

Council Reference: DA25/0628
Your Reference: SSD-41110128



2 February 2026

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Major Projects
Department of Planning and Environment

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Please address all communications
to the General Manager

ABN: 90 178 732 496

Dear Sir/Madam

47 place residential aged care accommodation, 51 independent living units split across 3 buildings, bowling green, indoor swimming pool and spa and associated facilities (SSD-41110128) at Lot 1 DP 786570; 87 – 89 Tweed Coast Road, HASTINGS POINT (DA25/0628)

Reference is made to the above proposal and the Department's request for Council's advice/comment on the proposed development.

Background

On 20 March 2025 a development application (DA25/0123) was lodged with Council over the site which sought consent for: "69 Independent Living Units (ILUS) over four separate buildings, the construction of communal facilities, native vegetation removal (2x trees), provision of 132 car parking spaces (on-grade and basement) and bulk earthworks over four stages".

As the estimated cost of development exceeded \$30 million, this application was considered by the Northern Regional Planning Panel (the "NRPP"). Council, in its assessment of the application recommended that the application be refused. A copy of Council's report to the NRPP is available at the following link: [Seniors Housing | Planning Portal - Department of Planning and Environment](#).

On 22 August 2025 the application was refused by the NRPP. This application is now the subject of a class 1 appeal in the Land and Environment Court of NSW.

Review of the material supplied with this applicant indicates that it is similar to that proposed under DA25/0123 except for the following notable points:

- Building D is a 47 Residential Aged Care rooms ("RAC") in this application, rather than 18 Independent Living Units ("ILU") as proposed by DA25/0123;
- Building D in this application has a maximum height of 12.205m, rather than 11.89m as proposed by DA25/0123;
- Building D in this application has a GFA of 3,483.24m² rather than 2,145m²;
- This application proposes a total of 248 car parking spaces rather than 132 spaces proposed by DA25/0123 and car parking has a different configuration
- Building D (including the basement) appears to be repositioned up to approximately 4.5 m towards Cudgera Creek;
- Additional hardstand is proposed to the north-east of Building D and the proposed '4 m emergency access track' has been reconfigured closer to Cudgera Creek to the north of Building D.

- The bushfire asset protection zone has been adjusted in the north-west of the site to apply distances to the revised Building D footprint and to exclude an area of the core ecological buffer. This has resulted in an approximate 200 m² overall reduction of APZ coverage.
- The number of car parking spaces proposed is higher in the SSD DA, though the number of bicycle parking spaces is lower – with different carparking for Buildings D, E and F.

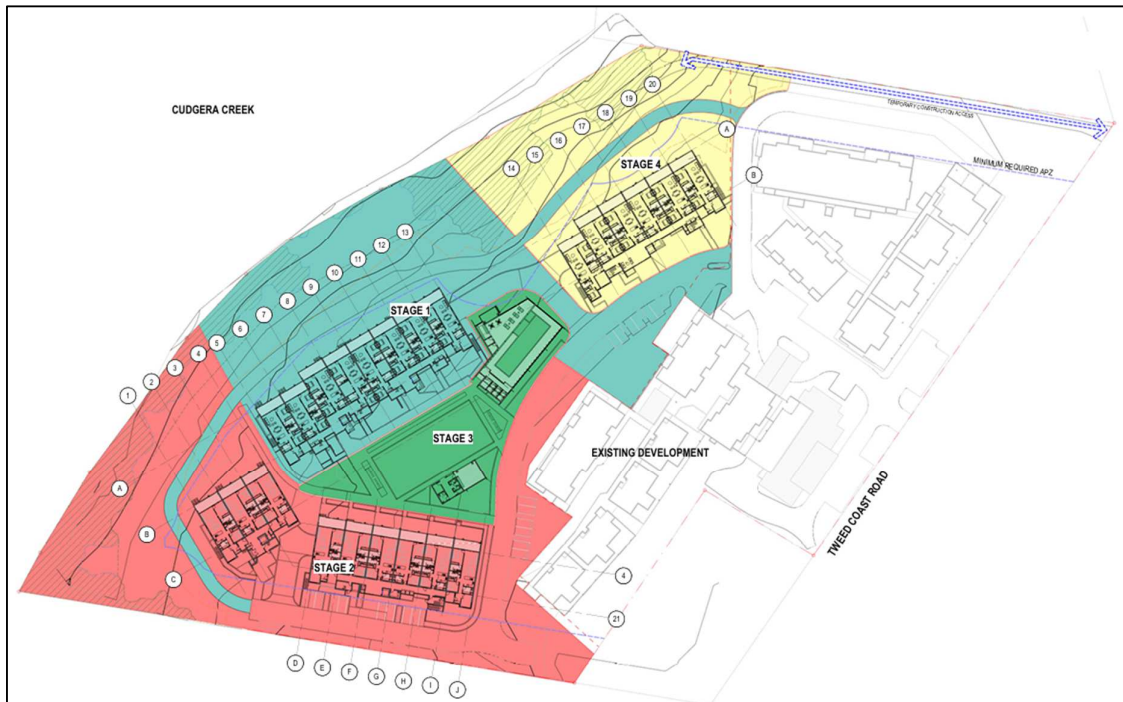


Figure 1: Proposed site and staging plan DA25/0123

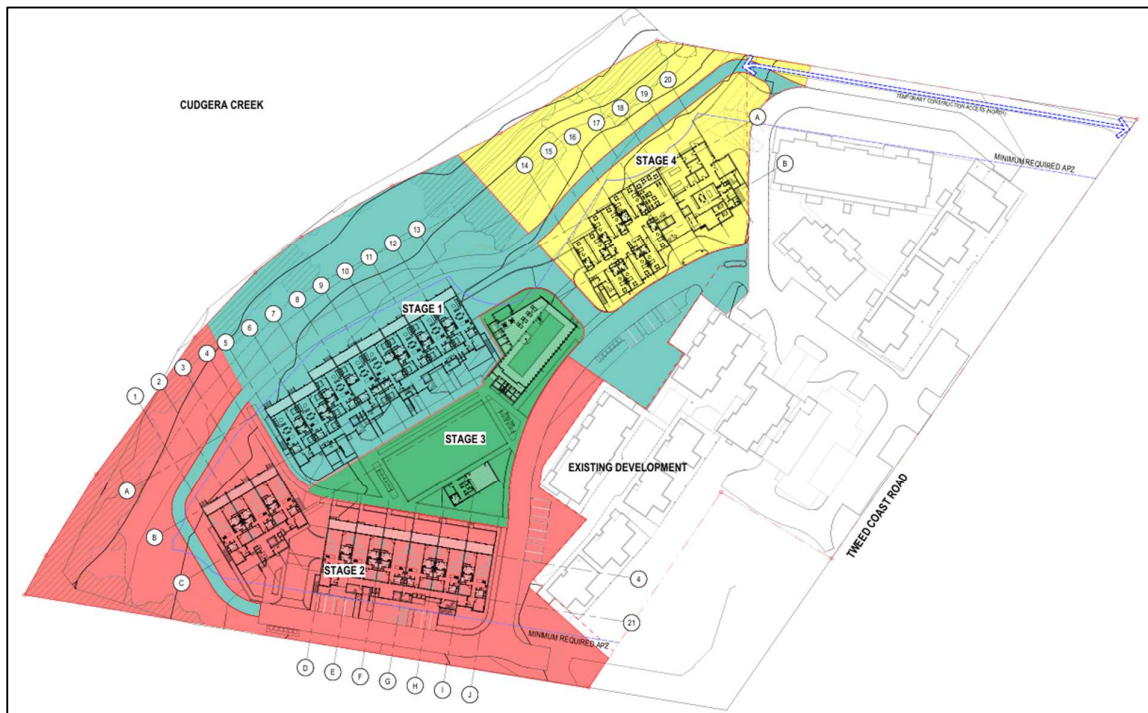


Figure 2: Proposed site and staging plan SSD-41110128

Given the similarity between the applications, there is significant overlap in Council's objections to the development proposed by this application and the development proposed by DA25/0123.

Summary of submission

Council is pleased to see that this application proposes the creation of RACs, which were not included in DA25/0123. This is a positive step in assisting residents age in place.

Notwithstanding the above, Council objects to the development proposed by this application. The reasons for objection are discussed in detail below, and summarised as follows:

- The proposal will have an unacceptable impact on the land mapped 'coastal wetlands' under *State Environmental Planning Policy (Resilience & Hazards) 2021* (the "**SEPP (R&H)**"). Further, insufficient information has been provided to demonstrate that the development will not have an impact on land mapped 'littoral rainforest';
- The proposal has not been adequately designed to avoid, minimise or mitigate the impact of the development on land mapped 'coastal environment area' under the SEPP (R&H);
- The Biodiversity Assessment Report ("**BDAR**") is inadequate and does not adequately offset residual biodiversity impacts in accordance with the Biodiversity Assessment Method;
- The proposed development does not incorporate sufficient measures to avoid or minimise adverse impacts on threatened species and biodiversity values in accordance with the *Biodiversity Conservation Act 2016* ("**BC Act**");
- The applicant's Koala Assessment Report is inadequate and does not demonstrate that the development is consistent with the *Tweed Coast Comprehensive Koala Plan of Management* ("**KPOM**");
- The proposal does not meet several key criteria within the NSW Apartment Design Guidelines ("**ADG**"), including (but not limited) solar access, cross flow ventilation, building separation and privacy, and internal amenity;
- The subject site has historically been used for sand mining activities, and the application does not include sufficient information to allow the extent of the contamination and the ability to remediate the land to be determined in accordance with Chapter 4 of the SEPP (R&H);
- The submitted Acid Sulfate Soils Management Plan is inadequate and does not properly consider the impact of dewatering;
- The application fails to demonstrate that dewatering can be conducted in a way which will not result in adverse environmental impacts;
- The application fails to demonstrate that the proposed earthworks will not have an impact on drainage patterns, the quality of soil to be excavated and the potential adverse impacts on the environment as required by clause 7.2(3) of the TLEP 2014;
- The Noise Impact Assessment and Construction Traffic Noise Assessment are inadequate for a variety of reasons including (but not limited to): lack of

- consideration for impact of weather in relation to noise impacts, and construction vehicle movement data;
- The fails to demonstrate compliance with the provisions of *Planning for Bushfire Protection 2019* (“**PFBP 2019**”) with regard to asset protection zones and landscaping;
 - The application fails to demonstrate that the proposal satisfies the requirements for development on flood prone land, including clause 5.21 of the TLEP 2014 and clause 5.22 of the TLEP 2014 in relation to sensitive and hazardous development;
 - The application fails to demonstrate that the proposed stormwater arrangements will not have an impact on property and the environment as required by clause 7.6 of the TLEP 2014;
 - The proposed development does not provide adequate levels of access for people with a disability in accordance with the Building Code of Australia, AS1428.1, or Schedule 4 of *State Environmental Planning Policy (Housing) 2021* (“**SEPP (Housing)**”);
 - The application fails to demonstrate that the proposed development is capable of compliance with the Building Code of Australia (“**BCA**”) without design changes;
 - Insufficient justification has been provided to support a variation of the height limits under clause 4.3 of the TLEP 2014. Additionally, the application does not seek a variation of non-discretionary height limits set out at clauses 107 and 108 of the SEPP (Housing)
 - The socio-economic impact of the proposed development does not adequately address the shortened availability of general medical services in the area, or the Design for Dementia provisions of the Seniors Housing Design Guide;
 - The proposed staging of the development gives rise to risks that the RAC accommodation and communal recreation facilities will not be completed; and
 - The application is missing information necessary to determine compliance with several planning instruments including (but not limited to) the TLEP 2014 and Part 5 of the SEPP (Housing).

For the above reasons, Council respectfully submits that the application should be refused.

Please note that Council has not provided draft approval conditions or suggested request for information (“**RFI**”) questions with this correspondence. However, if the Department elects to issue an RFI to the applicant Council requests that it be contacted to provide comments on the applicant’s response.

Further, (and as noted above) DA25/0123 is currently the subject of an appeal to the NSW Land and Environment Court. As part of the appeal, Council has obtained expert advice from Rhelm Pty Ltd in relation to the impact of the proposed development on groundwater, stormwater and flooding.

Given the similarities between the two proposals, it is considered that the advice of Rhelm is relevant to this application and as such it has been set out below in this submission where relevant.

Council Comments

1. Impact on Coastal Wetlands and Littoral Rainforest areas

The site contains land mapped 'coastal wetlands' 'proximity to coastal wetlands', 'proximity to littoral rainforest', and adjoins land mapped 'coastal wetlands' on the Coastal Wetlands and Littoral Rainforests Area Map referred to in the SEPP (R&H).

Further, the whole of the site is within the 'coastal environment area' defined in the SEPP (R&H).

a. Impact of dewatering

As noted above, expert advice has been received from Rhelm in relation to the impact of dewatering for DA25/0123. Given the similarity between the two proposals, it is considered that this advice is relevant to this application, and is set out below:

The Hydrogeological Impact Assessment (the "HIA"), prepared by Martens & Associates and dated 13 May 2025 is insufficient as:

- (a) it appears to assume an average condition for the boundary conditions in Cudgera Creek and at the ocean boundary. However, neither of these boundaries are static and vary tidally. The effects of the tidal variations are expected to exacerbate impacts of groundwater drawdowns, and this has not been considered in the HIA; and
- (b) no information is provided to demonstrate how the impact of drawdowns on the littoral rainforest located to the north-east of the site will be avoided, or to support the assertion in the HIA that such drawdowns will have "negligible impact".

In addition, it is noted that the HIA indicates that a permanent drawdown of groundwater will occur within a portion of the site mapped as Coastal Wetlands, stating:

"Modelling demonstrates that the proposed development is expected to cause a drawdown of up to 0.15 m within the coastal wetland in the western portion of the development."

The HIA also indicates that drawdown of groundwater will occur on the adjoining site mapped Coastal Wetland as a result from the construction-phase dewatering on site.

"Modelling indicates that drawdown impacts arising from temporary dewatering will largely be limited to the site, with drawdown of no greater than 0.1 m predicted outside site boundaries."

These drawdowns on the land identified as 'coastal wetlands' are considered likely to have an unacceptable impact on the health, integrity and assemblage of the Cudgera Creek riparian habitat (*plant community type (PCT) 3989*) comprising that coastal wetland area. In particular, it is noted that the threatened species Wallum Froglet (*Crinia tinnula*) has been identified occupying wetland habitat immediately adjacent

and to the south-west of the site within the predicted zone of influence of groundwater drawdown and the drying of this habitat may result in sub-optimal conditions for the species.

Further, and as discussed under the heading “Groundwater and Dewatering” below in this correspondence, the application is not accompanied by a dewatering management plan. As such, it is unclear how the proponent intends on addressing issues such as potential contamination / acidification of the groundwater or how the groundwater will be discharged.

It is submitted that the application should be refused as it is not possible for the consent authority to be satisfied that the proposed development that sufficient measures have been or will be taken to protect or enhance the biophysical, hydrological and ecological integrity of the coastal wetland area and littoral rainforest area as required pursuant to section 2.7(4) of SEPP (R&H), or that the proposed development will not significantly impact upon the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest area, or on the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland as required pursuant to section 2.8(1)(a) of SEPP (R&H).

b. Potential impacts of development not addressed

The proposal is likely to result in several indirect impacts on the coastal wetlands areas, including artificial light spill, increased human visitation, weed propagation and habitat avoidance. The application does not adequately describe these impacts and as a result, it is not possible to determine whether such impacts are acceptable or not.

Further, the proposed landscape plan and EIS notes an “*Ephemeral creek walk follows ecological conservation vegetation*” near the western boundary, with connections to Cudgera Creek. These connections will pass through the designated coastal wetlands area. Further, proposed “*Communal green spaces adjacent to ecological conservation vegetation*” are also located in the south-western corner of the site.

Insufficient information has been provided to allow assessment of the impact of these elements of the proposal on the coastal wetland. In particular, the application lacks information about matters such as:

- (a) The location the walking track (including connections to Cudgera Creek which appear to pass through the coastal wetland area), and communal green spaces in relation to the designated coastal wetland areas;
- (b) Details of vegetation removal, earthworks and other construction works required to create the proposed creek walk and connections to Cudgera Creek; and
- (c) Consideration of the direct or indirect impacts on the coastal wetland area through use of the walking track and communal green spaces.

Insufficient information has been provided with the application to allow the consent authority to be satisfied that the proposal has been designed to avoid, minimise and mitigate adverse impacts on ecological values in accordance with section 2.10 of the SEPP (R&H), or that sufficient measures have been or will be taken to protect or enhance the biophysical, hydrological and ecological integrity of the coastal wetland area and littoral rainforest area as required pursuant to section 2.7(4) of SEPP (R&H). For these reasons, it is submitted that the application should be refused.

c. Impact of Asset Protection Zone

The Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 2 December 2025 (the “**Bushfire Report**”) proposes the creation of an Asset Protection Zone (“**APZ**”), which is to be managed as an Inner Protection Area in accordance with *Planning for Bushfire Protection 2019* (“**PFBP 2019**”).

Creation of the APZ will result in direct impact upon of approximately 100m² of existing protected coastal vegetation in proximity to coastal wetlands as defined by the SEPP (R&H).

The vegetation is representative of two endangered ecological communities, on an over-cleared Mitchell Landscape offering habitat for threatened species including Mangrove Honeyeater (*Lichenostomus fasciocularis*) being a Serious and Irreversible Impact Species (SAIL).

The removal of vegetation consisting of a endangered ecological communities will reduce the width of the western Cudgera Creek (within the coastal wetland) fauna corridor and exacerbate the influence of edge effects of the development, particularly for those species reliant on riparian vegetation within the coastal wetland. Given that the ecological communities effected by such clearing a classified as being endangered, it is suggested that such impacts are of unacceptable and of a serious, adverse nature.

It is submitted that the consent authority cannot be satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, as required by section 2.8 of the SEPP (R&H).

2. Biodiversity Conservation Act issues

The site contains land identified on the Biodiversity Values Map referred to in the *Biodiversity Conservation Regulation 2017* (“**BC Regulation**”).



Figure 3: Biodiversity Values Map of site ([Biodiversity Values Map and Threshold tool](#))

a. Inadequate BDAR

The BDAR prepared by Cumberland Ecology and dated 15 December 2025 is inadequate and may not adequately offset residual biodiversity impacts in accordance with Biodiversity Assessment Method 2020 (“**BAM 2020**”).

Section 4.1 of the BAM 2020 manual requires that a Plant Community Type (“**PCT**”) be assigned to all areas of a site where a PCT can reasonably be applied.

In this regard, the grassland area of the site contains areas of native species that may represent more than one vegetation zone. As a result, justification that this area is a single vegetation zone is required as well as identification of a PCT across areas of grassland that contain at least 0.1 % native vegetation cover is required, along with resultant calculation of a Vegetation Integrity Score (VIS). This is not included in the BDAR.

In the absence of a VIS score across areas mapped as exotic grassland, the Species Credits have not been properly calculated as these also need to capture areas currently mapped as exotic grassland.

The BDAR includes figures that are inconsistent with the architectural plans and Bushfire Assessment Report submitted with the application such as:

- The footprint of proposed Building D
- The extent of bushfire Asset Protection Zones
- The alignment of the ‘4m wide emergency access track’

Further, and for the reasons set out below, it is considered that the BDAR fails to specify adequate measures to avoid or minimise the impact of the proposed development as required by section 6.12 of the BC Act.

b. Biodiversity impacts

Section 6.3A of the BC Act requires a proponent to avoid or minimise adverse impacts on biodiversity prior to seeking to offset or compensate for any residual impact on the biodiversity measures.

Further, Section 7.13(6) of the Biodiversity Conservation Act 2016 enables the consent authority to determine their own standards to avoid or minimise biodiversity impacts. Accordingly, this Section of the DCP sets out Council requirements to avoid or minimise the environmental impacts of development.

It is noted that section A19 of the *Tweed Development Control Plan 2008* (“**TDCP 2008**”) includes controls that relate to biodiversity and habitat management.

The proposal does not incorporate sufficient measures to avoid or minimise adverse impacts and is inconsistent with the provisions of the TDCP 2008. It is noted that:

- (a) The proposed development will remove or modify 0.07 ha of Northern Sands Tuckeroo-Banksia Forest (PCT 3132), which is known habitat for a range of threatened species outlined in the BDAR. A large proportion of this removal arises from the proposed perimeter road, and it has not been demonstrated that the development cannot be sited to avoid this impact.
- (b) The proposed development has the potential to result in changes to adjacent coastal wetlands, including Key Fish Habitat protected under the Fisheries Management Act 1994. A 100 m buffer is not provided to the Key Fish Habitat as required by section 3.2.4.2 of the Key Fish Habitat Policy and Guidelines.
- (c) The proposed development does not provide adequate ecological buffer zones between the development, and several areas of red flagged ecological value on the site. These areas include Important Wetland, Old Growth Forest, over-cleared Mitchell Landscapes, listed ecological communities, pre-existing protected habitat, waterways and riparian areas, threatened and significant species and land within a wildlife corridor.

The values identified above require various buffer distances, ranging from 20-50 metres as specified in sections A19 and B23 of the *Tweed Development Control Plan 2008* (“**TDCP 2008**”). The proposed development achieved an average buffer distance of 18m for these values and are inconsistent with the provisions of the TDCP 2008.

The inadequate buffers proposed will result in impacts to the adjacent wetlands and rainforest that are not adequately mitigated by the proposal.

- (d) Section A19 of the TDCP 2008 allow a bushfire APZ that is managed as an outer protection area (ie. 30% canopy cover and fuel reduced understory) to extend within the outer half of ecological buffer zones.

The submitted Bushfire Report proposes to locate an inner protection area (ie. maximum 15% canopy and fuel reduced understory) substantially beyond the outer half of ecological buffer zones applying to the site based on red-flagged values. This is inconsistent with the provisions of section A19 of the TDCP

2008 and is likely to result in direct loss of habitat, restrict the scope and quality of habitat restoration outcomes, and fragment habitat restoration zones.

- (e) The extent of indirect impacts, including light spill have not been quantified. The proposed development does not appear to have been designed in a manner that reduces light spill, and the application is not supported by a light spill assessment to demonstrate that this will not result in adverse impacts.
- (f) A Vegetation Management Plan (“**VMP**”), titled a Restoration Management Plan is proposed, however this is inconsistent with the landscape plan in that areas proposed for restoration contain lawns and pathways.
- (g) The VMP does not include an overall performance benchmark based on predicted VI score beyond MZ 1, thus it is unclear how restoration success will be determined.

3. Koala Protection issues

The KPOM applies to the subject site.

The applicant’s Koala Habitat Assessment Report prepared by Cumberland Ecology and dated 7 May 2025 (“**KAR**”) indicates that 360m² of Preferred Koala Habitat (“**PKH**”) will be impacted to establish APZs. It is noted that part of the PKH proposed to be impacted partially consists of habitat restoration areas established as a requirement of the current development consent on the site (DA06/0413.13).

a. Insufficient re-establishment of PKH

The KAR proposes that the impacted PKH will be offset by onsite establishment of 432m² PKH managed through weed control and restoration planting. To achieve this, the applicant seeks to utilise the ecological buffer zones that are already required to mitigate impacts of existing the development onsite (approved under DA06/0413.13) and the buffers required to be established under the proposed development scheme to mitigate additional impacts.

It is noted that the KPOM contains the following key offset principle:

“The following principles must be addressed in the development of offset proposals. Offsets must:

...
•

- *be new or additional to what is already required, determined by law or planning regulations or agreed to under other schemes or programs.”*

Accordingly, the proposed koala offset arrangements are unacceptable, as they are inconsistent with key offset principles detailed in the KPOM. It follows that the application fails to demonstrate that sufficient offsets to compensate for the loss of PKH can be achieved.

b. Inadequate Koala Habitat Assessment Report

The KAR inadequate for the following reasons:

- (a) The BAM 2020 Koala guideline specifies that two survey methods be applied. However, in the KAR these were only applied to the impact area and immediately adjacent. No surveys occurred in the broader landscape to allow an understanding of the use of the site as a Koala corridor.
- (b) The KAR does not consider Koala records or habitat in a broader context, such as within 1 km, 2 km and 5 km of the site.
- (c) The KAR does not properly consider indirect impacts on Koalas, including disorientation and isolation, light spill, noise and increased stress. As a result, the KAR does not adequately mitigate the impact of the development on koalas or their habitat.
- (d) While the KAR proposes Koala use trees to be replanted, the revegetation does not have proper performance targets for use by Koalas to establish whether such revegetation has been effective.

It is further noted that section 4.2 of *State Environmental Planning Policy (Biodiversity & Conservation) 2021* (“**SEPP (B&C)**”) requires an author of a KAR to be suitably qualified and experienced. It is unclear if the authors of the KAR meet the definition of suitably qualified and experienced as defined by the SEPP B&C.

4. Privacy, solar access, ventilation and amenity

The proposal has been considered against the relevant provisions of the NSW Apartment Design Guidelines (“**ADG**”) and SEPP (Housing). The plans provided are missing information to allow for a complete assessment under these provisions. This is discussed under the heading “Missing information” below in this submission.

From the information received, the following comments are made:

a. Separation, privacy and amenity

All proposed buildings are three storeys in height, and as such, under Part 3F of the ADG are required to provide 6m for habitable rooms, and balconies, and 3m for non-habitable rooms. It is noted that as the buildings are on the same site, the building separation requirements are combined (i.e. 12m for habitable rooms and balconies, and 3m for non-habitable rooms).

Buildings E, F, and G result in potential separation issues. Insufficient separation appears to occur between multi-purpose rooms, living rooms, and balconies. Further information is required in relation to the use of these multi-purpose rooms to determine if they are capable of being used as habitable rooms.

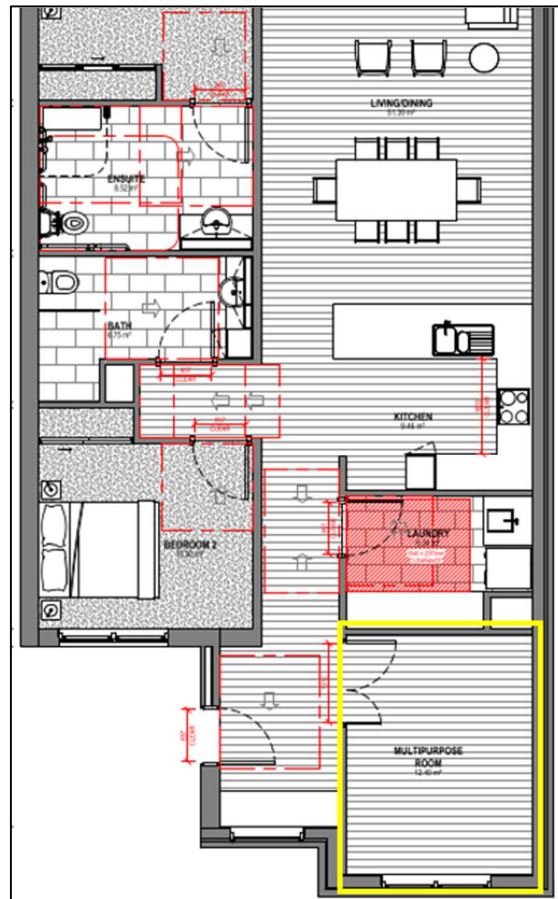


Figure 4: Extract of typical "Type 2" unit with Multipurpose Room highlighted yellow

The following separation issues are raised:

- The north-eastern part of Building D results in a separation distance of approximately 9m to the existing Building A-2.
- Less than 12m separation distances are proposed between Building E and Building G. The multi-purpose room of the eastern most unit of Building E has a separation ranging between 6.6m and 7m between the balcony and living room units of the western most unit of Building G.
- Less than 12m separation distances are proposed between Building G and Building F. The multi-purpose room of the eastern most unit of Building G has a separation ranging between 7m and 8m between the balcony and the living room units of the south-western most unit of Building F.

The non-compliant separation distances also result in acoustic privacy issues under Part 4H of the ADG.

Additionally, it is noted the proposal features windows from bedrooms which look into common circulation areas and foyers. This is considered to result in poor visual and acoustic privacy outcomes for these units.

b. Cross flow ventilation and natural light

The proposed development is inconsistent with the following parts of the ADG in relation to internal amenity:

- “Objective 4B-1 - All habitable rooms are naturally ventilated.”
- “Objective 4D-1 - The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.
 - Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.”
- “Objective 4D-2 - Environmental performance of the apartment is maximised.
 - In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.”

The proposed buildings include several independent living units which have rooms with very limited, or no access to daylight or natural ventilation.

Buildings E, F and G contain units, which have windows to habitable rooms that face into enclosed corridors. The glazing and sliding doors on the corridor restrict the natural daylight and ventilation to these rooms.

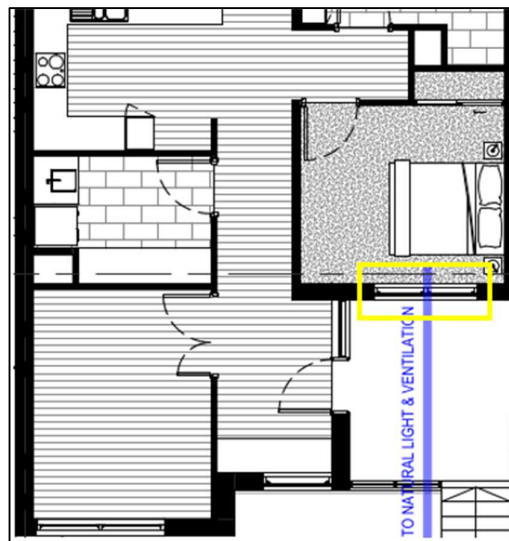


Figure 5: Extract of Building E plan with example of window to corridor highlighted yellow

It is further noted that the internal units of buildings E, F and G contain an open plan living, dining and kitchen layout that exceeds 8m from an external window. The distance from an external window which results in further reductions in the amount of natural light and breezes available internally.

c. Internal amenity

The proposed development is inconsistent with Part 4L – ground floor apartments of the ADG which relevantly provides as follows:

- *“Objective 4L-1 - Street frontage activity is maximised where ground floor apartments are located.”*
- *“Objective 4L-2 - Design of ground floor apartments delivers amenity and safety for residents.”*

It is noted that Buildings E and G feature breaks in the ground floor balustrades, to allow direct access from units to the communal grounds. However, it is not apparent that the balcony floor levels match the existing ground level immediately in front of these units. As a result, it is not apparent that safe access to the communal grounds can be established.

Further, concern is also raised about the safety and security of these ground floor units, as the proposed design allows for unrestricted access to the balconies.

d. Seniors Housing Design Guide

It is noted that section 97(2) the SEPP (Housing), requires that the consent authority consider the Seniors Housing Guide published in December 2023 (“**SHG**”), the design principles for seniors housing under Schedule 8 of the SEPP (Housing) and the design principles for residential apartment development under Schedule 9 of the SEPP (Housing).

The proposal fails to achieve several key principles contained in the SHG, and Schedules 8 and 9 of SEPP Housing as set out below:

- The proposal does not satisfy the design principles for independent living at section 13 of the SHG.

The proposal does not provide adequate areas where residents of units can socialise. No internal communal spaces are included to allow social interaction between residents. In addition, the external communal open spaces are lacking key areas for socialisation, and the only provided external communal area is the lawn bowls green, which may not appeal to every resident.

- Section 15 of the SHG, and Schedules 8 and 9 of the Housing SEPP include several design principles that have not achieved, as outlined below:
 - **Neighbourhood amenity, streetscape, context, and built form:** Issues of separation between buildings, as referred to above. In addition, it is recommended that separate vehicle and pedestrian access should be provided. Residents should not have to rely on roads for access to their building. The plans are also not clear as to what lighting is provided to promote safety and security.
 - **Density, and housing diversity:** The density of the proposal is considered inappropriate given the lack of health services, communal spaces, and general lack of facilities in the broader

locality. Refer to further comments herein under the heading Socio-Economic Impact.

- **Solar access, design for climate and sustainability:** as set out above, access to natural daylight and ventilation is not acceptable. In addition, the poor solar access is considered to represent a safety hazard to occupants as a lack of light is a contributing factor in fall and trip accidents.
- **Crime Prevention and safety:** The plans are not clear as to what lighting is provided to promote safety and security. Lack of detail is provided to outline the provision of safety for residents around the driveway entries to each building.
- **Accessibility:** Accessibility to and within the proposed development is inadequate. Refer to comments under the heading “Building Code of Australia and accessibility issues”. Additionally, it is considered that high-set windows in the common corridors will result in reduced solar access which will increase the risk of fall hazards in these areas.
- **Visual privacy and acoustic privacy:** Issues of separation between buildings are discussed elsewhere in this submission. In addition, driveway location is considered inappropriate as cars accessing each basement leads to reduced amenity for residents in terms of noise, particularly for buildings E, F & G. Other acoustic issues with the proposal are discussed elsewhere within this submission.
- **Landscape:** As noted elsewhere in this submission in relation to bushfire, the proposed landscaping is not considered to be appropriate as it is unclear whether it meets the requirements for landscaping under *Planning for Bushfire Protection 2019*.

5. Land contamination

The subject site has been affected by historical Heavy Mineral Sand Mining activities and is subject to a Site Audit Statement – Number 0103 – 0802 (“**SAS**”) prepared by an NSW EPA Accredited Site Auditor. The SAS relates to potential radiological issues arising from historical use for heavy mineral sand mining.



Figure 4: Heavy Mineral Sands Mining Path mapping of site – Tweed Shire Council

It is noted that at the time of preparation, the SAS only comprised the area of the site shown below (edged in orange dashed line):



Figure 5: Extract of SAS showing applicable location (DA06/0413).

This excludes most of the area intended for the proposed development.

The SAS is also subject to an environmental management plan (“**EMP**”) for residual contamination potentially arising from the historical sand mining.

Relevantly, the EMP requires the following:

- Clause 3.2: That a surface radiation survey be conducted for any proposed excavations or site disturbances greater than 300mm below the existing surface levels; and
- Clause 3.5: Any excavation greater than 1m below the existing surface requires development consent, and the requirements of the EMP should be considered and addressed when making the development application.

The Detailed Site Investigation prepared by Martens and Associates, dated 19 May 2025 (the “**DSI**”) does not consider the requirements of the SAS and EMP for the subject development and excludes a review of prior radiation assessments and reports as part of its analysis. Rather the DSI indicates that the risk of contamination arising from the sand mining activities are low, without providing any quantification or evidence for such assertion.

In addition, condition 103 of the current DA for the site (DA06/0413) specifies that an NSW EPA Site Auditor must have oversight in relation to the radiation, stating as follows:

103. Following completion of any excavations or site disturbances greater than 300mm deep below existing surface levels in a development stage and prior to commencement of any construction works in the stage a surface radiation survey shall be completed and reported to the satisfaction of the Director of Environment and Community Services. Each stage and validation statement shall be vetted by an EPA accredited contaminated land auditor. Should NSW health Action Level Criteria be exceeded then a remediation action plan shall be submitted for approval of the Director of Environment and Community Services. Where remediation works are required the relevant stage or future stages shall not continue until the auditors statement has been received to the satisfaction of the Director of Environment and Community Services.

The DSI does not address this condition, and no evidence has been provided which would support a change of this position.

Further, historical aerial imagery of the site notes the presence of ponds in the south-east of the site within the footprint of the proposed development, which have since been filled.



Figure 5: Aerial imagery of site noting site ponds in 1962

The DSI notes that some soil testing for heavy metals, petroleum and asbestos has been undertaken in the area the ponds to a depth of around 1.0m. This is not considered to be acceptable as no information has been provided to demonstrate the depth of the ponds and fill. As a result, it is not possible to determine whether contaminated material is located below this depth (for example, in the former pond base).

In addition, it is noted the DSI is not supported by a Site Audit Statement from an NSW Environmental Protection Agency Site Auditor certification.

Given the above deficiencies, it is not possible for the consent authority to be satisfied that the land is not contaminated, or (if contaminated) the extent of such contamination and whether it can be satisfactorily remediated for the intended use, as required by Chapter 4 of the SEPP (R&H).

To further consider the proposal, the following should be provided:

Option 1

A Section A Site Audit Statement prepared by an accredited NSW EPA Site Auditor confirming the subject site is suitable for the proposed use and provide a copy of the SAS to Council for consideration.

OR

Option 2

Engage an accredited NSW EPA Site Auditor to review the existing information set and provide formal advice. Following this desktop and document review (and any targeted verification the Site Auditor considers necessary), where the Site

Auditor cannot issue a Section A Site Audit Statement as per Option 1 above, the Site Auditor shall provide the applicant with an Interim Audit Advice confirming the site is suitable—or can be made suitable—for the proposed use, and specifying any remediation, validation, or management actions required prior to construction of the built form.

Both the Site Auditor’s advice (SAS or Interim Audit Advice) and the document set reviewed must be submitted to Council for consideration. A Section A Site Audit Statement will be required as part of the development

Please note:

1. A Section A Site Audit Statement will be ultimately required prior to any future construction.
2. Where the Site Auditor’s advice indicates the need for an Environmental Management Plan (EMP), the applicant must engage a suitably qualified consultant to prepare a **revised whole-of-site EMP** to the satisfaction of Council’s Manager Building & Environmental Health. The EMP will also be subject to Site Auditor review and must be submitted as part of the application package for Council consideration.

6. Acid sulfate soils

The entirety of the subject site is affected by class 3 acid sulfate soil.

Clause 7.1 of the TLEP 2014 requires that, unless an Acid Sulfate Soil Management Plan (“**ASSMP**”) that has been prepared in accordance with the Acid Sulfate Soils Manual has been provided, development consent not be granted for works on land affected by class 3 acid sulfate soil which involve either:

- Works more than 1 metre below the natural ground surface; or
- Works by which the water table is likely to be lowered more than 1 metre below the natural ground surface.

The ASSMP provided with this Application varies from that accompanying DA25/0123 as this version notes that dewatering is now anticipated to occur to approximately 6.0m below ground level (“**BGL**”).

Where dewatering is to occur, the National Acid Sulfate Soils Sampling and Identification Methods Manual (“**NASSIMM**”) requires that soil sampling be undertaken to at least 1.0m below the lowest estimated drawdown level. Therefore, soil sampling should extend to at least 7.0m BGL (and deeper where lift wells / services exceed this depth). Sampling should be completed using layer-based sampling with ≤ 0.25 m vertical increments. In addition, a sampling plan that demonstrably covers the footprint of all proposed basements, lift wells and footings is required.

The ASSMP does not comply with these requirements, as sampling has only been undertaken to 4.5m BGL, noting that “*Additional testing of ASS is required to assess the soil to a depth of 1m below the dewatering depth.*”

Given the above, it is note possible to be satisfied as to the extent of potential acid sulfate soils to be disturbed on the site, and the potential for environmental damage involved in such disturbance.

In addition, the ASSMP does not adequately address the following:

- (a) NATA accreditation quality control (“**QC**”) for sampling and testing. Field duplicates, filed documentation, chain-of-custody and laboratory QC controls should be addressed;
- (b) Liming rates and the treatment plan should accurately reflect the results of the required deeper tests (to at least 7.0m BGL). Validation frequency (≥ 2 composite samples per 250 m³ of treated soils) and action limits by texture/tonnage should be addressed and adopted in accordance with national practice;
- (c) Treatment pad/leachate controls and pH/turbidity monitoring should be described. Reference should be made to the applicable trigger values for any discharge or controlled release and also note any receiving-water objectives;
- (d) Dewatering controls should be embedded in the ASSMP and include baseline and ongoing monitoring (pH, EC, alkalinity, dissolved metals, turbidity), monitor well locations, frequency, and reporting. The controls should define site-specific trigger values consistent with ANZG (2018) and attach a Trigger–Action–Response Plan (**TARP**) for exceedances (e.g. reduce pumping, switch to treatment, pause discharge, notify etc.).
- (e) Contingency plans for unexpected events (e.g. excessive rain, runoff from the ASS treatment area) are not outlined in the ASSMP. A dedicated section should be included in the ASSMP outlining such a contingency plan, including triggers for implementation, specific remedial actions, responsibilities, and reporting protocols.

For the above reasons, the application fails to demonstrate that the development will not result in environmental damage arising from the disturbance, exposure and draining of acid sulfate soils on the site. This is a matter of concern given the proximity of the site to designated coastal wetlands areas and Cudgera Creek.

7. Earthworks

The proposal requires involve bulk earthworks to create suitable building platforms, basement levels, and overland flow paths.

The Civil Engineering Report prepared by Cozens Regan Group, dated 27 February 2025 (“**CER**”) notes that the earthworks will result in 12,000m³ of excavated material, with 8,000m³ of such material expected to be removed off the site. However, the

application lacks information regarding the location of the proposed earthworks to manage cut and fill on the site.

Additionally, the CER notes that dewatering will be required to allow for creation of the basements, however a dewatering management plan (“**DMP**”) has not been provided. As noted above, the DSI and ASSMP are inadequate and do not demonstrate that the proposed earthworks will not result in the disturbance of contaminated material or release of acid sulfates. This is a matter of concern given the proximity of the site to coastal wetlands and Cudgera Creek. For this reason, a satisfactory DMP is required to demonstrate that the potential risks associated with dewatering can be adequately managed.

Given the above, it is not considered possible to be satisfied as to the quality of the excavated soil, and that the proposed earthworks will not have an impact on the adjacent environmentally sensitive areas and waterway pursuant to clause 7.2 of the TLEP 2014.

8. Noise impacts

The Noise Impact Assessment by ADP Consulting, dated 9 June 2025 (“**NIA**”) is inadequate and fails to demonstrate that the proposal will achieve an acceptable level of amenity.

It is noted that all weather-impacted data has been excluded from the rating background noise levels in the submitted NIA. However, Bureau of Meteorology data for Coolangatta during the noise logging period indicates potential weather influences that may have affected results. Clarification regarding the specific data excluded, supported by inclusion of the relevant raw noise data is necessary.

a. Post-construction noise

While the NIA considers individual operational noise sources—including internal road traffic, bowling greens, walking trail, pool pavilion, and waste collection—compliance has been assessed in isolation. A cumulative noise assessment incorporating all relevant sources under worst-case operating conditions is required to accurately consider the amenity and impact of the proposal. The predicted cumulative noise levels should be modelled (using suitable noise modelling software) and assessed against the Project Specific Noise Levels (“**PNTLs**”), for Receivers R1, C1, and relevant on-site receivers.

In addition, the recommendations in the NIA for minimum glazing thickness contain some ambiguity. A marked-up floor plan or a detailed schedule is required to identify the glazing requirements (R_w) within each residential building including for level 2 residences within the western units of Budlings D, E and F.

b. Construction noise

The submitted Construction Traffic Noise Assessment is inadequate and does not:

- Quantify construction traffic volumes, including daily and peak-hour truck trips;
- Provide details of predicted noise levels ($L_{Aeq}(15 \text{ min})$ and L_{max}) at key receiver;

It has not been demonstrated that noise predictions comply with:

- NSW Department of Planning's Development Construction Noise Guideline ("**DCNG**") for on-site movements.
- NSW Road Noise Policy ("**RNP**") for off-site traffic on Tweed Coast Road including add detailed mitigation measures, consistent with DCNG Appendix C, including haulage routes to reduce impacts on residential receivers, driver behaviour and vehicle maintenance protocols to be implemented, vehicle, and delivery schedules to minimise cumulative impacts.

The Construction Noise Vehicle Management Plan ("**CNVMP**") states 2 years each for demolition/excavation and construction but lacks a detailed breakdown. In that regard estimated durations for each major phase (e.g., site establishment, excavation, piling, substructure etc) are required to clarify noise exposure periods for receivers.

In addition, it is noted that an estimated 8,000m³ of soil to be moved off-site in a period of 3 – 6 months. This has been quantified within the Construction Vehicle Management Plan as requiring up to 50 daily trips per day. A review of the internal route for heavy vehicle ("**HV**") movements shows that HV's will pass immediately next to the existing residential noise receivers north of the subject site. As a result, more detailed commentary and modelling is required to assess the impact of these movements on these receivers. Further, detailed mitigation measures consistent with DCNG Appendix C, such amended haulage routes, driver behaviour, vehicle maintenance protocols and delivery schedules should be considered and adopted to minimise the cumulative impacts of this haulage work.

The community notification strategy is generic and lacks proactive measures. The following details are required to be provided:

- Who: Identify receivers to be notified.
- Timing: Specify when notification will occur (i.e. 14 days before each phase).
- Details: Include work schedules, traffic movements (e.g., "10-15 truck trips/day, peaking 9 am-12 pm"), expected noise levels, and mitigation measures.
- Dispute Resolution: Define a clear escalation path for unresolved issues.

The complaints handling process is inadequate and needs clear, reportable procedures and responsibilities. The following details are required to be provided:

- Responsibility: Nominate a responsible person (e.g., "Site Manager or Community Liaison Officer") to receive, investigate, and respond to complaints.
- Investigation: Detail a structured process (e.g., "Identify noise source, measure levels at complainant's location, compare with nominated management levels within 24 hours").
- Feedback: Specify information to provide complainants (e.g., "noise source, measured levels, actions taken like rescheduling or silencing equipment").
- Complaints Register: List required details (e.g., complainant's name, contact, complaint date/time, noise description, measurements, actions, resolution status).

The CNVMP relies on complaint-driven monitoring, which is inadequate. A proactive monitoring plan should be provided which includes:

- Weekly noise measurements at R1 and ED during high-impact phases (e.g., excavation, piling) to verify compliance with 51 dB(A) NML.
- Logging results in the complaints register, even if no complaints are received, to demonstrate adherence to DCNG requirements.

The development application includes a 2.4m temporary wall. Clarification is required as to how this will work in circumstances where the emergency access track is to be built as part of stage 1. Further, clarification is required as to why the walls do not extend along the existing boundary of the residential uses to the east of the site.

It is also noted that the proposed location of the temporary acoustic wall may impede the proposed heavy vehicle traffic route, as detailed in the Construction Vehicle Management Plan. As a result, the Construction Traffic Noise Assessment and the Construction Vehicle Management Plan are inconsistent with each other.

9. Stormwater

As discussed above, the impact of the proposed development on stormwater is considered to be extremely similar to that in DA25/0123 which Council has obtained advice from Louise Collier on. As a result, it is considered that the following issues arise with this application:

The basis of the design for the stormwater infiltration areas is not consistent with the slug testing for the site reported in the Martens & Associates HIA, which indicates lower infiltration rates than those assumed for the disposal of stormwater. Therefore, the proposed infiltration arrangements are not suitable for the management of stormwater. Further, when groundwater is elevated on the site, there may be extended periods where captured stormwater cannot infiltrate, causing potential impacts on adjacent landscaping, amenities, buildings and their basements.

In addition, the application is not accompanied by detailed analysis of the discharges from the proposed stormwater systems into the coastal wetlands proximity area, and as a result it is not possible to be satisfied that the proposed development will not significantly impact on the hydrological integrity of the adjacent coastal wetland, nor adequately consider the quantity and quality of surface and groundwater flows to the adjacent coastal wetland area as required by the SEPP (R&H).

Given the above, it is not possible to be satisfied that the proposed development avoids significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact as required by clause 7.6 of the TLEP 2014.

10. Groundwater and dewatering

The HIA identifies that temporary dewatering will be necessary during the construction phase, specifically for basement excavation, with an expected extraction volume of approximately 2.74 to 4.54 megalitres (“ML”) over a period of 3–6 months. However, this timeframe does not appear to consider the potential for wet weather

and other delays which will prolong the timeframe and environmental impact of the proposed drawdown.

It is noted that the HIA also recommends preparation of a Dewatering Management Plan (“**DMP**”) which includes consideration of the following:

*1. Monitoring of groundwater levels outside the basement excavation areas using existing monitoring wells. 2. The establishment of trigger values for groundwater level and water quality based on monitoring of existing groundwater conditions. 3. Routine monitoring of groundwater quality during the groundwater extraction process to inform any treatment requirements. 4. Monitoring of groundwater extraction (pumping) rates. 5. A description of treatment and disposal methods. 6. A trigger, action and response plan (“**TARP**”) to manage situations where trigger values are exceeded.*

In addition to the matters referred to in the HIA, a DMP must also:

- Consider acid sulfate soils, particularly in relation to the cone of depression;
- Consider baseline data for any environment receiving discharge of groundwater;
- Address Tweed Shire Council’s [Dewatering in the Tweed guidelines](#) and relevant national guidance for dewatering in shallow groundwater environments;
- Provide a practical treatment train for dewatering effluent with acceptance criteria tied to ANZG default/site-specific values. Mapped discharge points and contingencies (Trade Waste agreement or tanker off-site) must be provided if triggers cannot be met;
- Be embedded within the ASSMP so that dewatering controls are fully integrated with Acid Sulfate Soil neutralisation, validation and waste traceability. This ensures the revised ASSMP complies with national guidance and Council requirements

The above material is considered necessary to demonstrate that the development can occur without adverse impacts on surrounding waterways and environmental areas, as well as resulting in negative outcomes for the amenity of the area. As a result of the absence of such material, it is considered that the application fails to satisfy clause 7.2 of the TLEP 2014.

11. Flooding

The land is affected by the 1% Annual Exceedance Probability (“**AEP**”) flood and the Probable Maximum Flood (“**PMF**”) along the western boundary with Cudgera Creek and new minimum flood levels and Flood Planning Levels are now applicable for Tweed Shire which include climate change.

As discussed above, the impact of the proposed development in relation to flooding is extremely similar to that in DA25/0123 which Council has obtained advice from Louise Collier on, and it is considered that the following issues arise with this application:

The application does not consider the impact of climate change under updated design rainfall arrangements using Australian Rainfall and Runoff 2019 Version 4.2 and no specific considerations been made of the potential adjustments to the coastal entrance conditions of Cudgera Creek associated with projected sea level rise.

Further, it is noted that the proposal is a *sensitive and hazardous development* as defined by clause 5.22 of the TLEP 2014. As a result, the application is required to demonstrate that the proposal:

- Will not affect the safe occupation and efficient evacuation of people in the event of a flood, and
- incorporates appropriate measures to manage risk to life in the event of a flood, and
- will not adversely affect the environment in the event of a flood.

The application is not accompanied by a suitable Flood Impact and Risk Assessment, nor an adequate evaluation of emergency response requirements or details of proposed arrangements. While having residents shelter in place may be appropriate during more minor flood events, this is unlikely to be suitable during more severe events involving extended inundation.

Further, considerations of the effect of likely overfloor flooding in the PMF of Building G do not appear to account for the vulnerability of occupants of the building.

12. Bushfire

The subject site is bushfire prone and the proposal is for a “*special fire protection purpose*” as defined by section 100b of the *Rural Fires Act 1997*.

The APZs proposed by the application do not comply with the requirements of Chapter 6 and Table A1.12.1 of PFBP 2019 and exceed the requirements for not exceeding 10kW/m² on any part of the building(s).

The principle of achieving a better outcome alone cannot apply to the establishment of buildings which have an unacceptable radiant heat threshold (notably buildings F and G). In this regard, it is noted that the advice from the Rural Fire Service of 3 May 2024 (annexed to the Bushfire Report) states that: “*Any new Development Application must comply with Chapter 6 of the PBP 2019 guidelines.*”

Further, the Bushfire Report does not correctly identify the extent to which ecological values are a potential constraint to development and as a result the proposed APZs substantially encroach into inner red flagged value ecological buffer zones which are a constraint to APZ management.

In addition, the proposed perimeter track with passing bays has a width of 4 – 6m, however this is required to be at least 8m (minimum) wide in accordance with PFBP 2019. PFBP 2019 also sets out a number of additional requirements in relation to access to special fire protection purposes (eg. Surfacing, grades etc.) however insufficient information has been provided with the application to establish whether the proposal meets these requirements.

It is also noted that proposed landscape plan identifies trees to be planted in conjunction with shrubs within the proposed APZs and around buildings. The Bushfire Report is inadequate as it fails to consider whether the proposed plantings are acceptable to achieving asset protection zone standards in accordance with PFBP 2019.

13. Building Code of Australia and accessibility issues

The application is accompanied by a Building Code of Australia Assessment Report by Credwell, dated 11 December 2025 (“**BCA Report**”).

a. BCA issues

The BCA report is missing information and as a result, the application fails to demonstrate that the proposal is capable of achieving the relevant BCA standards.

In this regard, it is noted that the BCA Report identifies several departures from the Deemed-to-Satisfy (“**DTS**”) provisions of the BCA and recommends that a Performance Solution be obtained from a C10 Fire Safety Engineer to justify the DTS departures.

Additionally, the BCA requires the proposed buildings be provided with several active fire safety measures. Whilst the BCA Report acknowledges that the fire safety measures are required, no consideration has been given to the associated infrastructure. This includes (but is not limited to) the following infrastructure that, if required, may require changes to the development as proposed by the application:

- Fire Hydrant and/or Sprinkler Booster Assemblies.
- Fire Hydrant and/or Sprinkler Booster Pumps.
- Fire Hydrant and/or Sprinkler Tanks.

As a result, preliminary advice is required from a Fire Safety Engineer to determine whether Performance Based Fire Engineering can be utilised to comply with the Performance Requirements of the BCA, without modification to the design of the proposed development shown in the application.

Further, the BCA Report identifies a number of parts of the proposal that are required to be modified to comply with the DTS provisions of the BCA. However, such design modifications have not been shown on the design documentation for consideration by the consent authority as part of the assessment process.

For example, the BCA Report notes that the building is either not provided with natural light in accordance with Clause F6D2/ F6D3 of the BCA, or insufficient information has been provided to confirm compliance with this requirement.

While the BCA Report states that a Performance Solution may be obtained to address this non-compliance, no details of the Performance Solution or any compensatory measures, are proposed or shown elsewhere on the plans and it is not possible to see how compliance of this requirement will be met.

The BCA also requires that the building be provided with Mechanical Ventilation Systems for the provision of mechanical ventilation, carpark exhaust and kitchen exhaust. Whilst the BCA Report acknowledges that these measures are required, no consideration in the design documentation has been given to the associated infrastructure. This includes (but is not limited to) the following infrastructure that, if required, would likely result in the application to not being “consistent” with the design documents as submitted with the Development Application:

- Air Conditioning Condenser Units.
- Mechanical Ventilation Systems.
- Carpark Exhaust (including point of discharge).
- Kitchen Exhaust (including point of discharge).

Preliminary Advice should be provided by a Mechanical Consultant having regard to the relevant Mechanical Ventilation Systems, so as this may be incorporated into the design documentation and considered by the project BCA Consultant.

The BCA Report does not adequately consider a number of other clauses within the BCA that would allow the consent authority to be satisfied that the design is capable of compliance with the BCA. These clauses include (but are not necessarily limited to):

- Clause B1D6 – The BCA Report does not consider the provisions of Clause B1D6 or the ABCB Standard for Construction of Buildings in Flood Hazard Areas.
- Clause C2D10/ C2D14 – The BCA Report does not consider the attachment of Planter Boxes/Timber Soffit/ Timber Screens/ Timber Cladding or Signs to the external wall of the building, having regard to the definition of “non-combustible”.
- Clause C4D2/C4D5 – The BCA Report identifies that the building contains openings that are required to be protected in accordance with Clause C4D5 of the BCA. The BCA Report does not consider the method of protection, nor is the method of protection indicated on the design documents.
- Clause C3D7 - The BCA Report states that the building is capable of complying with the spandrel and horizontal construction requirements of Clause C3D7 of the BCA. Scaled measurements of the architectural plans show that the position of windows do not comply with the spandrel/ horizontal projection requirements of Clause C3D7 of the BCA. In this regard, it is considered that the design is required to be modified or details are to be provided of the proposed sprinkler system to serve the building (Note: the proposed development need not comply with the spandrel provisions of the BCA if the building is provided with a sprinkler system other than a FPAA101D or FPAA101H System).
- Clause F4D4 – Clause D2D18 of the BCA establishes a methodology for calculating the anticipated number of people in a particular building. This has not been considered in the report. Having regard to a conservative measurement, it is calculated that the pool pavilion requires a minimum of ten (10) shower facilities and the bowls pavilion requires eleven (11) shower facilities.
- Clause G5D2, G5D3, G5D4 and Specification 43 – The BCA Report does not consider the provisions of Part G5/ Specification 43 of the BCA. The subject

site is identified as bushfire prone land and is a Class 2 building and a Special Fire Protection Purpose to which Part G5 (NSW Variation) applies.

Council considers that alterations to the design of the proposed buildings may be required to resolve the above issues. Accordingly, they should be addressed during the design phase of the development.

b. Accessibility issues

The application is accompanied by an Accessibility Report by Credwell, dated 10 December 2025 ("**Access Report**").

This report fails to demonstrate that the proposed development will meet the appropriate levels of access for people with a disability in accordance with the BCA, *State Environmental Planning Policy (Housing) 2021* ("**SEPP Housing**") and AS1428.1.

i. SEPP Housing requirements

The proposed development is inconsistent with the following standards within Schedule 4 of SEPP Housing:

- Clause 2 – Siting Standards – Insufficient information about the grade, surfacing and travel distances has been provided with the application to assess compliance with this standard.
- Clause 3 – Letterboxes – Insufficient information has been provided has been provided with the application to assess compliance with this standard.
- Clause 4 – Car Parking – Insufficient information has been provided has been provided with the application to assess compliance with this standard, particularly in relation to the required clearance heights for accessible parking spaces.
- Clause 5 – Accessible Entry – Insufficient Information provided with the application and the design may not achieve wheelchair circulation in accordance with AS 1428.1. Door schedules should be provided.
- Clause 6 – Interiors – Insufficient information provided with the application, and the design may not not achieve unobstructed door widths and/or internal circulation in accordance with AS 1428.1. Door schedules should be provided.
- Clause 7 – Bedroom - Insufficient information provided with the Design Documentation to determine compliance.
- Clause 8 – Bathroom - Insufficient information provided with the application, and the design may not achieve compliance with circulation space requirements for showers as set out in AS 1428.1.
- Clause 9 – Toilet - Insufficient information provided with the application, and the design may not achieve compliance with 19751680.2 the location of the Closet Pan and the sanitary facility circulation requirements as set out in AS 1428.1.
- Clause 10 – Surfaces of Balconies and External Paved Areas - Insufficient information provided with the application to determine compliance. Dimensioned plans should be provided.

- Clause 11 – Door Hardware - Insufficient information provided with the application.
- Clause 12 – Switches and Powerpoints - Insufficient information provided with the application.
- Clause 16 – Living Room - Insufficient information provided with the application.
- Clause 18 – Kitchen - Insufficient information provided with the application
- Clause 19 – Laundry - Insufficient information provided with the application.
- Clause 20 – Linen Storage - Insufficient information provided with the application.
- Clause 22 – Garbage and Recycling - the design does not achieve internal circulation in accordance with AS 1428.1.

The consent authority does not have the power to approve the development application in circumstances where the Applicant has not submitted a written request pursuant to clause 35B(2) of the EP&A Regulations addressing the matters in Clause 4.6 of TLEP 2014, seeking to justify the contravention of the development standards in Schedule 4 of SEPP Housing.

ii. BCA and AS:1428.1-2021

The Access Report identifies that no departures from the BCA can be addressed via Performance Solutions and states that the design is to be modified to comply with the Deemed-to-Satisfy provisions of the BCA. However, the documents provided with the application do not show these modifications and as such it is not possible to be satisfied that the proposed development can be constructed in the manner shown in the application.

For example, the Access Report does not suitably consider access to the proposed development under the provisions of Clause D4D3 of the BCA, simply stating “CRA” (meaning: “Compliance Readily Achieved”). In this regard, the design of the above will require the provision of ramps and/or lifts that are not detailed on the architectural plans submitted with the Development Application, and it is not readily apparent from the information provided how compliance can be achieved without changes to the overall design of the proposed development.

It is further noted that clause D4D2 of the BCA requires that access be provided throughout each of the proposed buildings. The Access Report states that compliance is readily achievable (CRA). In this regard, the following areas are not considered accessible:

- Building D Refuse Room – the design includes reduced circulation and door controls not complying with Clause 10.4 of AS 1428.1-2021 (assumed).
- Building D Garbage and Recycling Room – the design provides reduced circulation for a wheelchair user to perform a 180 degree turn, and reduced doorway circulation (latch side and hinge side clearances)

- Building E Refuse Room – the design includes reduced circulation and door controls not complying with Clause 10.4 of AS 1428.1-2021 (assumed).
- Building E Services Room – the design provides reduced circulation for a wheelchair user to perform a 180 degree turn, and reduced doorway circulation (latch side clearances)
- Building E Garbage and Recycling Room – the design provides reduced circulation for a wheelchair user to perform a 180 degree turn, and reduced doorway circulation (latch side and hinge side clearances).
- Building F Refuse Room – the design includes reduced circulation and door controls not complying with Clause 10.4 of AS 1428.1-2021 (assumed).
- Building F Garbage and Recycling Room – the design provides reduced circulation for a wheelchair user to perform a 180 degree turn, and reduced doorway circulation (latch side and hinge side clearances)
- Building G Refuse Room – the design includes reduced circulation and door controls not complying with Clause 10.4 of AS 1428.1-2021 (assumed).
- Building E Garbage and Recycling Room – the design provides reduced circulation for a wheelchair user to perform a 90 degree turn, 180 degree turn, and reduced doorway circulation (latch side and hinge side clearances)
- Pool Pavilion Sauna - the design provides reduced circulation for a wheelchair user to perform a 180 degree turn.
- Pool Pavilion Steam Room – the design provides reduced circulation for a wheelchair user to perform a 180 degree turn.
- Pool Pavilion Kitchenette – the design provides reduced circulation for a wheelchair user to perform a 90 degree turn and a 180 degree turn.
- Bowls Pavilion Cleaners Room - the design provides reduced circulation for a wheelchair user to perform a 180 degree turn, and reduced doorway circulation (latch side clearances).
- Bowls Pavilion SC - the design provides reduced doorway circulation (latch side clearance).
- Bowls Pavilion Multi Purpose Room - the design provides reduced doorway circulation (latch side clearance).

The Access Report fails to demonstrate that the proposed design complies with the accessibility provisions as contained in SEPP Housing, the BCA and AS 1428.1. Additionally, the Access Report requires that further information is required to demonstrate compliance however it is not clear what the extent of any design changes will be required in order to achieve compliance, and therefore not possible to be satisfied that the proposed development meets the necessary access requirements. The proposed plans should be amended to incorporate all requirements specified in the report.

14. Building height, clause 4.6 request and applicability of Part 5 of the SEPP (Housing)

The maximum permitted building height on the site under clause 4.3 of the TLEP 2014 is 8.0m.

It is noted that a request to vary these heights under clause 4.6 has been submitted by the Applicant, for the following heights:

Building D: 12.205m
Building E: 11.912m
Building F: 11.58m
Building G: 11.92m

It should be noted that Council is unable to verify the above heights on the plans due to the lack of provided ground levels. Further comment is made on this below under the heading Missing Information.

The Applicant states that the proposal receives a “bonus” 3.8m height through operation of clause 87 of the SEPP (Housing) and as a result the maximum permitted height on the site is 11.8m. On this basis, the Applicant submits that the requested variations range from between 0.95% to 3.43% of the permitted building height.

Council does not agree with this position. It is noted that clause 80 of the SEPP (Housing) exclude the provisions of Part 5 “Housing for Seniors and People with a Disability” under the SEPP (Housing) for sites on *environmentally sensitive land* (including Coastal Wetlands, Littoral Rainforest and land mapped under the *Biodiversity Conservation Regulation 2017*).

As discussed elsewhere in this submission, insufficient information has been provided with the application to allow a proper assessment of the impact of the development on land mapped as Biodiversity Values, Coastal Wetlands and Littoral Rainforest.

As such, it is not possible to determine whether the provisions of Part 5 “Housing for Seniors and People with a Disability” (including the height “bonus” given under s87) apply to this application.

If the height bonus does not apply, then the extent of the variations sought for each building will be as follows:

Building D: 52.5%
Building E: 48.9%
Building F: 44.7%
Building G: 49.0%

The submitted written request states that the objectives of the development standard under cl.4.3 of the TLEP 2014 are achieved notwithstanding the non-compliance. Council is not satisfied that written request has sufficiently demonstrated that the objectives are achieved. In this regard it is noted that the 8m maximum building height was applied to limit inappropriate development on this peri-urban site and ensure that any development has regard for the site’s location with respect to the natural and built environment.

Given the significant margins of non-compliance with clause 4.3 of the TLEP 2014, it is considered that insufficient environmental planning ground have been provided to justify a variation. While it is acknowledged that the existing development consent

(DA06/0413) does permit the construction of buildings to a similar height, this approval was granted under the previous *Tweed Local Environmental Plan 2000* rather than the TLEP 2014. As such, any comparison between the two proposals is not relevant.

In addition, it is noted that clauses 107 and 108 of the SEPP (Housing) impose a height limit of 9.5m (excluding servicing equipment) and 11.5m including servicing equipment if well integrated within the building. These limits are non-discretionary development standards.

It is noted that the height of the proposed buildings does not appear to include servicing equipment. This means that the proposed buildings exceed the height limit of 9.5m by a significant margin even without the additional height of servicing equipment.

The Applicant's section 4.6 variation request does not seek a variation of these development standards and no justification for any variation has been provided. Accordingly, application fails to demonstrate that consent should be granted for any building exceeding the height specified in these clauses.

The proposal does not comply with this non-discretionary development standard, and the Applicant's clause 4.6 variation request does not address this. Accordingly, it is considered that the application fails to demonstrate that a variation of a non-discretionary development standard should be granted.

15. Biting insects

Council considers that biting midge and mosquito activity in the TriCare area is severe, creating potential for future residents to be significantly impacted. Council does not currently employ any biting midge control methods in this Shire. Ground control mosquito treatment only is carried out further south of the site.

The application is supported by a Biting Insect Impact Assessment which indicates that biting midge is not as high as anticipated (traps set in March and April 2024). The report indicates no bio-retention systems are proposed and that the proposed APZ will offer residents a suitable buffer.

It is noted that recommendations around treatment within the home (ie window screens and the like) have not been outlined as a control measure for this application. It is considered that this may severely impact future residents' comfort.

16. Socio-economic impact

The Application is accompanied by a Social Impact Assessment by Hill PDA Consulting, dated 9 May 2025 ("**SIA**"). The SIA breaks down the potential social and economic impact of the proposal into various categories. Council make comments in relation to the following categories:

a. Access

It is noted that s.93 of the SEPP (Housing) requires that consideration be given to whether residents of future ILUs will have adequate access to facilities and services. In this context “facilities and services” includes a general medical practitioner.

It is noted that

- **Section 4.6.2 of the SIA** states “*The proposed aged care development would add to demand for health services including outpatient visits and clinics. The analysis in section 2.6 identified that there is a lack of healthcare facilities in the immediate surrounding areas.*”

and

“Concerns raised by the community during consultation (see section 3.2.1) also included a lack of support services in the existing TriCare Hastings Point facility or within the local community,”

- **Page 127 of the EIS** advises that “*While a medical centre onsite has not been nominated either, nursing staff will always be onsite for the RAC. This is in accordance with legislative requirements. Further to this, medical facilities are located within Pottsville, approximately 2km south of the site, which can be accessed via public and private transport, including the Tricare bus service.*”
- **Page 38 of the SIA under ‘Evaluation of impacts’ 4.11.2**, evaluates the social impact ‘*Potential for reduced access to healthcare through lack of nearby services*’ with a Low impact rating.

It is considered that:

- The SIA does not demonstrate how the ‘Low’ evaluation rating was determined.
- The SIA does not provide data on the current and future capacity of health services to manage the resident needs from this development.
- The SIA indicates nursing staff will only be available to meet medical needs of RAC residents and that an Operational Management Plan (“**OPM**”) should provide detailed information around healthcare services including visiting health care professionals

To understand that the service and support needs for the seniors housing residents have been appropriately considered, and to confirm that there is capacity to support the additional demand generated by the proposed development, the SIA should include the following:

- (a) Information on which health and support services have been engaged as part of the social impact assessment.
- (b) Information and data to confirm that there is capacity for on-site and local off-site services to manage the support needs of the Tricare resident population. And, if not, what measures will be taken to ensure support needs are adequately met.
- (c) Details of what ‘on-site services and support’ are referred to on page 25 and 42 of the SIA.

The proposed OPM containing detailed information around healthcare services including visiting health care professionals should also be provided to demonstrate that suitable mitigation measures can be put in place in relation to shortages of medical services in the vicinity of the site.

b. Health and wellbeing

The SIA (p.18) highlights community feedback identifying a preference for a Dementia ward onsite. Data also demonstrates a clear need for dementia care in the Tweed:

- Dementia Australia estimates a 78% increase in prevalence of Dementia in the Tweed by 2054;
- 55.3% of people using permanent residential care in North Coast on 30 June 2022 had a diagnosis of dementia.

Page 127 of the EIS states that *“a dementia ward has not been nominated, though this is also not precluded by the development or requiring a modified approval.”*

While a modified approval may be possible in the future, it is noted that doing so would likely require alterations to the proposed development to ensure alignment with section 7.3 Design for Dementia of the Seniors Housing Design Guide. For this reason, recommended that the proposal contemplate these matters at this stage in order to address this social impact.

17. Proposed staging

As noted above, Council considers the inclusion of an RAC component in the development to be an improvement from the proposal made under DA25/0123 as this will assist residents age in place. However, it is noted that the RAC component of the development is due to take place in the fourth stage.

Additionally, it is noted that the recreation facilities proposed by the applicant (including the swimming pool and bowling green) are proposed to take place in the third stage, following completion of buildings E, F and G.

The proposed staging places creation of the recreation facilities and RAC accommodation at the end of the development timeline for the site. It is noted that the Applicant is not required proceed with construction of all stages.

This is considered to give rise to the following risks:

- If Stage 3 is not completed, the site will receive a significant increase in residents who will have no access to on-site recreation facilities. It should be noted that the Applicant has relied on the proposed recreation facilities in support of the application, using it as evidence of compliance with various planning controls under the ADG and Schedule 9 of the SEPP (Housing).
- If Stage 4 is not completed, the ability of residents to age in place by moving into RAC accommodation will be lost.

Council recommends that the proposed staging be revised in order to assure that these important facilities are provided on the site.

18. Missing information

The plans are missing information necessary for further consideration of the proposal. The information missing includes the following:

- (a) The NIA proposed installation of a 2.4m acoustic barrier in the north-western corner of the site (see below).



Figure 6: Acoustic barrier plan from NIA

This is not shown in the architectural plans and it is unclear whether it is intended that this structure be included in the proposed development.

- (b) Insufficient information is provided to confirm whether the requirements of *State Environmental Planning Policy (Sustainable Buildings) 2022* are achieved. The submitted BASIX Certificate requires details such as air-conditioning units and hot water units to be shown on the “DA plans”. These items are not specified on the plans.
- (c) The architectural plans and landscape plans fail to illustrate the removal of the trees as noted in the Arboricultural Report prepared by TPZ Project Arborists.
- (d) Insufficient information about the proposed lifts, sprinkler systems and internal ducting has been provided to demonstrate that the proposed buildings can achieve:
 - i. The stated roof to ceiling heights of 2.7m; and
 - ii. The overall building heights specified in the EIS.

Updated plans showing proposed servicing and lifts should be provided to demonstrate that the proposed heights can be achieved.

- (e) Insufficient information has been provided to confirm whether the solar access requirements are achieved for individual independent living units in accordance with the ADG. While a sun study has been provided within the submitted architectural package, no information is provided to confirm the accuracy of this study. All ILUs should achieve the minimum solar access requirements specified under the ADG of 3 hours sunlight per day to living rooms, as at 21 June.
- (f) Insufficient information has been provided to confirm compliance with the landscape and deep soil requirements of the SEPP Housing (including the relevant non-discretionary development standards). The landscaping area calculation plan on DA-2-16 of the submitted Architectural Plans is inconsistent with the submitted landscape plan. A revised calculation plan that is calculated as per the definition of landscape area under SEPP Housing is to be provided to ensure compliance is achieved.
- (g) Insufficient information has been provided to confirm compliance with the communal open space requirements of Part 3D of the ADG and the SEPP Housing (including the relevant non-discretionary development standards). The submitted architectural plans include a calculation on Drawing No. DA-2-21. This calculation includes inaccessible areas such as the creek line. A calculation plan is to be provided, which clearly outlines that the site, as a whole, complies with the communal open space requirement. In addition, the landscape plan should demonstrate how the counted areas are functional to the residents of the site.
- (h) Insufficient information has been provided to determine if the storage requirements of Part 4G of the ADG are complied with. The submitted architectural plans fail to nominate unit storage areas.
- (i) Insufficient information has been provided to determine cut and fill impacts across the site. Specifically, no existing ground levels (to AHD) are noted on the elevations/sections of any building to clarify cut and fill impacts.
- (j) Clarification is required as to whether the site will accommodate private caravans or the like.
- (k) Insufficient information is provided on how the emergency access track will be used to prevent access by residents.
- (l) Insufficient information has been provided to demonstrate that the proposed buildings can comply with the relevant provisions of the BCA, Australian Standards and SEPP (Housing). Updated plans showing how compliance will be achieved are required.
- (m) Insufficient information has been provided to determine whether the site will comply with clause 4.4 of the TLEP 2014 in relation to the Floor Space Ratio (“FSR”).

In this regard, it is noted that, the proposal plans rely on plans submitted with DA06/0413.13 to determine the Gross Floor Area (“**GFA**”) of the existing development, however the figures shown on this plan do not match up with the figures provided on the DA-2-11 of the submitted architectural plans (A total GFA of 15,063.62m² is shown on the previously plans for buildings A – C, not 15,790m²).

Further, it is noted that

- i. Not all of the room types / uses have been identified on the plan, meaning it is not possible to determine what parts of each unit should be counted towards the GFA; and
- ii. Entry corridors and breezeways are heavily enclosed at points and should be counted towards GFA.

(n) The design of the proposed development should consider and address the following points:

Building D:

- i. each unit is not allocated any Private Open Space (“**POS**”) or balcony space. The application should demonstrate that the allocation of Communal Open Space (“**COS**”) is sufficient to address needs of the RAC residents, having regard to privacy and reduced mobility of these residents;
- ii. The window schedule and front elevation shows a fixed window to all the RAC units. Council’s preference is operational windows to assist in providing breezes and to help reduce unhealthy internal environments.

Building E

- iii. Concerns arise relation to solar access to bedrooms (specially all units located on plan DA-E-02/ DA-E-02 and DA-E-03) In some instances the distance through the screens past the floor plate which in part may exceed 6 m.
- iv. Some units feature an internal area / room beside the kitchen which does not have an allocated use. This area / room has no access to direct sunlight or natural ventilation.
- v. End units should consider providing windows to the kitchen;
- vi. Plans contain the following notation: “*Corridor windows are at a minimum sill height of 1550mm*” This is not considered to comply with SLSEPP Design guidelines, as access to direct sunlight is necessary to reduce falls.
- vii. The south elevation presents as a poor design outcome, especially given that many of the high-light windows with a sill height of 1550 mm sit recessed within the corridors that have a depth exceeding 4-6 m. The lack of direct sunlight and design appearance is a poor urban design outcome for the south elevation, particularly given this is the primary frontage

addressing the internal road and pedestrian access to the building.

- viii. Operational and movable screens should be applied to all northern facing balconies.

Building F

- ix. Plan DA-F-02 shows the bedroom of the unit behind the primary entrance receives ventilation from the entrance doors and foyer however this will not be possible while the entrance doors are closed. Additionally, the size of the foyer is such the solar access will not be available to this window.

Building G

- x. Plan DA-G-02/03/04, shows the bedroom of the unit behind the primary entrance receives ventilation from the entrance doors and foyer however this will not be possible while the entrance doors are closed. Additionally, the size of the foyer is such the solar access will not be available to this window.

General comments

- xi. The proposed multi-purpose rooms feature poor solar access and do not appear to provide any opportunity for cross-flow ventilation
- xii. The RAC typical unit layout and plans do not depict minimum size requirements to demonstrate compliance with accessibility and aged care , and a condition of consent should ensure compliance with regs.
- xiii. Each unit to be allocated an individual unit number and a floor space schedule;
- xiv. Full window schedules should be prepared for every elevation including open lobby areas / screens etc. to allow further assessment of ventilation and solar access
- xv. Cross ventilation plans should be provided for every proposed unit and the RAC building
- xvi. Details on functionality of the building entrances (eg. Intercoms, fob keys etc.) should be provided
- xvii. Ensure to provided photomontage, elevations and floor plans match in relation to the window schedule as some inconsistencies are noted.

For further information regarding this matter please contact Aaron Zycki on (02) 6670 2172.

Yours faithfully

Aaron Zycki
Town Planner
Development Assessment and Compliance