle 20m wide and of approximately 153m in length.

The site currently consists of the Soldiers Point Bowling Club (Lot 1) and partially constructed Seniors Housing Development (Lot 2) approved under DA 16-2013-757-1 (as modified). Lot 2 is the subject site of the seniors housing development (**'the site'**). The front most portion of the site is relatively flat, with a dramatic slope and increase in topography up to the north-western portion of the site. The site has historic use for seniors living development. The site is generally clear of vegetation, due clearing which was approved under DA 16-2013-757-1.

Soldiers Point Road turns into Salamander Way, both with a speed limit of 50km/hr which connects Soldiers Point to Salamander Bay. It provides one lane of travel in each direction with kerb/gutter, and footpaths along the site frontage and south western side of Soldiers Point Road. The site is identified as bushfire prone land, vegetation category 1, 2 and buffer. However, the land is clear of vegetation, as approved under DA 16-2013-757-1. The land slopes up to the north western corner of the site.

The site is currently zoned RE2 – Private Recreation under the Port Stephens Local Environmental Plan 2014 ('the LEP'). The northern, southern and western boundaries of the site directly adjoin land zoned and utilised for urban purposes. It is zoned R2 – Low Density Residential and mostly contains single and two storey dwellings and ancillary residential structures.

The site is located within close proximity to the centre and business precinct of Salamander Bay, accessible from Salamander Way. This centre is located 5.5km from the site and consists of a large number of large and smaller speciality shops and facilities, including banks, post office, supermarkets, doctors and health practitioners, convenience stores, restaurants and entertainment.



Figure 1 - Aerial image of subject site (Source: NearMap) Note: boundaries of site in red are approximate only.

2.3 CHARACTER OF LOCALITY

Visual character is formed by patterns created by the relationship of all elements within an area, including both the public and private domain.

Soldiers Point is a coastal suburb that is situated within the north-western peninsular of the Port Stephens Local Government Area, that experiences steady residential growth, reflective of the ageing population of the area. As detailed within the Port Stephens Planning Strategy (2011), the increasing car ownership, increasing affluence and the creation of high-speed roads has changed development patterns. As a result, low density residential development has become the predominant development pattern and some separate villages and towns have

merged into continuous residential areas, such as from Soldiers Point to Salamander Bay. Block patterns are consistent with the topography of the area, with minor local roads separating each block from the major roads, being Soldiers Point Road.

Most housing in this locality comprises of single and double storey detached dwellings. Earlier coastal cottages are lightweight timber frame construction on piers and more recent dwellings are typically brick veneer and/or rendered brick construction on a concrete slab. A number of tourist accommodation units (detached and multi-storey), holiday parks, restaurants and recreation areas (inclusive of a bowling club), characteristic of the tourist use and drive of the locality.

The local character of Soldiers Point consists of density clustered along the coastal portions of the peninsular not affected by significant vegetation, consisting of single and two storey dwellings of contemporary nature.

It is expected that the locality will continue this built form character given the coastal location and tourism point of interest. The proposed development is respectful of this built form and offers an improved outcome on-site with regard to site coverage and bulk and scale. Whilst the development is multi-storey in nature, it is limited to the north-eastern most section of the site, to respond to the lowest portion of the site, respectful of the topography and impacts development of this land would involve

3 DEVELOPMENT AND PLANNING CONTEXT

3.1 PROPOSED DEVELOPMENT

The proposed development is defined as self-contained dwellings (multi-storey serviced self-care housing) under the Seniors Housing SEPP.

The proposed development incorporates the construction of a single building consisting of six storeys or seven levels, comprising 68 self-contained units being a mix of one, two and three bedrooms, with up to three bathrooms, open plan kitchen, dining and living area and courtyard and/or balcony (**FIGURE 2**). The building will be constructed over three stages, and will incorporate car parking, community bowling green or tennis court, communal terrace. The architectural plans are provided at. The revised new development will involve:

- a. A single building consisting of six storeys or seven levels (ground level parking with six residential levels above) with a flat / angled roof;
- b. 68 self-contained dwellings, incorporating one, two or three bedrooms;
- c. Construction of the development in three Stages, including:
 - i. Stage 2A: 26 units
 - ii. Stage 2B: 21 units
 - iii. Stage 2C: 21 units
- d. A car parking area providing 86 car parking spaces;
- e. Community bowling green or tennis court or equivalent; and

- f. An adjustment to the landscaping plan for parts of the site no longer occupied by buildings.

The built form visually reflects a residential use typology through the use of materials and colours chosen. The proposed design demonstrates articulated elevations and a high-end, aesthetically pleasing built form to the street, existing Bowling Club and surrounding properties.

The proposed built form defines the desired public domain, contributes to the character of the streetscape, considers views and vistas through design elements and provides internal amenity and outlook. The palette utilises natural colours and materials which will not require constant maintenance. The design utilises the appropriate composition of building elements, textures, materials and colours to achieve quality aesthetics, whilst ensuring respect for the locality. The proposed aesthetics respond to the environment, context and streetscape of the precinct strongly contributing to the desired character of the site and surrounding area.



Figure 2 - Proposed development.

3.2 PLANNING CONTEXT

Port Stephens Local Environmental Plan 2013 (PSLEP 2013)

The subject land is zoned RE2 Private Recreation and is adjoined by land on the western, eastern and southern boundaries, zoned for urban purposes, being R2 Low Density Residential. The objectives of the RE2 zone include:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

Other areas zoned as RE2 within the locality include the adjoining BIG 4 Holiday Park to the south-east and Soldiers Point Bowling Club to the east of the site. The proposed development will not impact upon the operations of either of these developments, remaining as both tourism and recreation facilities, acting as a community hub and place for accommodation. It is considered that sufficient land is zoned for these uses within this area. Land adjoining the coast zoned RE1 Public Recreation will not be impacted by the proposed development, rather will encourage use of these areas by the residents for recreational activities.

The proposed development has been designed and located to avoid and minimise the impact on the natural environment to protect the values associated. No conflict of land use is envisaged to the amenity and character of the neighbouring properties. To this extent, the proposed development is consistent with the objectives and aims of each zone.

Port Stephens Development Control Plan 2014 (PSDCP 2014)

Section C5 – Multi-dwelling housing and Seniors Living Development

The objectives of this section relevant to Seniors Housing include:

- *To ensure development for seniors housing provides adequate area for communal open space.*
- *To ensure development activates streetscape to provide passive surveillance and privacy.*
- To ensure development provides continuity and consistency to the public domain.

Amenity impacts relate to the surrounding residential zoned land. The residential zoned land surrounding the site and existing uses are consistent with the seniors housing that will make up this development. The locality has seen and will continue to see the construction of new dwellings.

It is noted that the Soldiers Point Bowling Club met with board members and held information and discussion sessions with members of the Club to discuss the proposed development. As a result, they were supportive of the development and were of the opinion that this outcome better reflected the current landform and reduced the impacts to surrounding neighbours, in comparison to the development which is previously approved over the site. The proposed development has been designed to minimise overshadowing, with impacts largely confined to the site itself.

The proposed design provides substantial setbacks and building separation from the northern property boundary that exceeds the Apartment Design Guide requirements. The proposal also orientates all units to either the 'street' frontage for water views, or to the rear garden and away from neighbours and the existing Greenside dwellings to maximize privacy and amenity.

Due to the site's topography, the development has been situated on the lower /flat part of the site to ensure reduction in visual impact from prominent vistas and eclipsing of surrounding residential properties. Surrounding residential land uses will not be greatly affected by the proposed development, particularly those to the

north and south. These properties do not contain any significant external views and as such, visual impacts of the proposed development will be minimal. The residential properties to the direct west of the site currently maintain views towards Karuah River and Tomaree Headland due to being located on an elevated topography. The development once constructed will obscure this view. Detailed assessment of view sharing and rights to views is provided below. The development will not be visible from beaches and other public vantage points due to being concealed by surrounding structures and vegetation on the ridgeline.

The proposed development will be associated with the existing Seniors Housing and Registered Bowling Club on the site, which are larger than existing low-density residential buildings on land adjoining. However, it is noted that many tourism developments of multi-storey nature exist within the locality and therefore the development is not out of character, rather better reflects the design outcomes of the coastal location.

The proposed development will enhance the subject site and locality by improving the landscape and natural environment, bulk and scale, site coverage, streetscape and pedestrian amenity. Soldiers Point Road will remain the main road within the neighbourhood, connecting the site to the Salamander Bay town centre. The building will be higher than the existing building on the site, however in context, does not detract from or impact on the existing area due to the topography of the land. It is considered that the proposed development is appropriate for the existing and future character of the neighbourhood.

4 VIEWPOINTS AND IMPACT

4.0 SUMMARY

Visibility is a product of both how easily a site is seen and the number of viewers that see it. Visibility also relates to visual sensitivity and how the viewer is impacted by the development.

Locations can be visually sensitive for a number of reasons however generally relate to aspects including landscape type, landscape character, extent of vegetation, scenic quality and visibility, and how these each combine. Three main visual amenity issues have been identified as key concerns when considering the proposed mixed-use development of the subject site, including:

- Change to the existing character of the site and the need to achieve an attractive overall development appropriate to the residential character and setting;
- The potential effect on the surrounding low residential and recreational settings due to any changes in views approaching the site from surrounding street connections; and
- Potential visual amenity impacts on and from nearby properties, particularly those to the north and west of the site.

Given the subject site is located on a ridgeline with a higher elevation to its surrounding neighbours, seven prominent viewpoints / vistas have been chosen to capture the overall visual impact of the proposed development.

A summary of the prominent viewpoints / vistas towards the proposed development includes the following, as shown within **(FIGURE 3)**:

- **Viewpoint 1** – looking from extent of constructed development on-site.
- **Viewpoint 2** – looking from rear boundary of 4 Grandview Close.
- **Viewpoint 3** – looking from rear boundary of 25 and 25A Ash Street.
- **Viewpoint 4** – looking from rear boundary of 21 Ash Street.
- **Viewpoint 5** – looking from rear boundary of 23 Ash Street.
- **Viewpoint 6** – looking from side boundary of 5 Kings Court.
- **Viewpoint 7** – looking from Soldiers Point Road, directly fronting the site towards the development.

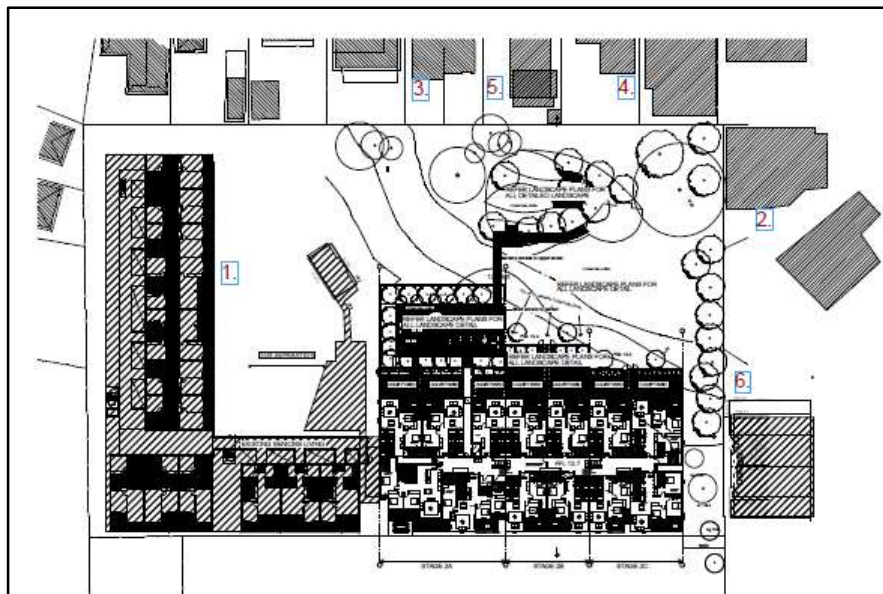


Figure 3: Map of each prominent viewpoint.

To assist in appropriately assessing the visual impact from each of these locations, a mixture of architectural photomontages in 'real time' settings along with illustrated images within the existing landscape have been created. Provision of the 'existing' view and landscape has also been provided for contextual analysis. These images are shown in **Images 1 – 11** below.

4.1 VIEWPOINT 1: EXTENT OF CONSTRUCTED DEVELOPMENT ON-SITE



Image 1: Existing view from extent of constructed development on-site.

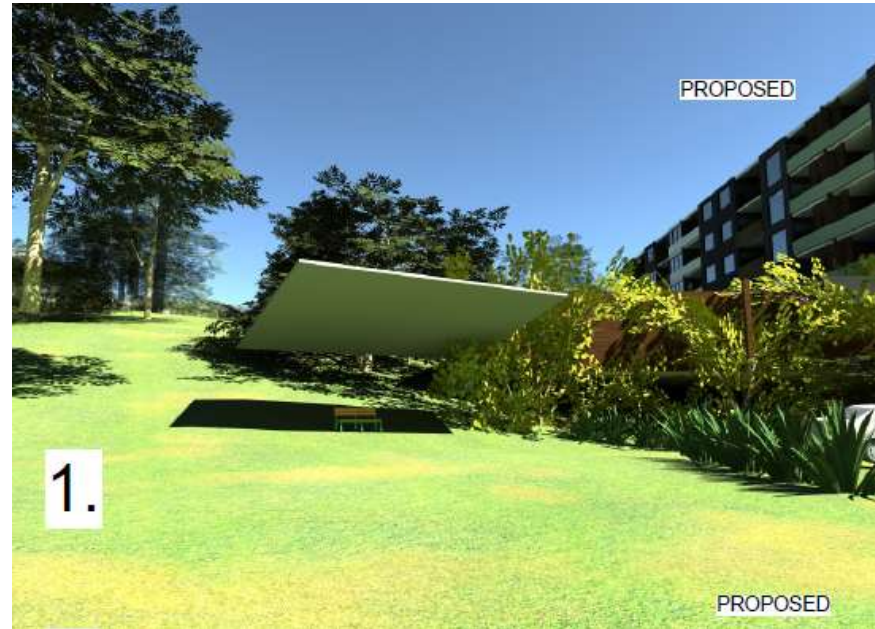


Image 2: Proposed view from extent of constructed development on-site.

Existing views from the extent of constructed Seniors Housing development on-site are high towards the site to be developed. From a residential viewpoint, the degree of sensitivity to change and change to visual amenity is high.

As shown in **(IMAGE 1 and 2)**, the development has been designed to be located on the lower portion of the site to reduce any visual obtrusion having the potential to be created. This also allows for views from the existing Seniors Housing Development and associated units to be towards open space, landscaping and greenery rather than a large, dominant building. In this regard, the development is shown to integrate in with the height of surrounding development, which does not dominate the skyline and respects the existing scale and proportion of the natural setting and streetscape.

The proposed development is not visually obtrusive from this viewpoint, rather adds to the identity of the site in consideration of the existing development constructed on-site and adjoining Bowling Club. The impact of the development and magnitude of change from this location is slight.

4.2 **VIEWPOINT 2 and 6:** REAR BOUNDARY OF 4 GRANDVIEW CLOSE AND SIDE BOUNDARY OF 5 KINGS COURT



Image 3: Existing view from 4 Grandview Close (*note: photo taken from opposite side of fence*).



Image 4: Proposed view from 4 Grandview Close.

No prominent views are held from 4 Grandview Close Further, the development on this site is primarily located on the portion of the site fronting Grandview Close, with the rear of the property consisting of tiered retaining walls and landscaping due to the sloped topography. It is noted that adjoining No. 6 Grandview Close is also reflective of this condition and layout, with no prominent views held.

As evidenced by **(IMAGE 3 AND 4)**, due to the topography of the site increasing to this particular position and the development being located on the low portion of the site, views from the dwelling towards the development is low. Sensitivity to change and the degree of change to visual amenity are in turn, low. The development on the contrary will assist in providing additional landscaping and natural elements within the area identification to provide further visual interest from this property towards the site. The development as proposed does not dominate the skyline or result in any negative visual impacts from this viewpoint. The magnitude of change from this viewpoint is negligible.



Image 5 : Existing view from 5 Kings Court (*note: photo taken from opposite side of fence*)



Image 6: Proposed view from 5 Kings Court.

The development existing on 5 Kings Court is two-storeys in form and currently built close to the side property boundary (**IMAGE 7**). In turn, views from the dwelling toward the site are high however, the windows are either frosted glass, or side windows, with primary views maintained from the front balcony, looking away from the site. No important views are obscured from this location.



Image 7: Existing dwelling located at 5 Kings Court

To this extent, the degree of sensitivity to change and degree of visual amenity is moderate. Further, the development has been setback from this shared boundary by approx. 9m to ensure sufficient separation is provided to decrease any massing of the building over the site. Landscaping will also be provided within this setback area to soften the appearance of the development and enables better integration into the surrounds and public domain. The inclusion of vertical and horizontal lines assists in drawing the eye to multiple portions of the structure, adding to the overall form and quality of the development. The impact and magnitude of change is moderate in this regard.

4.3 VIEWPOINT 3, 4 and 5: REAR BOUNDARY OF 21, 23, 25 AND 25A ASH STREET



Image 8: Existing view from 21 Ash Street (*note: photo taken from opposite side of fence, standing within subject site*).



Image 9: Proposed view from 21 Ash Street.



Image 10 : Existing view from 23 and 25 Ash Street (*note: photo taken from opposite side of fence, standing within subject site*)



Image 11 and 12: Proposed view from 23 and 25 Ash Street.

As evidenced by **(IMAGE 8 – 12)**, the adjoining properties to the west have a high sensitivity to change. Upon inspection of the 'view' held by the adjoining sites to the west, it was revealed that the extent of the view is moderate towards Karuah River and the Tomaree headland due to being partially obscured by vegetation. The view is also obtained as a result of the absence of rear boundary fencing at these locations. Should a boundary fence be implemented, at a seated or standing position, the view would be lost.

Generally, views are not owned and are shared and there are no guarantees that views from a site as a result of a development will be maintained. However, there are situations where the loss of a view may be challenged. While each situation requires a complex planning and legal evaluation, the general principles are laid out by Senior Commissioner Roseth SC in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140 ('Tenacity')*, as referenced in Section 3.02.09 of the Newcastle DCP 2012.

It is noted that a 'planning principle' is not a binding law. Rather, it is described by the Court as a statement of a desirable outcome or a list of appropriate matters to be considered in making a planning decision. The 'planning principle' within this particular case established a four-step process for considering the impact of a development on views, including:

1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.
2. A consideration of how views are obtained and what part of the property the views are obtained from.
3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible minor, moderate, severe or devastating.
4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The subject site is not affected by a maximum height of buildings standard under Clause 4.3 of the Port Stephens Local Environmental Plan 2013. The objective of clause 4.3 is to ensure that the height of buildings is appropriate for the context and character of the area. It is considered that the proposed development is of an acceptable height for the location and will not detrimentally affect the values of the site or adjoining sites.

The height of the building (HOB) at its highest point is 25m, however this varies (as shown in the section plans) due to the slope of the site. While the height (HOB measured at any point) is increased substantially from the approved design, the actual finished roof (FL) level AHD is only 5.6m above the approved max ridge level (also shown on the section plans). This is because where the new

proposal is located at the lowest point of the site away from neighbours, the approved design continued to step up and follow the slope of the site.

Tenacity details that a property owner does not 'own' a view and does not provide that anyone has a proprietary right to retain all or part of the views enjoyed from their land, which has been reinforced on several occasions and decisions of the Court, and as legal principle, remains relatively unchanged. In *Robson v Leischke* [2008] NSWLEC 152, His Honour, Preston CJ, summarised the limited powers available to an aggrieved landowner when, at paragraph [86] of his judgment, he stated:

*"...a defendant may erect a building or other structure such as a fence or plant a tree on his or her land which interferes with the neighbour's enjoyment of their land. The building, structure or tree may...**spoil the neighbour's view** ...yet such interferences are not **actionable as a nuisance**".*

As a result of the development, the view currently held by these sites to the west will be spoilt and therefore the magnitude of change from these locations is substantial. However as noted above, this view would not be held if boundary fencing were in existence. Further, the proposed development has been significantly setback from the rear property boundary in an attempt to reduce overshadowing, privacy and visual impact caused by associated bulk. The setback area will be extensively landscaped to soften the appearance of the development and contribute to the natural setting in which it is located. In comparison, should development occur across the entirety of the land from the front to the rear boundary, matching the steep topography, at one – two storey's in height, the development impacts would be greater than that proposed (as reflected in the previous approval). This is due to massing and bulk that would result due to development occurring closer to the property boundaries.

Overall, it is considered that the proposed development achieves greater sympathy to the surrounding properties and is more appropriate for the context and character of the area. Through consultation with the adjoining property owners and board members, support was provided for the proposed redesign.

4.4 VIEWPOINT 7: SOLDIERS POINT ROAD FRONTING SITE



Image 13: Existing view from Soldiers Point Road fronting site.



Image 14: Proposed view from Soldiers Point Road fronting site.

When considering the proposed development from Soldiers Point Road, an understanding and appreciation of the desired built form along Soldiers Point Road is formed. As evidenced by **(IMAGE 13 AND 14)**, the existing vegetation on the site and along Ash Street and Grandview Close assist in providing a sense of scale to the proposed development and development on adjoining sites.

The sensitivity to change from this viewpoint is high when in a stationary position however Soldiers Point Road has a low – medium traffic volume, which leads the site to have medium visibility when in transit. The proposed development from this location is well integrated into the surrounds and does not result in a dominating structure to the skyline or existing streetscape. When considering the development in context with the surrounding properties, it is appropriate in scale, proportion and form. The proposed development is not visually obtrusive from this viewpoint and in turn, the magnitude of change from this viewpoint is moderate.

5 KEY FINDINGS AND SOLUTIONS

When considering the effect of the proposed development from viewpoints, the level of impact is determined by a combination of:

- The situation from which people may view components of the development (e.g. residential occupancy or motorists);
- The number of people with a view towards the development from any one location;
- The distance between a person and components of the development; and
- Duration of time that a person may view the development.

Generally, the duration of time that a person may view the development from Soldiers Point Road or surrounding roads is low – moderate, given that they are in transit along the local or main roads. Those low-density residences positioned within the closest proximity to the development that would have a permanent view of the development are not considered to be highly affected due to the inclusion of appropriate setbacks, landscaping, materials, colours and articulation to soften the appearance of the building.

This VIA has found that the proposed development would have a low to medium visual effect on the existing visual catchment surrounding the subject site. Visibility of the development is most prominent from the immediate streets; however, visibility quickly decreases when stepping away from the site due to the sloping ridgeline in all directions, which in turn screens the site with vegetation or existing structures.

As further detailed, a property owner does not 'own' a view and does not provide that anyone has a proprietary right to retain all or part of the views enjoyed from their land, which has been reinforced on several occasions and decisions of the Court, and as legal principle, remains relatively unchanged. The development will result in the properties adjoining to the west losing their moderate view to the Tomaree Headland and Karuah River. However, this would occur in the event of boundary fencing being erected, or smaller density development being located across the entirety of the site, reflective of the topography and massing that would occur.

The development contributes to the use and nature of the site without adversely affecting the character of the existing streets and associated development. The proposed development includes visually compatible elements within the streetscape and results in a positive impact to the subject site and locality.