

NOTICE OF RESCISSION

ITEM NO. 2

FILE NO: 17/80855

RM8 REF NO: 16-2016-631-1

DEVELOPMENT APPLICATION 16-2016-631-1 FOR A RESIDENTIAL FLAT BUILDING (INCORPORATING 8 STOREY APARTMENT COMPLEX WITH UNDERGROUND CAR PARKING) AT 11-13 CHURCH STREET, NELSON BAY (LOTS 17 & 18 SECTION 7 DP8611)

**COUNCILLOR: JOHN NELL
GEOFF DINGLE
PETER KA FER**

THAT COUNCIL:

That Council rescind its decision of 11 April 2017 on Item No. 1 Development Application 16-2016-631-1 for a residential flat building (incorporating 8 storey apartment complex with underground car parking) at 11-13 Church Street, Nelson Bay (Lots 17 & 18 Section 7 DP8611).

Councillor Paul Le Mottee returned to the meeting at 06:25pm, in Open Council.
Councillor Ken Jordan returned to the meeting at 06:25pm, in Open Council.
Councillor Peter Kafer left the meeting at 06:28pm, in Open Council.
Councillor Peter Kafer returned to the meeting at 06:29pm, in Open Council.

**ORDINARY COUNCIL MEETING - 9 MAY 2017
MOTION**

097	Councillor John Nell Councillor Geoff Dingle It was resolved that Council rescind its decision of 11 April 2017 on Item No. 1 Development Application 16-2016-631-1 for a residential flat building (incorporating 8 storey apartment complex with underground car parking) at 11-13 Church Street, Nelson Bay (Lots 17 & 18 Section 7 DP8611).
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Peter Kafer and John Nell.

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, John Morello and Steve Tucker.

ATTACHMENTS

- 1) DA 16-2016-631-1 Church Street, Nelson Bay.

MINUTES ORDINARY COUNCIL - 11 APRIL 2017

ITEM NO. 1

**FILE NO: 17/60837
RM8 REF NO: 15-2016-631-1**

DEVELOPMENT APPLICATION NO. 16-2016-631-1 FOR A RESIDENTIAL FLAT BUILDING (INCORPORATING 8 STOREY APARTMENT COMPLEX WITH UNDERGROUND CAR PARKING) AT 11-13 CHURCH STREET, NELSON BAY (LOTS 17 & 18 SECTION 7 DP8611)

**REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER
GROUP: DEVELOPMENT SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application No. 16-2016-631-1 for a Residential Flat Building (Incorporating 8 Storey Apartment Complex with Underground Car Parking) at 11-13 Church Street, Nelson Bay (Lots 17 & 18 Section 7 DP8611), subject to the conditions contained in (**ATTACHMENT 3**).

**ORDINARY COUNCIL MEETING - 11 APRIL 2017
MOTION**

083	Councillor Geoff Dingle Councillor Ken Jordan It was resolved that Council move into Committee of the Whole.
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COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Geoff Dingle That item 1, development application no. 16-2016-631-1 for a residential flat building (incorporating 8 storey apartment complex with underground car parking) at 11-13 Church street, Nelson Bay, be deferred until the next presentation to Council of the Nelson Bay Strategy.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Peter Kafer and John Nell.

MINUTES ORDINARY COUNCIL - 11 APRIL 2017

Those against the Motion: Crs Chris Doohan, Ken Jordan, Paul Le Mottee and Steve Tucker.

The motion was lost.

**ORDINARY COUNCIL MEETING - 11 APRIL 2017
MOTION**

	<p>Councillor Ken Jordan Councillor Steve Tucker</p> <p>That Council:</p> <ol style="list-style-type: none"> 1) Acknowledge the proposed amendments to the Notice of Determination. 2) Replace the Notice of Determination attached to the Council Report as (ATTACHMENT 3), with the amended Notice of Determination attached to this Supplementary Report as (ATTACHMENT 1). 3) Approve development application No. 16-2016-631-1 for a Residential Flat Building (incorporating 8 storey apartment complex with underground car parking) at 11-13 Church Street, Nelson Bay (Lot 17 & 18 Section 7 DP8611).
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Chris Doohan, Ken Jordan, Paul Le Mottee and Steve Tucker.

Those against the Motion: Crs Geoff Dingle, Peter Kafer and John Nell.

**ORDINARY COUNCIL MEETING - 11 APRIL 2017
MOTION**

084	<p>Councillor Ken Jordan Councillor Steve Tucker</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1) Acknowledge the proposed amendments to the Notice of Determination. 2) Replace the Notice of Determination attached to the Council Report as (ATTACHMENT 3), with the amended Notice of Determination attached to this Supplementary Report as (ATTACHMENT 1). 3) Approve development application No. 16-2016-631-1 for a
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MINUTES ORDINARY COUNCIL - 11 APRIL 2017

	Residential Flat Building (incorporating 8 storey apartment complex with underground car parking) at 11-13 Church Street, Nelson Bay (Lot 17 & 18 Section 7 DP8611).
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Chris Doohan, Ken Jordan, Paul Le Mottee and Steve Tucker.

Those against the Motion: Crs Geoff Dingle, Peter Kafer and John Nell.

BACKGROUND

The purpose of this report is to present to Council for determination development application (DA) 16-2016-631-1 for the construction of an eight (8) storey Residential Flat Building and associated basement car parking.

The DA is being reported to Council given the large variation proposed to the building height requirement. Under the DAs Reported to Council Policy, Manager of Development Assessment and Compliance can elect to report DAs to Council.

Whilst the proposal seeks to legitimately vary a development standard relating to height controls, Council staff are confident the flexibility in height has provided an opportunity for a better planning outcome due to the increased setbacks, amenity and overall urban design. It is argued that a strictly compliant design cannot achieve the same design excellence.

Proposal

The application proposes an eight (8) storey Residential Flat Building at 11-13 Church Street, Nelson Bay (**ATTACHMENT 1**). The building comprises 56 apartments including:

- 8 x one-bedroom apartments;
- 34 x two-bedroom apartments; and
- 14 x three-bedroom apartments.

An outdoor pool and landscaped recreational area have been provided in the eastern section of the site. The lower ground level includes a gymnasium and men's shed. Landscaping has been provided along all of the boundaries to screen the lower levels from adjacent sites. A rooftop terrace is proposed, to provide additional recreational space. Vehicular and pedestrian access is provided from the north-western corner of the site via a vehicle crossing from Church Street. Car parking is provided below ground within three (3) basement levels. The basement contains 100 car parking spaces, 18 motorbike spaces and nine bicycle racks.

MINUTES ORDINARY COUNCIL - 11 APRIL 2017

The slope of the site dictates the building form and results in building heights that vary between 29m (west) and 32m (east). The overall development footprint comprises 6,238m², which translates into a floor space ratio of 2.47:1.

Assessment Outcomes

The subject land is zoned R3 Medium Density Residential under the *Port Stephens Local Environmental Plan 2013* (LEP2013). The proposal is permissible with consent in the R3 zone.

The proposed amendments were assessed against relevant controls and objectives as specified under, *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)*, *State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *LEP2013* and *Port Stephens Development Control Plan 2014 (DCP2014)*.

Key Issues

The application has been considered against the requirements of the *Port Stephens Local Environmental Plan 2013*, *Port Stephens Development Control Plan 2014* (The DCP), and other relevant legislation. The key matters considered in the development have been summarised below:

1) Building Height

The building height requirement for the site is 15m and any variation above this level will require a variation to the development standard under Clause 4.6 of the LEP. A discussion relating to compliance with clause 4.6 is provided below.

It is noted that Council adopted the Nelson Bay Strategy in 2012 that included a building height 'bonus' of 2 storeys. However, the Strategy does not hold any statutory weight under Section 79C of the *Environmental Planning & Assessment (EP&A) Act 1979*.

A discussion paper was recently released to start a conversation in the community on how to guide future development in the area. The paper recommends a building height limit of 24.5m for the proposed development, which correlates with the existing Nelson Bay Strategy.

It is however noted that the feasibility study used in the recommendation stated that development on the site would only be feasible at 28m in height (excluding car parking levels).

In summary, although the Nelson Bay Strategy and a recent discussion paper recommended building heights well in excess of the exiting LEP provisions, the building height requirement for the site is currently set at 15m currently.

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To justify the proposed variation in height from the LEP provision, a Clause 4.6 variation report was lodged as part of the application. The variation is discussed below.

In summary, an assessment of Clause 4.6 by Council staff found that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances, as required under the Five Part Test (*Webbe v Pittwater Council*);
- There are sufficient environmental planning grounds to justify the contravention;
- The proposed development represents an increase in the residential housing in Nelson Bay;
- The development achieves and is consistent with the objectives of the development standard and the objectives of the R3 zone, notwithstanding the variation;
- The proposed development is an appropriate response to the context of the site, and the variation to the standard is compatible with the existing and future character of the area;
- The proposed development will not have significant environmental impact and is in the public interest and better achieves the development standard's objectives;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and
- The contravention does not raise any matter of State or Regional Significance.

In accordance with Clause 4.6 (a)(i) the applicant has adequately addressed the matters required to be demonstrated, as discussed above. Further, the application is deemed to be in the public interest by providing a range of housing within close proximity to the Nelson Bay Town Centre and Marina precinct on a site, which is currently vacant.

The proposed variation to Clause 4.3 is considered acceptable in this instance. Accordingly, the application is exempted from the requirement to comply with the nominated height limit derived under Clause 4.3. The proposal is considered to be appropriate in the context of the site.

2) Setbacks

The application was referred to the Newcastle City Council's Urban Design Consultative Group (UDCG). The UDCG initially raised concerns regarding the limited setback provided to the adjoining sites in the north and south during the initial meeting.

The applicant provided clarification on the layout of the adjoining development to the north, concluding that the living areas associated on the adjacent development facing north and presented mainly non-habitable areas and well screened habitable rooms to the south. It was further noted that the development only contained five storeys

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and that all development above this level would not be impacted. The UDCG accepted these arguments, however stated that future development on the adjoining site may be impacted by the limited setbacks.

The setbacks along the southern boundary were increased to 4.5m to the nearest balcony, 6.5m from the closest habitable room and 9.03m from the main building wall. The UDCG stated that this is not acceptable, raising concern relating to both privacy and the visual bulk of the buildings without an adequate break between. The applicant subsequently included louvered screens on the affected balconies to limit privacy impacts.

It is noted that the areas setback less than 9m from the southern boundary only measures 9.7m in width along the 57m long boundary (17%). It is considered that, although privacy impacts my result, the additional articulation provided by these features limits the bulk of the development, when viewed from the south. The future development on the site to the south would therefore only be partially impacted by the limited setback.

The main purpose of locating the development at the frontage of the site is to limit the impact on the important view corridors from the south. Increases in the side setbacks could result in a larger building footprint, thereby compromising the main objective of the current design.

It is considered that the articulation provided by the use of materials and finishes will significantly improve the appearance of the streetscape. The design of the development promotes the activation of Church Street, which currently lacks any type of activation along the eastern frontage. It is anticipated that the design of the development will provide a benchmark in regards to design for future development along Church Street.

Although the UDCG concerns are noted, it is considered that the variation to the setback requirement of the Apartment Design guidelines (ADG) is offset by the limited impact on important view corridors, increased visual interest and the activation of the Church Street frontage.

At the meeting the UDCG spoke generally favourable of the design itself, however stated that it's not their role to support variations to development standards.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

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FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	Yes		Section 94 applies to the development.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Section 79C of the *Environmental Planning and Assessment Act 1979*.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused the ability to provide new residential accommodation will not be realised.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed development is anticipated to generate viable employment and economic activity through both the construction of the development and occupation by additional residents. The development is generally consistent with surrounding developments and is in keeping with the residential context of the locality, with the increase in height being reasonably justified. The development also includes appropriate stormwater management systems and acceptable access arrangements

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to Church Street. The development is not anticipated to have significant adverse impacts on the locality, surrounding properties or public places.

A detailed assessment of the proposed development has been carried out against the requirements of the *EP&A Act 1979* and has been included as **(ATTACHMENT 2)** to this report.

CONSULTATION

Consultation with key stakeholders has been undertaken, including through the public notification and advertising process.

Internal

The application was referred to the following Council sections:

- Strategic Planning,
- Development Engineering,
- Building Surveying,
- Developer Contributions,
- Vegetation Management,
- Business Development,
- Accessibility, and
- Waste Management.

Each internal staff member assessed the relevant portion of the original application and where necessary requested additional information.

Following receipt of amended plans and additional information, the application was referred back to the internal staff members for review. No objections were raised by any internal staff to the amended design and relevant conditions have been incorporated into the Schedule of Conditions provided at **(ATTACHMENT 3)**.

External

Department of Planning and Environment - As the proposal includes a variation to the LEP building height provisions, the proposed development was referred to the Department of Planning and Environment for comment. The Department did not have any specific comments on the proposed variation.

It was requested that Council considers the Department's Guidelines when varying development standards, including consideration of the cumulative effect of similar approvals on the objectives of the development standard/ zone and ensuring that the appropriate reporting is completed. The guidelines have been considered in the assessment of the application.

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Urban Design Consultative Group - As stated previously, the application was referred to the UDCG for comment. It is noted that the comments are non-statutory and therefore hold no weight under the Act. However, the comments were used to ensure the architectural merit and potential design issues were adequately assessed.

The proposal was initially presented to the UDCG in mid-November 2016 and several issues were identified and suggestions made, which included:

- Removal of the four (4) townhouses at the rear of the site;
- Increase in the side setbacks to conform more closely to the ADG requirements;
- The proposed balustrades are mostly glazed, which is contrary to the recommendations of the ADG. It was considered that the use of glazing would provide poor levels of amenity and would also contribute to heat gain for west facing apartments;
- The applicant must investigate the use of alternative materials and incorporate these into the design;
- The dark colour of the window and door mullions would increase the thermal absorbcency of the building;
- The lack of solar access to the lift lobby was identified as an issue; and
- Enclosure of an area on the rooftop terrace to enable use of the area during inclement and winter periods. It was also requested that basic amenities be provided within this area.

The UDCG stated that the intent of the site planning strategy (a slender tower) was supported, but it was noted that this had not been successfully carried through in the site planning proposed. Support for any development exceeding the maximum 24.5m height achievable under the Nelson Bay Town Centre and Foreshore Strategy is difficult because demonstrable public benefit and design excellence is very hard to justify.

The original proposal was not supported due to the number of significant departures from the ADG separation standards and the perceived amenity and equity issues.

The applicant amended the design to take into consideration the majority of the issues raised by the UDCG, as follows:

- Deletion of the four (4) townhouses at the rear of the site;
- Inclusion of four (4) units into the main building (one (1) additional unit on the lower levels);
- Increase in setbacks along the southern boundary; and
- Clarification of the adjoining development to the north.

The amended design was presented to the UDCG in mid-February. The main outstanding issues identified in the second meeting included the northern and southern setbacks, and bulk and height of the development. These specific

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comments provided by the UDCG were discussed in the SEPP65 assessment in the Assessment Report provided at (ATTACHMENT 2).

Public Consultation - The application was notified / advertised for 14 days, ending on 12 October 2016. During this period the following public submissions were received:

- a total of approximately 75 submissions of support;
- a petition of support containing 145 signatures;
- two (2) submissions requesting further information on the potential construction impacts and use of the communal facilities; and
- two (2) submissions objecting to the proposal.

One submission requested Council defer or refuse the application until such time as the Nelson Bay Strategy has been updated. The submission did state that the writer *'welcomes the positive approach the applicant has taken to bring forward a proposal designed to attract permanent residents, with a focus on good design, and the applicant's proactive engagement with interested parties'*.

It is considered that, as the applicant provided sufficient grounds to grant a variation under Clause 4.6 of the LEP to vary the height limit, the application can be determined prior to the adoption of any new strategies for Nelson Bay.

It is considered that future applications in the area will need to comply with the new provisions and the current application will therefore not set a specific precedent. Each application is assessed on its individual merits.

The other issues identified in the submissions are addressed below:

Non-compliance with Nelson Bay Strategy - As stated in the assessment and the submission, the Strategy is not a statutory document and was only utilised in the assessment to provide context on the existing development and future intent for the area. The issues surrounding 'design excellence' and 'public benefit' was not taken into consideration, as the stated 7 storey height limit in the Strategy was not used as a means to provide permissibility for the height limit. Notwithstanding, the Discussion Paper utilised Clause 4.6 to vary the height limit in order to achieve better design outcomes for individual developments.

SEPP 71 - The submission identified issues with the applicant's discussion of subclause (d), (e) and (f) of Clause 8. These subclauses were addressed in the assessment and the development is considered in keeping with the objectives and provisions of the Policy.

Density - The submission states a number of Council areas that have adopted the FSR requirement that limits development to below the proposed 2.47:1 ratio. Although this is considered high when taking into account the measures stated above, the floor space ratio only addresses part of density considerations. A development that is compliant with the height control can still provide a similar floor

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space ratio as the proposed development, but cover the majority of the site. This type of development would impact significantly on views from the adjacent site and potentially impact on the view corridors identified in the NB Strategy.

The proposed development is contained within a smaller footprint that ensures views are largely maintained and limits excessive overshadowing of adjoining sites. It is therefore considered that the proposed floor space ratio is acceptable in this instance.

Clause 5.5 – Coastal Zone - One submission maker provided comment subsequent to the initial submission that identified the fact that the applicant did not address Clause 5.5 of the LEP. The applicant provided an addendum to the report that addressed these provisions. These comments were utilised in the assessment of the potential coastal impacts.

Property Values - The submissions stated that property values in the surrounding area would be negatively affected by the proposal. No evidence of the assumption was provided in the submission. The feasibility study undertaken as part of the NB Strategy Discussion Paper stated that *'unit prices in the residential unit market in Nelson Bay has been static and has actually declined over the past ten years*. The Discussion Paper went on to state that quality housing stock is required in the area to ensure investor confidence returns. It is therefore considered that the proposed development could potentially stimulate investment and result in increased unit prices in the area.

Construction Impacts - The submissions identified the following construction issues:

- Construction hours – 8am start;
- Noise and vibration issues associated with pile pile-driving of foundations; and
- Truck parking during construction.

The general construction hours are limited to:

- Monday to Friday 7am to 6pm
- Saturdays 7am to 1pm
- Sunday and Public Holidays No work

Whilst it is acknowledged that impacts to local amenity will arise during the construction phase, these impacts will be managed as per regulatory standards. Further, any pile driving will be limited to 8am to 5pm on weekdays only.

A Construction Traffic Management Plan will be required to control all construction traffic and ensure a safe environment for road users and pedestrians.

Operational Impacts - The submissions identified the following construction issues:

- Maintenance should be undertaken throughout the life of the development to ensure the standard of the external appearance not be compromised

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- Pool usage be limited to 9.00 pm in the evenings
- Garbage bins are not allowed on the street

The ongoing maintenance and pool hours are not issues usually dealt with by the development assessment and would be a consideration for the future owners of the units. All garbage will be compacted and stored in the basement and will be removed by private contractor.

Overshadowing - The applicant provided shadow diagrams that indicated limited impacts from the proposal on the adjoining sites. It was also shown that a compliant development footprint could potentially result in greater impacts on the adjoining land.

The shadow diagram below indicates that the vacant site in the south will be impacted by the proposal during the majority of the day during winter months. This can be expected from all types of high rise development. It is however noted that the existing development in the area will only be impacted during short periods of time in the either the morning (west) or the evening (east). The impacts associated with overshadowing are considered acceptable in this instance.

Proposed building height - As stated above, it is considered that the assessment took into consideration the concerns raised above, in regards to the variation proposed to the LEP height limit, as part of the application.

Out of character with future intent for the area - As stated earlier in the assessment, the proposal is consistent with the objectives of the R3 zoning of the area and the existing development on the adjacent sites.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Locality Plan.
- 2) Development Assessment Report (including Urban Design Consultative Group Meeting minutes).
- 3) Notice of Determination.

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 9 MAY 2017

ITEM 2 - ATTACHMENT 1

DA 16-2016-631-1 CHURCH STREET, NELSON BAY.

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ITEM 1 - ATTACHMENT 1

LOCALITY PLAN.



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ITEM 1 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT
(INCLUDING URBAN DESIGN CONSULTATIVE GROUP MEETING MINUTES).



APPLICATION DETAILS

Application Number	16-2016-631-1
Development Description	Residential Flat Building (Incorporating 8 Storey Apartment Complex with Underground Car Parking)
Applicant	MR R J SALMON
Date of Lodgement	20/09/2016
Value of Works	\$19,358,331.00

Development Proposal

The application proposes an eight (8) storey Residential Flat Building at 11-13 Church Street, Nelson Bay.

The building comprises 56 apartments including:

- 8 x one-bedroom apartments;
- 34 x two-bedroom apartments; and
- 14 x three-bedroom apartments.

The slope of the site dictates the building form and results in building heights that vary between 29m (west) and 32m (east). The overall development footprint comprises 6,238m², which translates into a floor space ratio of 2.47:1. The front elevation of the development is shown in Figure 1.



Figure 1: Western building elevation (Church Street frontage)

MINUTES ORDINARY COUNCIL - 11 APRIL 2017**ITEM 1 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT
(INCLUDING URBAN DESIGN CONSULTATIVE GROUP MEETING MINUTES).**

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An outdoor pool and landscaped recreational area have been provided in the eastern section of the site. The lower ground level includes a gymnasium and men's shed. Landscaping has been provided along all of the boundaries to screen the lower levels from adjacent sites. A rooftop terrace is proposed, to provide additional recreational space.

Vehicular access is provided from the north-western corner of the site via a vehicle crossing from Church Street. Vehicle access is incorporated at a right angle to the Church Street frontage and controlled by a security roller door located approximately 10m inside the lot boundary. Pedestrian access will be made available from Church Street to the entry lobby. Both vehicular and pedestrian access will be controlled by a card security system to ensure safe and secure vehicle and pedestrian access.

Car parking is to be located below ground within three (3) basement levels. The basement contains:

- 81 resident car parking spaces;
- 19 visitors' spaces (including 2 accessible space);
- 18 motorbike spaces;
- 9 bicycle racks (18 bicycles);
- pool filtration system; and
- 56 storage cages.

The basement levels also contain various fire stairways, waste compaction and storage area, and stormwater infiltration pits.

All waste will be removed by a private contractor.

PROPERTY DETAILS

Property Address	11 and 13 Church Street NELSON BAY
Lot and DP	LOTS: 17 AND 18 SEC: 7 DP: 8611
Current Use	Vacant. Footings were constructed as part of work under separate development consent.
Zoning	R3 MEDIUM DENSITY RESIDENTIAL
Site Constraints	Acid Sulfate Soils – Class 5 SEPP71 – Coastal Protection

Site Description

The subject site is located on the western fringe of the Nelson Bay CBD at 11 – 13 Church Street and is legally identified as Lots 17 & 18 Section 7 DP8611. The site is shown in Figure 4. The site slopes from the Church Street frontage in the west towards the eastern boundary and measures 2,523m² in size.

Significant earthworks and the construction of building foundations have previously been undertaken on the site, resulting in a pit several meters deep (See Figures 5 and 8). A disused construction office is located on the Church Street frontage. Figures 2, 3, 6, 7, 9 and 10 show existing surrounding development within the immediate proximity of the site.

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Figure 2: Existing Residential Flat building at 9 Church Street

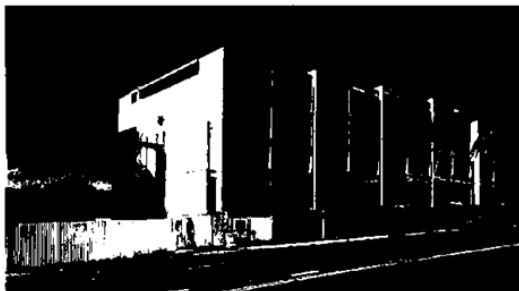
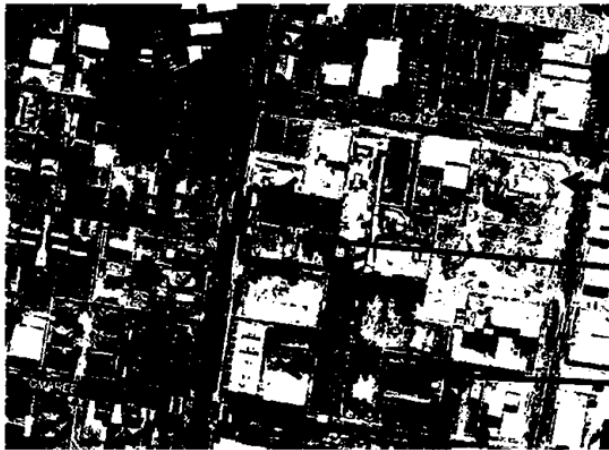


Figure 3: Existing Oaks Lure development located on the corner of Church and Tomaree Streets



Woolworths
Shopping
Centre

Subject Site

Oaks Lure
Apartments

Figure 4: Aerial photo of locality

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**ITEM 1 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT
(INCLUDING URBAN DESIGN CONSULTATIVE GROUP MEETING MINUTES).**

16-2016-631-1

Surrounding Development

The surrounding developments to the west of the site consist of detached dwellings and multiple dwelling developments up to two (2) storeys in height. Development to the north and east contains higher density residential and holiday accommodation, between three (3) and five (5) storeys in height. The site directly to the south currently contains an abandoned construction site, with high pierced walls. It is noted that the owner of the subject land recently purchased this allotment.

The development along the eastern alignment of Church Street is oriented towards the north east to capture water views (Refer Figures 2 & 3). When taking in consideration the two vacant sites in between the developments above, no developments along this frontage interact with Church Street. A development application for a five (5) storey residential building was recently lodged over the vacant site on the corner of Donald Street and Church Street. It is considered that the proposal will create a design precedent which will ensure future development is designed to continue the activation of Church Street.

Site History

The site has been vacant for an extended period of time. Consent (DA 16-2008-236-1) was granted in June 2008 for a five storey residential apartment complex comprising 33 units within two buildings. A modification to the consent was approved to increase the number of units to 36 and the building height to 16.8 metres. This consent was physically commenced with partial completion of the building foundations.

Site Inspection

An initial site inspection was carried out on 12/10/2016, following which a number of subsequent site visits were undertaken during the assessment.

The subject site can be seen in the figures below:



Figure 5: View of site from Church Street in a north easterly direction

Figure 6: View along Church Street in a northerly direction

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ITEM 1 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT
(INCLUDING URBAN DESIGN CONSULTATIVE GROUP MEETING MINUTES).

16-2016-631-1



Figure 7: View along Church Street in a southerly direction

Figure 8: View of abandoned construction site to the south of the subject land



Figure 9: View of development along the western side of Church Street

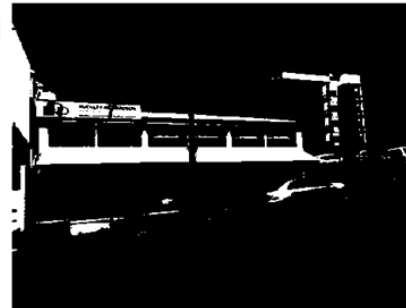


Figure 10: Development along Donald Street to the north of the subject site

ASSESSMENT SUMMARY

Designated Development	The application is <u>not</u> designated development
Integrated Development	The application does <u>not</u> require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does <u>not</u> require the concurrence of another body

Internal Referrals

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been considered as part of the assessment against the S79C Matters for Consideration below.

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Development Engineer

The originally submitted application was referred to Council's Development Engineering section for comment. A number of issues were identified and additional information was requested, which included:

- the provision of updated infiltration rates;
- provision of geotechnical information;
- clarification of impacts of piling on infiltration;
- size of infiltration pits; and
- maintenance details for infiltration pits.

Amended information was submitted to address these matters. This information was assessed and the development was supported, subject to the inclusion of conditions of consent.

Building Surveyor

Council's Building section did not identify any significant issues and supported the proposal with conditions. The conditions have been incorporated into the conditions of consent.

Section 94 Officer

No objections were made to the proposal. A monetary contribution is required for the provision of 54 additional lots and will total \$802,278. S94 contributions are conditioned to be paid prior to the issue of a Construction Certificate.

Spatial Services

Council's Spatial Services unit provided a numbering convention for the development. The amalgamated site will in future be known as 11 Church Street (with each individual unit receiving a unit number).

Strategic Planning

Due to the proposed variation to the LEP building height requirement, the application was referred to the Strategic Planning section for review. The referral stated that any variations to the LEP provisions should be dealt with under Clause 4.6 of the LEP and that the design be referred to an independent panel for review.

Vegetation Management

The landscape design was initially assessed by Council's Vegetation Management section. A number of issues were raised and an information request was sent to the applicant for review.

The applicant provided an amended landscape plan and the only outstanding issue relates to the provision of uniform street planting. A condition of consent has been provided to require the removal of the three (3) existing trees and the planting of seven (7) new trees along the road frontage.

Social Planning

The application was assessed from a disability access perspective by Council's Social Planning section. The applicant provided an Access Review that assessed the proposal against applicable legislation. It is noted that at least 20% of the units will comply with the Liveable Housing Australia 'Silver' requirements. No significant issues were identified and the application was supported unconditionally.

Business Development & Investment

The proposal was reviewed by Council's Business Development and Investment section. It was concluded that the proposal would provide significant investment during the construction phase,

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while overall economic development in Nelson Bay would increase in the longer term. The following economic attributes of the development were noted:

- Total economic output of the development is estimated to be \$38.334 Million;
- The development is projected to provide 92 jobs; and
- Residents of the development and their families will contribute with flow-on effects for shopping, working, living and recreational pursuits in the area.

Waste Management

The proposed waste management strategy was reviewed by Council staff. The removal of waste by a private contractor is supported unconditionally. It is noted that all tenants will be charged a standard waste collection rate by Council, even though Council will not provide this service to the development.

External Referrals**Department of Planning and Environment**

As the proposal includes a variation to the LEP building height provisions, the proposed development was referred to the Department of Planning and Environment for comment. The Department did not have any specific comments on the proposed variation.

It was requested that Council considers the Department's Guidelines when varying development standards, including consideration of the cumulative effect of similar approvals on the objectives of the development standard/ zone and ensuring that the appropriate reporting is completed. These matters have been addressed throughout this report.

Urban Design Consultative Group

The application was referred to the Newcastle City Council's Urban Design Consultative Group (UDCG) for comment. It is noted that the comments are non-statutory and therefore hold no weight under the Act. However, the comments were used to assist Council officers to ensure the architectural merit and potential design issues were adequately assessed.

The proposal was initially presented to the UDCG in mid-November 2016 and a number of issues were identified and suggestions made, which included:

- Removal of the four (4) townhouses at the rear of the site;
- Increase in the side setbacks to conform more closely to the ADG requirements;
- The proposed balustrades are mostly glazed, which is contrary to the recommendations of the ADG. It was considered that the use of glazing would provide poor levels of amenity and would also contribute to heat gain for west facing apartments;
- The applicant must investigate the use of alternative materials and incorporate these into the design;
- The dark colour of the window and door mullions would increase the thermally absorbency of the building;
- The lack of solar access to the lift lobby was identified as an issue; and
- Enclosure of an area on the rooftop terrace to enable use of the area during inclement and winter periods. It was also requested that basic amenities be provided within this area.

The UDCG stated that the *'intent of the site planning strategy (a slender tower) was supported, but it was noted that this had not been successfully carried through in the site planning proposed. Support for any development exceeding the maximum 24.5m height achievable under the Nelson Bay Town Centre and Foreshore Strategy (NB Strategy) because demonstrable public benefit and design excellence is very difficult to justify'*.

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The original proposal was not supported due to the number of significant departures from the ADG separation standards and the perceived amenity and equity issues.

The applicant amended the design to take into consideration the majority of the issues raised by the UDCG, as follows:

- Deletion of the four (4) townhouses at the rear of the site;
- Inclusion of four (4) units into the main building (one (1) additional unit on the lower levels);
- Increase in setbacks along the southern boundary; and
- Clarification of the adjoining development to the north.

The amended design was presented to the UDCG in mid-February. The main outstanding issues identified in the second meeting included the northern and southern setbacks, and bulk and height of the development (a copy of the last UDCG minutes is included as **Attachment A**). These specific comments provided by the UDCG were included in the SEPP 65 assessment below.

MATTERS FOR CONSIDERATION – SECTION 79C

s79C(1)(a)(i) – The provisions of any EPI

State Environmental Planning Policy 65 – Design Quality for Residential Apartment Development

State Environmental Planning Policy (SEPP) No.65 applies to the development. As a result, the nine design quality principles set out in the Apartment Design Guide (2015) produced under SEPP 65 are required to be addressed.

Clause 6A states that any of the following ADG provision supersedes the DCP controls in respect of the following issues:

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

The proposal complies with the majority of the ADG controls. However, a number of issues were identified by the UDCG and these are included in the discussion below. The application has been accompanied by a Design Verification Statement from the architect. Each design principle outline under SEPP 65 is discussed below.

1. **Context and Neighbourhood Character**

The applicant stated that the proposed development was designed with reduced side setbacks. The reduced scale limited the setback from the adjoining sites on Church Street, thereby allowing increased setbacks to the east. This allowed for the view corridors from the south to be largely maintained. The UDCG raised concerns regarding the limited setback provided to the adjoining sites in the north and south during the initial meeting.

The applicant provided clarification on the layout of the adjoining development to the north, concluding that the living areas associated on the adjacent development facing north and presented mainly non-habitable areas and well screened habitable rooms to the south. It was further noted that the development only contained five storeys and that all development above this level would not be impacted. The UDCG accepted these arguments, however

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stated that future development on this site may be significantly impacted by the limited setbacks. It is acknowledged that the adjoining site is currently under the same ownership as the subject site.

The setbacks along the southern boundary were increased to 4.5m to the nearest balcony, 6.5m from the closest habitable room and 9.03m from the main building wall. The UDCG stated that this is not acceptable, raising concern relating to both privacy and the visual bulk of the buildings without an adequate break between. The applicant subsequently included louvered screens on the affected balconies to limit privacy impacts.

It is noted that the areas setback less than 9m from the southern boundary only measure 9.7m in width along the 57m long boundary (17%). It is considered that, although privacy impacts may result, the additional articulation provided by these features limits the bulk of the development, when viewed from the south. The future development on the site to the south would therefore only be partially impacted by the limited setback.

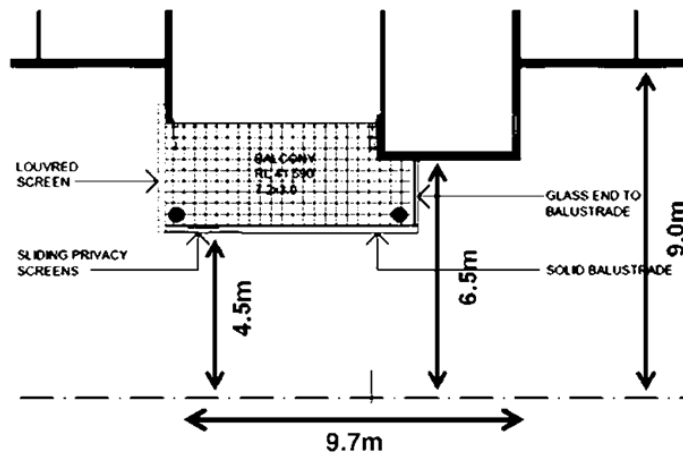


Figure 11: Proposed building setbacks from the southern boundary

The main purpose of locating the development at the frontage of the site is to limit the impact on the important view corridors from the south. Increases in the side setbacks could result in a larger building footprint, thereby compromising the main objective of the current design.

It is considered that the articulation provided by the use of materials and finishes will significantly improve the appearance of the streetscape.

The design of the development promotes the activation of Church Street, which currently lacks any type of activation along the eastern frontage. It is anticipated that the design of the development will provide a benchmark in regards to design for future development along Church Street.

Although the UDCG concerns are noted, it is considered that the variation to the setback requirement of the ADG is offset by the limited impact on important view corridors, increased visual interest and the activation of the Church Street frontage.

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2. Built Form and Scale

The applicant stated that the proposed height, bulk and scale of the building are considered appropriate within the area. It was also noted that the proposed density is similar to that of the existing residential flat buildings along Church Street and Tomaree Street; however the building footprint has been limited by incorporating additional building height. It was further stated that *'the building articulation and smaller footprint achieved an appropriate response to the building height.'*

The UDCG disagreed with the comments above and stated that *'while pushing the majority of the development west towards the street was a positive initiative in respect to partially preserving views from the "Oaks Lure" development, and was supported in principle, impacts on future development on the adjacent site to the south (15 Church Street) need to be better considered'*. The UDCG did not support the proposal as the building bulk would result in privacy impacts (due to the inadequate separation distance from the southern boundary) and overshadowing impacts due to the building height.

As stated above, the applicant addressed some of the privacy concerns raised by the UDCG, by adding screens along the southern balconies. It is also noted that the overshadowing impacts would be limited by the proposed bulk and height of the building. A complying development (15m in height) could potentially cover the majority of the site, thereby impacting significantly on the property to the south from an overshadowing perspective.

Council officers agree that redesign of the building, to provide compliant setbacks from the side boundaries, will increase amenity to the adjacent development and limit impacts on the future development of these sites. However, this could result in an increase in the building footprint to the east, which would result in the loss of view corridors and increased overshadowing. In that regard considering the implications of a further design change (which would be likely to create more notable impacts), the design in its current form is supported.

3. Density

The applicant amended the original design by removing the four townhouses at the rear of the site. This resulted in a reduction of the floor space ratio from 2.8:1 to 2.47:1. The UDCG stated that, in *'order to achieve an acceptable outcome in relation to the building form, some further reduction in density will be necessary.'* This view is based on the fact that the development does not comply with the ADG building setbacks.

As stated in the discussion above, the massing of the development in the western section of the site will maintain views in the locality, create visual interest and activate the Church Street frontage.

4. Sustainability

The Design Verification Report stated that the building would provide an environmentally friendly development by incorporating a highly efficient solar boosted hot water heating, water harvesting, low water reliant planting and building material selections. The design was designed to provide thermal comfort through unit orientation. Units will receive sufficient solar access during the required winter months and a large overhanging building elements reducing unwanted heat gain during the summer months.

The application provided BASIX certificates and a Natthers thermal assessment that shows the development meeting the required sustainability measures.

The UDCG identified the following issues with the proposal:

- o The use of east and west facing glazed balustrades was of concern in respect to solar gain. It was recommended that no more than one third of any apartment's balcony

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balustrades should be glazed, and this proportion should lessen in favour of solid balustrades on floors towards ground level.

- c. The window and door mullions were proposed to be finished in black or a very dark grey tone that would result in heat gain into the interior of the apartment.

In response to the UDCG comments, the applicant included window systems that are designed to incorporate thermal breaks and glass that comply with the BASIX certification.

It is noted that the majority of the western facing units and balconies are not protected. In this regard, it is proposed that a condition of consent be included to require movable screens along this façade to limit impacts from the westerly sun.

As stated above, the proposed development has demonstrated compliance with BASIX requirements. The introduction of solid balustrading would impact on future residents' amenity by limiting views.

5. Landscape

The applicant provided landscaped areas at street level, within the side/rear setbacks and in the communal open space. The building roof area has been landscaped to provide further communal open space. Deep soil has been provided in the front, side and rear setback areas.

The UDCG noted that virtually all deep soil is confined to a very narrow strip along some of the site boundaries. This area as proposed cannot be utilised for appropriately scaled trees, as their canopies would overhang neighbouring properties.

It is considered that the removal of the townhouses in the rear of the site provides additional open space and opportunities for additional landscaping. Council staff assessed the landscaped design and recommended alternative species and the provision of uniform street trees along Church Street. The amended design was supported conditionally. Overall, the landscaping incorporated into the development is considered to be acceptable.

6. Amenity

The design of the residential flat building incorporates quality spatial amenity. The majority of the apartments will receive ample solar access with good cross ventilation, internal and external spaces of a size and level of amenity well above standard. Solid balustrades and screening louvres to balconies is provided to avoid impeding privacy and avoids overlooking on all neighbours surrounding the development. The proposed units provide a large number of balconies with dual aspects, which provide sufficient access to solar access, natural light and cross-ventilation.

The UDCG again stated that the limited setbacks to the adjacent sites will result in amenity impacts. It was also stated that the projecting corner balconies would be exposed to wind, and should be fitted with adjustable screens. It was further noted that the lift lobbies did not have access to daylight and natural ventilation.

The setback issues raised by the UDCG are addressed earlier in this report. The amenity concerns relating to the glazed balustrade balconies are noted and it is proposed that a condition of consent be included to require movable screens to increase the useability of these balconies.

7. Safety

The applicant stated that the proposal incorporates suitable definition of the public, communal and private domains. The entry to the main communal space is controlled by secure access controlled gates and doors at the building entry and ancillary service gates. The communal spaces are well lit and benefit from abundant passive surveillance. Residential basement car parking levels are also secured separated by electronically

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controlled garage door from marked visitor and accessible parking spaces. The UDCG did not specifically comment on the safety of the design.

Council staff identified safety issues with the limited casual surveillance of the storage lockers located in the basement. In response, the applicant amended the design to include safety measures, which included:

- limiting access to the storage areas with card readers; and
- installation of CCTV along all corridors within the storage areas.

A condition of consent has been provided to ensure these measures are installed.

8. Housing Diversity and Social Interaction

The proposed development provides a mix of unit sizes that includes 8 x one-bedroom apartments (14%), 34 x two-bedroom apartments (61%) and 14 x three-bedroom apartments (25%). The UDCG stated that provision of a pool, gymnasium, rooftop deck and mens' shed is supported and would result in a vibrant community within the development. It also was suggested that a section of the rooftop communal area should be enclosed to increase usability. It is considered that the development will provide housing diversity contributing in providing a range of housing options within the locality, consistent with the objectives of R3 zoned land.

9. Aesthetics

The applicant stated that the proposed built form, materials, finishes and various architectural features respect and refine the entire appeal by attempting to provide a contemporary design that fits with the coastal urban environment. The articulation of the proposal provides a variety of horizontal and vertical elements throughout the building.

The UDCG states that the development *'offered potential for a good outcome, once basic planning and bulk and scale issues were addressed.'* However, a reduction in height and compliance with the southern boundary setbacks would assist towards gaining support for the proposal. It was further stated that the 'black and white' finishes (particularly the top roof canopy and the vertical 'blade' element) should be toned down.

The overall aesthetics of the development are supported; however, the issues identified by the UDCG have been noted and addressed in the above sections of this report.

Summary

It is acknowledged that issues were raised by the UDCG regarding the side setbacks, building height and the bulk of the design. It is considered that the majority of the UDCG concerns have been addressed and the development can be supported, as the design will:

- limit impacts on the view corridors from the south;
- provide significant articulation at the site frontage; and
- activate the Church Street frontage.

Given the design merit of the existing proposal as outlined above, it was not considered warranted to request the applicant to comprehensively re-design the development to address all aspects raised by the UDCG. The proposal in its current design results in an appropriate development of the site.

State Environmental Planning Policy 71 – Coastal Protection

This application has been assessed having regard to the aims of the SEPP. It is not expected that the proposed development will have an adverse impact on achieving the aims of the SEPP.

In addition, the application has had regard to the matters for consideration in Clause 8 of the SEPP, as follows:

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Matters for Consideration	Comment
(a) the aims of the policy	Consistent with the relevant aims of the Policy.
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved	The site is not located in close proximity of the foreshore and it is considered that access will be maintained.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability	N/A
(d) the suitability of development given its type, location and design and its relationship with the surrounding area	The nature of the proposed development, which provides residential accommodation and facilities, is permissible on the site and considered suitable for the location on the edge of the Nelson Bay CBD.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant loss of views from a public place to the coastal foreshore	The development is not likely to overshadow the foreshore, or significantly impact views from any public place to the foreshore.
(f) the scenic qualities of the NSW coast, and means to protect and improve these qualities	The proposal will enhance the scenic qualities of the NSW coast through the addition of a contemporary structure to the Nelson Bay built scenic landscape. The proposal has been designed with regard to the quality of the coast.
(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that part) and their habitats	Land is located in a developed urban area. No impact is likely on animals, plants or their respective habitats.
(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part) and their habitats	No impact.
(i) existing wildlife corridors and the impact of development on these corridors	The site does not form part of an existing wildlife corridor.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards	No impact.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities	No impact.

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(l) measures to protect the cultural place, values, customs, beliefs and traditional knowledge of Aboriginals	No impact.
(m) likely impacts of development on the water quality of coastal water bodies	Run off to be managed through stormwater quality measures.
(n) the conservation and preservation of items of heritage, archaeological or historic significance	No impact as the site is already highly disturbed by development.
(o) Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities.	Not applicable, but consistent with this aim.
(p) only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.	(i) Impact is minimal. Cumulative impact is considered to be positive on a socio-economic basis and no impact to environmental matters. (ii) Water reuse and energy usage is reduced by design measures for water and energy efficiency.

The application has been assessed against these matters for consideration. The application will generally comply with the aims of the SEPP and the other matters for consideration under Clause 8 of the SEPP.

State Environmental Planning Policy (Infrastructure) 2007

Under Clause 104 of this SEPP, the proposed development is not classified as traffic generating development as the proposed residential flat building does not exceed 200 units. Consequently, the application was not referred to RMS for comment.

State Environmental Planning Policy (BASIX) 2004

A BASIX Certificate has been submitted for the proposed development which demonstrates that the proposal can achieve required water and energy saving targets compared to the standard model house. A condition of consent has been included in the notice of determination requiring the development to be carried out in accordance with the BASIX Certificate.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.3 – Zone Objectives and Land Use Table

The site is zoned R3 Medium Density Residential and the objectives of the zone are:

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

It is considered that the proposed development will provide additional housing in an area identified for this type of development. The proponent has provided a wide range of dwelling types including one, two and three bedroom units.

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Further, the proposal will contribute towards creating critical mass in the local economy. This stimulus will assist in supporting facilities and services required by permanent residents. The surrounding area includes commercial and retail spaces, medical and government facilities, and recreational land uses that will be complemented by the proposal and the permanent residents.

Residential Flat Buildings (RFB) are permissible with consent in the R3 zone. RFB's can be defined as a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing. It is considered that the proposal conforms to this land use definition and the proposed development is therefore permissible with consent.

Clause 2.7 – Demolition requires development consent

The proposal involves the demolition of the existing basement works constructed as part of the previous development. Conditions of consent have been included to ensure the demolition works do not impact on the adjoining development.

Clause 4.1B – Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

The provisions of Clause 4.1B provides minimum lot sizes for RFB's in the R3 zone of 450m². The site has an overall size of 2,523m² and therefore complies with the LEP provisions.

Clause 4.3 – Height of building

The building height requirement for the site is 15m and any variation above this level will require a variation to the development standard under Clause 4.6 of the LEP. A discussion relating to compliance with clause 4.6 is provided below.

Council adopted the NB Strategy in 2012. It is noted that the Strategy does not hold any statutory weight under Section 79C of the EP&A Act 1979. The Strategy provides the future intent for development in the Nelson Bay area and provides recommendations on the density of development anticipated in the area.

The main recommendations that were included in the Strategy include new development controls that will be implemented through amendments to the LEP and DCP. The changes included a building height bonus of 2 storeys and 0.5:1 increase in the floor space ratio for development that demonstrates design excellence and strategic public benefit.

It is noted that these recommendations were not translated into amendments to the LEP or DCP that were in force at the time.

Four years since adoption, it was noted that the town centre attracted limited investment. In response, Council has undertaken a review of the existing Strategy in order to understand why limited development has occurred.

A Discussion Paper was released to start a conversation in the community on how to guide future development in the area. The Discussion Paper states that, *'within the town centre, this would mean a building height limit of 7 storeys (24.5m) and through the use of Port Stephens Local Environmental Plan 2013 (LEP) (c4.6 - Exceptions to Development Standards), this height limit could be varied in order to encourage feasible development to occur.'* This is linked to the feasibility of development in Nelson Bay. The Paper recommends a building height limit of 24.5m for the proposed development, which correlates with the existing NB Strategy.

It is however noted that the feasibility study used in the recommendation stated that development on the site would only be feasible at 28m in height. This only includes saleable area and heights may need to increase further to include car parking.

The Discussion Paper stated that the best strategic approach is through variations to the height limit under Clause 4.6, rather than a blanket increase in building height where quality design is not necessarily be achieved.

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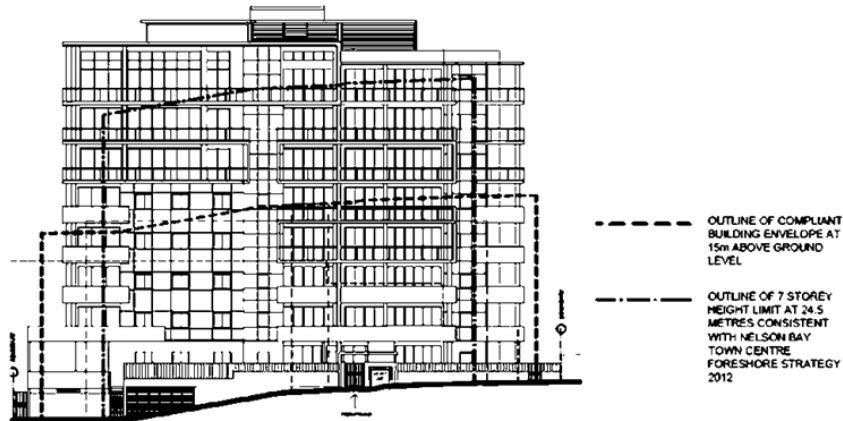


Figure 12: Diagram showing development footprints for various building height provisions

In summary, although the NB Strategy and a recent Discussion Paper recommended building heights well in excess of the exiting LEP provisions, the building height requirement for the site is set at 15m.

A Clause 4.6 Variation Report was lodged as part of the application. The variation is discussed below.

Clause 4.6 – Exceptions to development standards

An exception is requested to Clause 4.3 Height of buildings which nominates a maximum height limit of 15m for the subject site. The application seeks to exceed this development standard by 17m. The assessment against Clause 4.6 has been carried out below.

The applicant has prepared a submission on in accordance with the requirements outlined in Clause 4.6.

Clause 4.6(3):

Clause 4.6(3) states that any variation to a development standard must demonstrate the following:

Objective (a)

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

In the Wehbe decision, Preston CJ set out five (5) ways in which an objection to a development standard can be supported:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard:*

The objectives of Clause 4.3 are as follows:

- (a) to ensure the height of buildings is appropriate for the context and character of the area.
- (b) to ensure building heights reflect the hierarchy of centres and land use structure.

A detailed summary of the context and character of the area was included in the NB Strategy, which located the site within Nelson Bay. The applicant stated that the NB Strategy

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identifies the location of the site *'on the western edge of the Nelson Bay Town Centre. The NB Strategy identifies the unique natural context of Nelson Bay as sitting within a basin, or amphitheatre, where residential and tourist apartment developments are located on the upper levels of the basin.'*

The NB Strategy characterises the urban framework in the elevated areas around the town centre as being developed *'by multistorey buildings set back from the street frontage, and often features landscaping in the front setback.'*

The applicant undertook an investigation of the existing development in the area and included the findings in the Urban Design Analysis that was submitted as part of the application. The *'exercise found that taller developments from 4 to 7 storeys were generally located around the perimeter of the basin, consistent with the Strategy. It was also noted that developments of an increased height were generally built within the last 10 years reflecting a changing context and character of Nelson Bay.'* Subsequent to lodgement, Council staff undertook various visits to the area and found similar results.

It is considered that the design will complement the streetscape as it will provide significant articulation at the site frontage and activate the Church Street frontage. The design will also limit impacts on the view corridors from the south and provide sufficient measures to ensure the privacy of future residents, while not significantly limiting the development on the adjacent site.

Although the development proposes a building height exceeding the LEP height requirement, it is consistent with the intended future land use of Nelson Bay. It is considered that the proposal will provide development that is consistent with objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The application does not rely on this consideration to justify the proposed variation.

3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objective of Clause 4.3 is to ensure that impacts on the existing amenity and character impacts are taken into consideration to ensure the orderly economic and urban growth of the Nelson Bay area.

The NB Strategy states that the *'urban design analysis undertaken during the development of the Nelson Bay Town Centre and Foreshore Strategy confirmed the appropriateness of a five storey (17.5m) maximum building height seven storey (24.5m).'* The 17.5m height limit was identified for development within the lower CBD, with the higher level (24.5m) on the slopes to the south, east and west. These findings are reflected in the more recent discussion paper that goes one step further, by suggesting that all height variations be dealt with under Clause 4.6 of the LEP. The feasibility study undertaken as part of the Paper found that building heights of 9 storeys (including a car parking level) would be required to ensure developments are economically feasible.

Enforcing the existing 15m height limit will not facilitate development in the area. This view is reinforced by the Discussion Paper that states the *'residential unit market in Nelson Bay has been static and has actually declined over the past ten years.'* This can partly be attributed to the limited development potential provided under the restrictive building height provisions in force during this period.

The applicant argued that, in this instance, *'strict compliance with the development standard is considered unreasonable as:*

- It would not reflect the desired future character of Nelson Bay town centre;*

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- It would not allow for the economies of scale - i.e. the high-quality finishes and inclusions that are currently available with the proposed development;
- It would not provide a greater diversity of housing choice;
- It would not promote contemporary and unique development that is commercially viable; and
- As demonstrated by the current failed development on the site – encourage the promotion and co-ordination of the orderly and economic use and development of land.

It can therefore be argued that the 15m height requirement has limited development 'that is appropriate for the context and land use' of Nelson Bay and is therefore contrary to the underlying objective of the Clause.

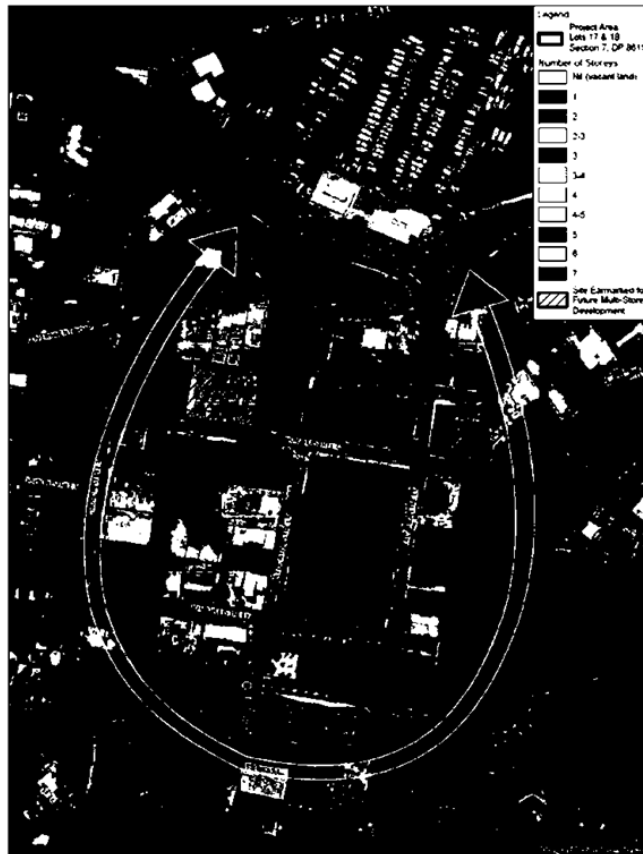


Figure 13: Building Heights in Nelson Bay

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4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The applicant noted that Council has approved numerous development applications in the area above the 15m height limit. This is accurate for the subject land, where a height limit variation was previously granted under the former development application.

Figure 13 below was included in the Urban Design Assessment undertaken by the applicant. It shows the building heights currently developed in the Nelson Bay area. The land marked pink or purple are currently developed with building significantly higher than the 15m height limit. As stated earlier, other approvals above the 15m height limit also exist in the area.

The following table provides details of other variation previously approved in the Nelson:

Application No	Site Address	Building Height Limit	Building height	Percentage Variation
16-2002-696-1	55 Magnus Street, Nelson Bay	15m	17m	13%
16-2001-1755-1	21 Tomaree Street, Nelson Bay	15m	20.0m	33%
16-2015-769-1	60 Diemars Road, Salamander Bay	9m	14.4m	60%
16-2014-782-1	29-45 Magnus Street, Nelson Bay	15m	25m	67%

Of these examples, the application at 29-45 Magnus Street is a good example of previous variations to the LEP building height requirement. The proposal included an eight (8) storey building on a sloping site. The assessment report found that the variation could be supported under the Clause 4.6 of the LEP, as the development was considered appropriate.

The applicant's argument, that Council has abandoned the height limit requirement, can also be seen in the NB Strategy and Discussion Paper that supported and encourages building heights above the LEP requirement.

It can therefore be argued that Council has abandoned the height requirement applicable to the subject site.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The application does not rely on this consideration to justify the proposed variation.

Objective (b):

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

The application does not rely on this consideration to justify the proposed variation. The following points however are identified as important grounds for justification:

- **Additional Residential Development in Nelson Bay**
The development provides 54 new housing units in Nelson Bay and will cater wide range of the community by providing one, two and three bedroom units to cater for a large portion of the local population.
- **Amenity / Streetscape**
The development will address Church Street and provide visual interest in an area dominated by development that is oriented away from the road frontage. The

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articulation provided as part of the application will also assist in creating an appealing streetscape.

Where the development encroaches on setback requirements, privacy measures have been incorporated to ensure impacts are limited.

- **Public interest**

The proposal will stimulate local investment and improve use of existing facilities and services in the Nelson Bay area. It is considered that the development will not have significant cumulative impacts on the community or the surrounding locality.

- **Economic growth**

The proposal will provide short term construction and long term service employment opportunities. The new quality development would provide confidence in the local real estate market, which would stimulate further development in Nelson Bay.

Clause 4.6(4):

Clause 4.6(4) requires Council to address the following requirements prior to granting development consent:

- The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- The concurrence of the Secretary has been obtained.

In response, it is noted that the applicant provided written request of the variation that addressed the issues identified in subclause (3).

Further, it is considered that the proposed development meets the objectives of the R3 Medium Residential zone (see applicable zone objectives above) as the development:

- Will provide additional housing in an area identified for this type of development;
- Provides a wide range of dwelling types including one, two and three bedroom units; and
- Contributes towards creating critical mass in the local economy. This stimulus will assist in supporting facilities and services required by permanent residents. The surrounding area includes commercial and retail spaces, medical and government facilities, and recreational land uses that will be complemented by the proposal and the permanent residents.

It is considered that the proposal is consistent with the objectives.

Clause 4.6(5):

Subclause (5) states that, in deciding whether to grant concurrence, the Secretary must consider the following:

- Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- The public benefit of maintaining the development standard, and
- Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no identified State or Regional matters of significance that would result as a consequence of varying the building height provisions.

There is no public benefit in maintaining strict compliance with the development standard given that there are no significant impacts that will result from the variation to the standard. However, the proposal will provide additional residential accommodation for the community in a building with

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excellent internal and external amenity. Further, expanding the population base in close proximity to the Nelson Bay CBD is more desirable and beneficial in planning terms as it will contribute towards critical mass of the local population thereby supporting the local economy. It is therefore considered that the advantages of the proposal outweigh the disadvantages.

DoPE did not identify any specific matters to take into consideration.

Conclusion:

This Clause 4.6 variation request is well founded as it demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify the contravention;
- The proposed development represents an increase in the residential housing in Nelson Bay;
- The development achieves and is consistent with the objectives of the development standard and the objectives of the R3 zone, notwithstanding the variation;
- The proposed development is an appropriate response to the context of the site, and the variation to the standard is compatible with the existing and future character of the area;
- The proposed development will not have significant environmental impact and is in the public interest and better achieves the development standard's objectives;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and
- The contravention does not raise any matter of State or Regional Significance.

In accordance with Clause 4.6 (a)(i) the applicant has adequately addressed the matters required to be demonstrated, as discussed above. Further, the application is deemed to be in the public interest by providing a range of housing within close proximity to the Nelson Bay Town Centre and marina precinct on a site which is currently vacant.

The proposed variation to Clause 4.3 is considered acceptable in this instance. Accordingly, the application is exempted from the requirement to comply with the nominated height limit derived under Clause 4.3. The proposal is considered to be appropriate in the context of the site.

Clause 5.5 – Development within the Coastal Zone

The proposed development is located within the coastal zone and is considered to meet the principles of the NSW Coastal Policy. There are no anticipated adverse impacts on the local ecology or water quality as the proposal incorporates a stormwater quality control system and erosion and sediment control devices. The proposal is sufficiently separated from the waterway that there are no anticipated impacts on the access to the foreshore. The proposed development is in keeping with the character of the locality and is not anticipated to have any significant negative impacts on views to or from the waterway.

Clause 5.6 – Architectural roof feature

It is considered that the rooftop recreational area conforms to the architectural roof feature definition. The roof feature will therefore not be included in the overall height measurement.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 5 acid sulfate soils. As the proposed development is anticipated to entail excavations below 5m, conditions of consent will be included to ensure an Acid Sulfate Soils Management Plan is implemented where acid sulfate soils are encountered.

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Clause 7.2 – Earthworks

It is noted that major earthworks have previously been undertaken on the site. It is understood that all existing structures will be removed from site prior to the stabilisation of the site and excavation of the basement levels.

The proposed earthworks have been assessed by the Council staff and no major issues were identified. Conditions of consent have been provided to ensure detrimental impacts on drainage patterns or soil stability will be managed.

As the site has been disturbed through extensive excavation, it is highly unlikely that the development will encounter Aboriginal relics. The proposal is therefore consistent with requirements outlined in Council's LEP relating to earthworks.

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Council's requirements. The subject land also maintains direct access to Church Street, meeting the requirements of this clause. A condition is proposed that requires the provision of evidence that all essential services are available, prior to the issue of an occupation certificate.

s79C(1)(a)(ii) – Any draft EPI

Draft State Environmental Planning Policy (Coastal Management) 2016

The draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal SEPP) was on public exhibition until 23 December 2016.

The draft policy aims to balance social, economic and environmental interest by promoting a coordinated approach to coastal management, consistent with the objectives of Part 2 of the Coastal Management Act 2016.

The Act divides the coastal zone into four (4) management areas:

- Coastal Wetland and Littoral Forest areas;
- Coastal Vulnerable areas;
- Coastal Environment areas; and
- Coastal Use areas.

The subject land is located with the Coastal Use area and the objectives for this area are:

- (a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:
- (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and
 - (ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
 - (iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
 - (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
 - (v) the use of the surf zone is considered.
- (b) to accommodate both urbanised and natural stretches of coastline

The proposed development is consistent with the objectives of the Coastal Use areas, as identified in the draft policy, and can therefore be supported.

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s79C(1)(a)(iii) – Any DCP**Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Section A – Introduction**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was notified between 26 September 2016 and 12 October 2016.

Section B – General Controls**Chapter B2 – Natural Resources**

The subject site is not located on land or is within 500m of land that contains items of environmental significance.

Chapter B3 – Environmental Management

Acid Sulfate Soils – The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils and cause environmental damage. An Acid Sulfate Management Plan is to be prepared prior to the issue of the Construction Certificate and carried out during the construction phase of the development. In this regard the development is consistent with the objective and requirements of the DCP.

Noise – The separation distances incorporated into the development will limit any significant impacts on the adjoining development from a noise perspective. The addition of screens along the southern balconies will assist with this concern.

Conditions of consent have been imposed to limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. The application is satisfactory in regards to noise management.

Earthworks – It is noted that major earthworks have previously been undertaken on the site. The proposed earthworks have been assessed by the Council staff and no major issues were identified. Conditions of consent have been provided to ensure detrimental impacts on drainage patterns or soil stability will be managed. As the site has been disturbed previously, it is highly unlikely that the development will disturb Aboriginal relics. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

Waste – Conditions of consent have been proposed that require waste from demolition and building works to be separated into recyclable and non-recyclable materials, the reuse of materials on-site where possible, and the disposed of all other materials at an approved facility.

To ensure ongoing waste is managed responsibly, the development includes a waste storage area and compactor in the upper basement level. A dedicated pickup area has been provided to enable safe removal by private contractor. The waste area contains sufficient space for 20 x 660lt bins, which is considered sufficient to deal with the general waste and recycling generated by the development.

Chapter B4 – Drainage and Water Quality

Council staff assessed the stormwater management plan and supported the proposed measures with conditions of consent.

Chapter B6 – Essential Services

Reticulated water, electricity and sewer are available to the subject site. In addition, an acceptable stormwater management plan has been submitted and the land achieves direct access to a public road.

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Chapter B9 – Road Network and Parking

Council's Engineering section assessed the potential impacts on the local road network and access to the site. No specific concerns were raised.

The DCP outlines the following on-site car parking provisions for residential flat buildings:

- 1 car space for one or two bedroom dwellings
- 2 car spaces for three or more bedrooms dwellings
- 1 visitor space per three dwellings

The proposed development includes:

- 8 x one-bedroom apartments;
- 34 x two-bedroom apartments; and
- 14 x three-bedroom apartments.

The parking calculation is shown in the table below:

Units	DCP Requirement	Parking Provision
8 x one bedroom dwelling	1 car space for one or two bedroom dwellings	8 spaces
34 x two bedroom dwelling	1 car space for one or two bedroom dwellings	34 spaces
14 x three bedroom dwelling	2 car spaces for three bedrooms dwellings	28 spaces
Visitors' spaces	1 visitor space per three dwellings	19 Spaces
Total		89 spaces

The proposal includes 100 parking spaces (81 x resident parking and 19 x visitors' parking) within the basements car park and therefore complies with the car parking requirements of the DCP.

Section C – Development Types

As stated previously, the DCP controls are superseded by the AGD controls, where conflicts exist. The following DCP controls are however applicable to the proposal.

Chapter C5 – Multi Dwelling Housing

C5.6 Building Height – Refer to discussion of the LEP height requirements above.

C5.8 Site Coverage – The proposal exceeds the site coverage requirement of 75% with the inclusion of the basement car parking areas. A detailed stormwater management plan was provided to Council and the Engineering section supported the proposed water quantity and quality measures.

C5.13 Access – The development provided both pedestrian and vehicular access from the Church Street frontage. It is considered that the pedestrian access is legible and will be clearly defined by the proposed retaining and landscaping along the frontage.

C5.18 On-Site Parking Provisions – Please refer to the discussion relating to Section B of the DCP for a detailed assessment of the parking requirements for the development.

C5.19 Driveway Width – The proposal complies with the access width requirements with the provision of a 6.8m wide access driveway from Church Street.

C5.23 Equipment – The pool, air conditioning and lift plant will not be located in close proximity to any boundaries and it is not anticipated that the equipment will have a significant impact on the adjoining sites.

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Section D – Specific Areas – Nelson Bay Centre

D5.A General Precinct Provisions

D5.1 Significant Vistas – The significant vistas are shown in Figure DJ of the DCP. The main vista located in close proximity to the development is from the corner of Tomaree Street and Church Street. It is considered that this vista will not be impacted on as the proposal only covers the western half of the site and will therefore not block or significantly impede water views from the south.

D5.2 Street Layout – The proposal will not alter the existing road layout.

D5.3 Roof Design – The roof design is considered to have architectural merit and will not have significant impact on the public domain.

D5.4 NSW Coastal Planning Guidelines – The proposal incorporates non-reflective materials.

D5.C Desired Character – Town Living and Commercial

The proposal complies with the desired character of the area by providing a wide range of housing options, creating critical mass in the Nelson Bay CBD and incorporating landscaping to limit impacts on the adjoining development.

s79C(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F

There are no planning agreements that have been entered into under section 93F relevant to the proposed development.

s79C(1)(a)(iv) – The regulations

There are no regulations applicable to the proposed development.

s79C(1)(a)(v) – Any coastal management plan

There are no coastal management plans applicable to the proposed development.

s79C(1)(b) – The likely impacts of the development

Social and Economic Impacts

The proposal will result in additional residential development in the LGA through the provision of a wide range of accommodation units. It will result in a large capital investment in the local economy and will create a number of short and indirect long term employment opportunities. The development is expected to have a total economic output of \$38.3 million. Additionally, 92 jobs are anticipated to be created and positive economic outcomes will continue post construction via the flow on effects of future residents by way of shopping, working, living and recreational pursuits.

Furthermore, the construction of 54 units will attract \$94 contributions totalling \$802,278. These contributions will be used to create and improve community facilities, public open space, sport facilities, and infrastructure and the like, further adding to the positive economic impact of this development.

The additional development within the abandoned sites will also increase confidence in the local residential market and provide the impetus for more development in the area.

The proposal will not result in any significant social impacts.

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Impacts on the Built Environment

The applicant provided a detailed Urban Design Analysis that included a number of perspectives showing the proposed development in the existing urban context. It is considered that, although the proposal exceeds the building height provisions, it will fit well within the existing built environment. It is noted that, when viewed from the Nelson Bay waterfront, the proposal does not extend above the ridgeline (refer Figure 14).

The development will not result in unacceptable privacy impacts and addition of privacy screens along balconies will further limit potential impacts on adjoining land owners as well as future occupants of the development.

The overall aesthetics of the development are of good quality with the inclusion of range of materials, textures and colours. The range of materials and colours in conjunction with the articulation and modulation of building facades visually reduce the perception of the bulk and scale of the development to ensure consistency with surrounding development. The development will also result in the activation of Church Street.

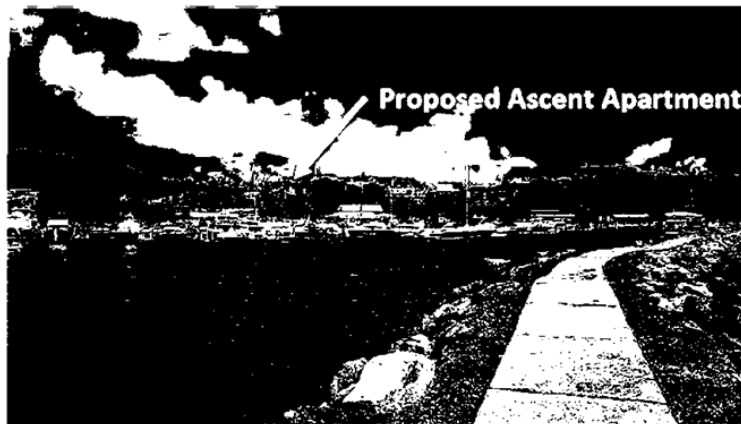


Figure 14: Photomontage showing view from Nelson Bay Marina

Impacts on the Natural Environment

The development includes water quantity and quality control devices to reduce the impact of the development on the natural environment. Having regard for Section 5A of the Environmental Planning and Assessment Act, the proposed development is considered to not have a detrimental impact on any critical habitat, threatened species or ecological community. The existing site is devoid of any natural habitat or native vegetation and there are no anticipated negative impacts on the natural environment.

s79C(1)(c) – The suitability of the site

The subject site is located in close proximity to the Nelson Bay CBD and will result in the redevelopment of an abandoned building site. The proposal will assist in revitalising the city centre through increased population and increase use of facilities and services in the area.

The development site will have limited impacts on the amenity of the surrounding development.

It is therefore considered that the site is suitable for the proposed development.

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s79C(1)(d) – Any submissions

The application was notified / advertised for 14 days, ending on 12 October 2016.

During this period the following public submissions were received:

- a total of approximately 75 submissions of support;
- a petition of support containing 145 signatures;
- two (2) submissions requesting further information on the potential construction impacts and use of the communal facilities; and
- two (2) submissions objecting to the proposal.

One submission requested Council defer or refuse the application until such time as the NB Strategy has been updated. The submission did state that the writer *'welcomes the positive approach the applicant has taken to bring forward a proposal designed to attract permanent residents, with a focus on good design, and the applicant's proactive engagement with interested parties'*.

It is considered that, as the applicant provided sufficient grounds to grant a variation under Clause 4.6 of the LEP to vary the height limit, the application can be determined prior to the adoption of any new strategies for Nelson Bay. It is considered that future applications in the area will need to comply with the new provisions and the current application will therefore not set a specific precedent.

The specific application related issues identified in the submissions are addressed below:

- Non-compliance with NB Strategy
As stated in the assessment and the submission, the NB Strategy is not a statutory document and was only utilised in the assessment to provide context on the existing development and future intent for the area. The issues surrounding 'design excellence' and 'public benefit' was not taken into consideration, as the stated 7 storey height limit in the NB Strategy was not used as a means to provide permissibility for the height limit. Notwithstanding, the Discussion Paper utilised Clause 4.6 to vary the height limit in order to achieve better design outcomes for individual developments.
- SEPP 71
The submission identified issues with the applicant's discussion of subclause (d), (e) and (f) of Clause 8.
These subclauses were addressed in the assessment and the development is considered in keeping with the objectives and provisions of the Policy.
- Density
It is noted that the LEP does not contain any FSR requirements. However, the argument around density will be addressed.
The submission states a number of Council areas that have adopted the FSR requirement that shows a large variation of between 0.7:1 and 3:1.
It should be noted that the deletion of the townhouses at the rear of the site reduced the floor space ratio from 2.8:1 to 2.47:1. Although this is considered high when taking into account the measures stated above, it is considered that the amended floor space measure is more acceptable.
Further, floor space ratio only addresses part of density considerations. A development that is compliant with the height control can still provide a similar floor space ratio as the proposed development, but cover the majority of the site. This type of development

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would impact significantly on views from the adjacent site and potentially impact on the view corridors identified in the NB Strategy.

The proposed development is contained within a smaller footprint that ensures views are largely maintained and limits excessive overshadowing of adjoining sites.

It is therefore considered that the proposed floor space ratio is acceptable in this instance.

o Clause 5.5 – Coastal Zone

One submission maker provided comment subsequent to the initial submission that identified the fact that the applicant did not address Clause 5.5 of the LEP. The applicant provided an addendum to the report that addressed these provisions. These comments were utilised in the assessment of the potential coastal impacts.

Other issues raised related to the following aspects of the development:

• Property Values

The submissions stated that property values in the surrounding area would be negatively affected by the proposal. No evidence of the assumption was provided in the submission. The feasibility study undertaken as part of the NB Strategy Discussion Paper stated that *'unit prices in the residential unit market in Nelson Bay has been static and has actually declined over the past ten years.'* The Discussion Paper went on to state that quality housing stock is required in the area to ensure investor confidence returns. It is therefore considered that the proposed development could potentially stimulate investment and result in increased unit prices in the area.

• Construction Impacts

The submissions identified the following construction issues:

- o Construction hours – 8am start
- o Noise and vibration issues associated with pile pile-driving of foundations
- o Truck parking during construction

The general construction hours are limited to:

Monday to Friday	7am to 6pm
Saturdays	7am to 1pm
Sunday and Public Holidays	No work

Whilst it is acknowledged that impacts to local amenity will arise during the construction phase, these impacts will be managed as per regulatory standards. Further, any pile driving will be limited to 8am to 5pm on weekdays only.

A Construction Traffic Management Plan will be required to control all construction traffic and ensure a safe environment for road users and pedestrians.

• Operational Impacts

The submissions identified the following construction issues:

- o Maintenance should be undertaken throughout the life of the development to ensure the standard of the external appearance not be compromised;
- o Pool usage be limited to 9.00 pm in the evenings; and
- o Garbage bins are not allowed on the street.

The ongoing maintenance and pool hours are not issues usually dealt with by the development assessment and would be a consideration for the future owners of the units.

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All garbage will be compacted and stored in the basement and will be removed by private contractor.

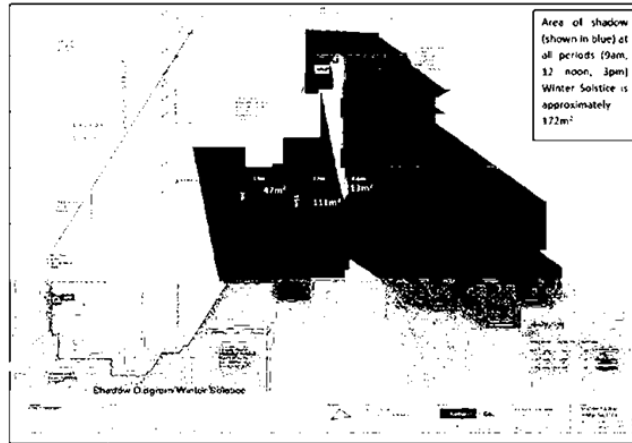


Figure 15: Shadow diagrams

- **Overshadowing**

The applicant provided shadow diagrams that indicated limited impacts from the proposal on the adjoining sites. It was also shown that a compliant development footprint could potentially result in greater impacts on the adjoining land.

The shadow diagram (Figure 13) indicates that the vacant site in the south will be impacted by the proposal during the majority of the day during winter months. This can be expected from all types of high rise development. It is however noted that the existing development in the area will only be impacted during short periods of time in the either the morning (west) or the evening (east).

The impacts associated with overshadowing are considered acceptable in this instance.

- **Proposed building height**

As stated above, it is considered that the assessment took into consideration the concerns raised above, in regards to the variation proposed to the LEP height limit, as part of the application.

- **Out of character with future intent for the area**

As stated earlier in the assessment, the proposal is consistent with the objectives of the R3 zoning of the area and the existing development on the adjacent sites.

s79C(1)(e) – The public interest

The assessment found that the development is considered suitable in the locality. The proposal will stimulate local investment and improve use of existing facilities and services in the Nelson Bay area. It is considered that the development will not have significant cumulative impacts on the community or the surrounding locality. The proposed development is considered to be in the public interest.

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DETERMINATION

The application is recommended to be approved under delegated authority, subject to conditions as contained in the notice of determination.

REAN LOURENS

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ATTACHMENT A – UDCG Comments

1



URBAN DESIGN CONSULTATIVE GROUP MEETING

ITEM No. 8

Date of Panel Assessment: 15th February 2017
Address of Project: 11-13 Church Street Nelson Bay
Name of Project (if applicable): N/A
DA Number: 16-2016-631-1
No. of Buildings: One
No. of Units: 56
Declaration of Conflict of Interest: Nil.
Attendees: Applicant
Rod Salmon - Applicant
Steve McCall - Planner
Stephen Koturic - Architect
Tony Whaling - Project Manager

Council
Rean Lourens - Planner PSSC

This report addresses the nine Design Quality Principles set out in the Apartment Design Guide (2015) under State Environmental Planning Policy No.65. It is also an appropriate format for applications which do not include residential flats.

Background Summary

The Panel reviewed this proposal previously in November 2016, when it was concerned about a number of issues, in particular the proposed height, boundary setbacks, inadequate setbacks between the tower and town-house buildings, and overall building bulk. The revised design before the Panel has deleted the four townhouses and increased the number of apartments in the tower building from 52 to 56, as well as making various other changes. The November report is included below in *italics*, with comments on the amended scheme following.

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The proposal has been put before the Group in part because of the special circumstances pertaining to the PSSC Nelson Bay Strategy 2012 (NB Strategy), which provides for a possible increase in permitted building heights of an additional 7m in addition to the 17.5m maximum standard specified in the height controls for the Nelson Bay area. For this concession to occur, the Nelson Bay Strategy requires a strategic public benefit of appropriate magnitude be demonstrated, as well as outstanding design excellence.

The permissible height taking advantage of the above bonus provision would be 24.5 metres. The amended application proposes a height well in excess of that permissible even with the concession, exceeding the control by 3.3 metres or over one floor on the western (Church Street) frontage, and because of the sloping site by 7 metres or over two floors to the west.

As to whether the development would result in 'strategic public benefit' or be of 'design excellence':-

- (a) It is understood that the Council is generally supportive of the height concession in view of the development potentially making a positive contribution to the objective of the Nelson Bay Town Centre and Foreshore Strategy by making the area "...more attractive to tourists, the business community and residents." Certainly the proposal would provide attractive accommodation with good views and luxury amenities, as well as creating employment, so that it potentially would achieve this outcome
- (b) The architectural design character is generally of good quality, although it cannot be agreed that the overall design achieves 'design excellence' - even with the recommended changes. Certainly as proposed the height and bulk are both excessive and as discussed below amendments will be necessary for the development to be supported. The lack of daylight and ventilation to the internal corridors at each level is a further fundamental shortcoming, which cannot be overcome without major re-planning.

1.Context and Neighbourhood Character

The site is located at the western edge of the R3 zone, and on the opposite side of Church Street the zoning falls to R2, which has a maximum building height of 9m. The subject site and the site to the immediate south (No. 15) have both had construction of 5 storey residential unit developments commenced under earlier approvals some time ago, but in both instances work stalled for financial reasons when the footings were partially complete. Both sites are now in a poor state of upkeep and present very poorly to the street and to surrounding residential development.

Several residential apartment developments have been completed in the immediate vicinity of the site, each appears to be generally compliant with the 5 storey height limit. These include a small block immediately to the north of the site, a larger, lineal block fronting Donald Street "Cote d'Azur", that runs the full

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length of the shared eastern boundary, and further south at the corner of Church Street and Tomaree St, is a substantial 5 storey block "Oaks Lure", which shares its northern boundary with the abandoned site at 15 Church Street. The eastern half of this block currently enjoys attractive views north to Port Stephens waterway, over its landscaped gardens surrounding a swimming pool.

Development on the western side of Church Street is primarily original mid-century single dwellings and small blocks of flats. There is also a row of two storey townhouses accessed from Tomaree St, which is diagonally adjacent to the south-eastern corner of the subject site. To the north of the site, towards the eastern side of the common boundary, is a low-scale building housing a dentist's surgery that is accessed from Donald Street.

The applicant indicated that their architect had adopted a strategy for the internal planning of the site that sought to utilize the provision for an extra two floors as outlined in the Nelson Bay Strategy. A key part of this approach involved an intent for a more slender, taller structure that would assist with view sharing and maintaining solar access to properties nearby. The Group supported this as an appropriate approach, but raised serious concerns in respect to the very substantial shortfall of the proposal in respect to setbacks as nominated in the Apartment Design Guide. This is inconsistent with the stated intent. These setbacks are identified as being required within each adjacent property. The lower floors are required to have a minimum separation distance of 6m from the boundary (measured from the balustrade of any deck or balcony) for lower floors up to four storeys in height, while 5 storeys and above require a setback of 9 metres to the balustrade or wall to the boundary. These setbacks assume an equivalent boundary setback in adjacent properties where residential apartments are constructed, however in this instance existing apartment buildings on the east and north have substantially lesser setbacks, thus exacerbating the impacts any shortfall that might occur on the subject site.

The revised design has resolved some issues by deletion of the town-house block, but boundary setbacks to the north and south remain well below the ADG recommendations, and both remain of concern:-

.To the north there is an existing 5 storey apartment block. Diagrams were submitted and explained that although the separation distances were non-compliant, the privacy impacts were within acceptable limits because the small balconies served only bedrooms, and the bedroom windows were of glass blocks and thus privacy of residents would not be compromised. It is considered that the separation distances could be accepted provided that screening were to be provided on the west ends of balconies so that outlook would be focused to the views to the north-east, not towards the neighbours' balconies. Concern remains in relation to compromising the development potential of this neighbouring site if redevelopment were to be sought to the greater height permissible under the bonus provisions of the Nelson Bay Strategy. In that scenario the separation between the two future building should be 18 metres at the upper levels, and the presently proposed setbacks would not be equitable.

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.To the south it was advised that the adjoining site was now in the same ownership as the subject site, and that it was likely that approval would also be sought for a development taking advantage of the additional height available under the Nelson Bay Strategy, potentially a building 24.5 m. high. The ADG separation distance required between the two buildings then would be 18 metres, with 9 metres needed from the common boundary for each building. This is as shown indicatively for the southern site on drawing DA-21. The present application proposes that most of the southern wall of the building would have this setback, but the central units at each level have considerably less, with only 4.5m. setback to the balcony edge. This is not acceptable, having in mind not only privacy separation - but similarly important - the visual bulk of the buildings without an adequate break between. The floor plans should be revised to achieve the necessary separation distance.

2 .Built Form and Scale

The proposal as submitted is substantially bulkier than would be appropriate for a development seeking to benefit from the bonus provisions of the NB Strategy. It was suggested that, as a minimum, one apartment needed to be deleted from the plan at each floor level. This would potentially facilitate meeting the ADG required setbacks, while at the same time preserving reasonable view sharing opportunities and solar access for neighbours.

While pushing the majority of the development west towards the street was a positive initiative in respect to partially preserving views from the "Oaks Lure" development, and was supported in principle, impacts on future development on the adjacent site to the south (15 Church Street) need to be better considered. This should take the form of considering both the approved development, as well as a possible future development that also might seek to take advantage of the additional height possible under the NB Strategy.

The Group expressed concerns with respect to the inadequate separation distances between the townhouses and the proposed tower, and the rear of the townhouses and the adjacent Cote d'Azur development to the east. This group of four residences also suffers from a lack of street address, as well as having privacy and amenity conflicts with the common open space and pool which immediately abuts the residences. The townhouses are also at a lower level than the tower, and will potentially be visually dominated by the much larger scaled residential tower. The Group recommends that these residences be deleted from the proposal.

Balustrades are proposed to be in most instances glazed, which is contrary to the recommendations of the ADG, and which provides poor levels of amenity to the balconies. On western and eastern facing facades, glazed balustrades also contribute to heat gain for the apartments with this orientation.

As discussed above the building bulk cannot be supported in relation to:-

- (a) Privacy impacts due to the inadequate separation distance from the southern boundary

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- (b) Overshadowing impacts due to the excessive height beyond that permissible even given the 7m. bonus 'concession'. It is noted that winter overshadowing would impact in the morning on low dwellings on the opposite side of Church Street, and town-houses etc to the south and west. Certainly any adverse impacts beyond those caused by a potential development complying with planning controls is not acceptable.

3. Density

It was noted that there is no FSR specified in the controls, which places additional emphasis on the need to provide appropriate setbacks from all boundaries.

In order to achieve an acceptable outcome in relation to the building form some reduction in density will be necessary.

4. Sustainability

As the broad site planning and setback / bulk and scale issues were considered fundamental to achieving an appropriate development, most of the discussion with the applicant and his consultants, centered upon these primary concerns. However, the Group briefly noted that the very extensive use of west-facing and east facing glazed balustrades was of concern in respect to solar gain. Apartments should be provided with adjustable screens that allow for changing seasons and for control of unwanted summer sun. This also makes the balconies more useable for residents. As a guide, it was recommended that not more than one third of any apartment's balcony balustrades should be glazed, and this proportion should lessen in favour of solid balustrades on floors towards ground level. Similarly, western and eastern facing balustrades in particular should be primarily solid.

The panel noted that window and door mullions were proposed to be finished in black or a very dark grey tone. Standard aluminium mullions do not provide a thermal block between exterior and interior, and thus any black-toned mullion will immediately re-radiate absorbed heat into the interior of the apartment. Unless more sophisticated glazing incorporating a thermal block is provided, window and door frames should be of a light, less thermally absorbent tone.

It appears from the submitted elevations and three-dimensional images that the amended design has not responded to the above recommendations in relation to screening of balconies and tone of glass framing elements. These concerns are reiterated.

5. Landscape

The recommended reduction in units in the tower footprint, coupled with the deletion of the townhouses and the corresponding reduction in the required parking, can assist the proposal in providing some more useful deep soil

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planting. At present, virtually all deep soil is confined to a very narrow strip along some of the site boundaries. This area as proposed cannot be utilized for appropriately scaled trees, as their canopies would overhang neighbouring properties extensively, and will potentially interfere with their footings.

It was noted that locations should be identified as part of the further site analysis and consideration of sight lines from adjoining properties, for the planting of some trees of a large scale that is in keeping with the scale of the development. The western, street side of the tower is one possible location for tall trees that will provide some summer shade to the western apartments and that is unlikely to interfere with views or adversely impact winter sun. This landscaping can potentially also assist in softening the significant contrast in scale from the proposal to the much lower current and likely future scale of the R2 zoned land on the western side of the street. Street trees can also assist with this visual softening. Appropriate deep soil locations can also be provided on the internal parts of the site for mid-scaled trees and large shrubs.

A landscape plan has not been seen and the above recommendations have not been discussed, other than for the roof-top terrace and communal ground level spaces. Substantial planting along perimeters and street front as recommended would have major benefits in relation to the character and amenity for future residents.

6. Amenity

As noted under other headings, the amenity of both the proposed dwellings on the subject site, and existing and future dwellings on adjacent sites, is significantly compromised by the lack of adequate setbacks as proposed. This needs to be revisited from a site analysis perspective, as outlined.

The need for appropriate screening of summer sun to balconies and apartment doors and windows, that fully considers orientation, should be addressed. This will also potentially assist with providing some visual depth, texture and differentiation to the facades.

The amenity of the proposed townhouses was considered to be poor for the reasons outlined elsewhere above.

The above issues need to be addressed, but these aside, with the deletion of the townhouses the amenity of the residential apartment would be good quality, with outlook from the large majority of apartments towards attractive views, good solar access and ventilation, and with excellent on-site amenities. Three additional points:-

.The amenity of the pool could be enhanced if it were to be relocated further to the north to take better advantage of afternoon sunlight.

.The projecting corner balconies will be extremely exposed to winds, and should be fitted with adjustable screens to ensure that they will be habitable in such weather conditions.

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.The lift lobbies/corridors on each level do not have access to daylight and natural ventilation as clearly recommended by the ADG, and as provided or required in the many applications reviewed by the UDCG. This might be accepted given that it was not an issue previously raised, but is nevertheless of concern.

7. Safety

No specific issues identified.

No further comment

8. Housing Diversity and Social Interaction

The proposal for a number of communal areas, including a pool, gymnasium, rooftop deck and mens' shed were all considered to be very positive inclusions that would contribute to the building of a vibrant community within the development. It was suggested that the rooftop communal area might also include a small area of enclosed common space, that might incorporate basic tea making facilities.

If site planning is reassessed as recommended, further opportunities are likely to emerge through good landscaping, for even more attractive communal spaces.

A small enclosed area as part of the rooftop communal area would further enhance its amenity, although in view of the high quality of amenities at ground level, this is not a necessary provision.

9. Aesthetics

The Group noted that the development's aesthetics had been given consideration, and in many respects offered potential for a good outcome, once basic planning and bulk and scale issues were addressed. The aesthetics of the facades should be informed substantially by the orientation of each, with consideration of privacy, solar gain and protection from wind on balconies. Access to views will also be an important part of these considerations. Similarly aesthetics should not override practical sustainability considerations, and large expanses of black or very dark cladding and aluminium window and door framing should be avoided.

The architectural character as now better demonstrated in the montage views would be of good standard. As the design is further refined it should be borne in mind that a development of this scale will be extremely prominent, and the basic objective should be for the building not to be over-dominant, but as far as possible to fit well into its evolving urban context. To this end the reduction in height and increased southern boundary setbacks required to comply with the controls will assist: the somewhat stark 'black and white' finishes as indicated should also be toned down, particularly the top roof canopy and the vertical 'blade' element. Provision of adjustable screens to balconies, as well as

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responding to sustainability and amenity concerns, would also assist in 'humanizing' the character of the building.

.Amendments Required to Achieve Design Quality

As outlined under the headings above, there needs to be a return to the site analysis process to better inform site planning. More thorough and in-depth consideration needs to be demonstrated in respect to impacts on surrounding sites and development. Boundary setbacks reflecting the ADG minimum distances and the interface between the proposal and existing and likely-future surrounding development, needs to be more extensively considered and demonstrated on plans and sections.

The stated intent of the site planning strategy (a slender tower) was supported, but it was noted that this had not been successfully carried through in the site planning proposed. Support for any development exceeding the maximum 24.5m height achievable under the NB Strategy because of demonstrable public benefit and design excellence is very difficult to justify.

It was noted that the 3D montage renderings should provide a more accurate representation of existing and likely future development in the context. Similarly cross-block sections and other diagrams that fully outline the preservation of views and interfaces between adjacent properties should also be provided as part of a more extensive site analysis.

The following matters as discussed above under various headings must be addressed and resolved -

*.The height must be reduced at least to comply with the height control of 24.5 metres which would take advantage of the 'concession' provisions of the Nelson Bay Strategy plan. Due to the slope of the site the top of the building would need to step down on the eastern side by approximately one level. It should be noted that although one of the conditions required to qualify for this bonus ('strategic public benefit') is possibly satisfied, the application falls well short of achieving the other ('outstanding design excellence'), and thus this height cannot be supported by the Panel, let alone a height *additional* to this of approximately 7 metres.*

.The setback from the southern boundary must be increased to at least 9 metres.

.Detailed design issues particularly those discussed under Amenity and Aesthetics

.Summary Recommendation

The Group could not support the proposal, even if it complied with the 17.5m height limit, because of a number of significant departures from the ADG

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separation standards and the amenity and equity issues arising. The additional height sought further exacerbates this situation.

However, the stated site development strategy, which recognised the need for a slender tower and appropriate view sharing and sensitive consideration of solar access, was considered to be appropriate. Providing all of the issues raised under the above headings were adequately addressed, and providing also that the proposal convincingly demonstrates through its architecture a design excellence, there is an opportunity for an attractive, viable and amenable development on the subject site.

Although the amended submission has resolved some concerns, and aspects of the design are of good quality, the application cannot be supported for the reasons documented above.

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ITEM 1 - ATTACHMENT 3 NOTICE OF DETERMINATION.

	PORT STEPHENS COUNCIL	Notice of Determination <small>Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).</small>
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Development consent is granted to development application 16-2016-631-1 subject to the conditions in Schedule 1.

Notice is hereby made under Section 81 of the Environmental Planning and Assessment Act 1979 (the Act) of a Development Consent issued under Section 80 of the Act, for the development described below. The consent should be read in conjunction with the conditions contained in Schedule 1 and the notes contained in Schedule 2.

Determination Outcome: Approval, subject to conditions

APPLICATION DETAILS

Application No: 16-2016-631-1

Property Address: LOT: 18 SEC: 7 DP: 8611,
LOT: 17 SEC: 7 DP: 8611
**11 Church Street NELSON BAY,
13 Church Street NELSON BAY**

Description of Development: **Residential Flat Building (Incorporating 8 Storey Apartment Complex with Underground Car Parking)**

Date of determination: [Click here to enter a date.](#)

Date from which the consent operates: [Click here to enter an operational date.](#)

Date on which the consent shall lapse: Enter date of approval plus 5 yrs and 1 day (unless physical commencement has occurred)

MR R J LOURENS
Senior Development Planner

Supreme Planning Tribunal, Environmental Planning and Assessment Act 1979 (NSW)
Planning and Assessment Department, Level 4, 499 Pitt Street
The City of Sydney, New South Wales 1587

16-2016-631-1
16/04/2017



PORT STEPHENS COUNCIL

Notice of Determination
Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

SCHEDULE 1

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc.Title	Sheet	Rev	Date	Drawn By
Residential Development, 11-13 Church Street, Nelson Bay (16 Sheets)	DA00, DA01, DA05 - DA17, DA19	C	February 2017	Koturic & Co
Residential Development, 11-13 Church Street, Nelson Bay (4 Sheets)	DA02 - DA04, DA 18	B	January 2017	Koturic & Co
Residential Development, 11-13 Church Street, Nelson Bay (2 Sheets)	474-L1, 474-L2	E	29/01/2017	Impact Planners Pty Ltd
Residential Development, 11-13 Church Street, Nelson Bay (1 Sheet)	474-L3	D	29/01/2017	Impact Planners Pty Ltd

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

Notice of Determination (DA) 16-2016-631-1
 11-13 Church Street, Nelson Bay
 The Port Stephens Council

11-13 Church Street
 Nelson Bay
 NSW 2262



PORT STEPHENS COUNCIL

Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to the commencement of works**, erosion and sediment control measures shall be put in place to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with *Managing Urban Stormwater – Soils and Construction, Volume 1* (Landcom, 2004).
4. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. A monetary contribution is to be paid to Council for the provision of 54 additional dwellings and units, pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, Section 94 of the *Environmental Planning and Assessment Act 1979*, and Councils Section 94 Contribution Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration	\$1,160.00	\$62,640.00
Public Open Space, Parks and Reserves	\$2,543.00	\$137,322.00
Sports and Leisure Facilities	\$6,865.00	\$370,710.00
Cultural and Community Facilities	\$2,448.00	\$132,192.00
Road Works	\$1,616.00	\$87,264.00
Fire & Emergency Services	\$225.00	\$12,150.00
Total		\$802,278.00

Payment of the above amount shall apply to Development Applications as follows:

- a) **Building work - prior to the issue of the Construction Certificate**

Note: The amount of contribution payable under this condition has been calculated at the time of determination and in accordance with the Port Stephens Section 94 contributions plan. The contribution amount is valid for twelve months from the

1. Council Resolution No. 11, 11 April 2017, Item 10.1
2. Council Resolution No. 11, 11 April 2017, Item 10.1
3. The amount of contribution payable to the

4. Council Resolution No. 11, 11 April 2017, Item 10.1
5. Council Resolution No. 11, 11 April 2017, Item 10.1



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Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

consent date. Should payment take place after twelve months the contribution shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics.

- The shared vehicle driveway, internal traffic aisles shall have a width to cater for design vehicle paths determined by Australian Standard AS2890 into and out of assigned parking spaces for a minimum of seventy (70) vehicle parking spaces for residents and the provision of a minimum nineteen (19) visitor parking spaces onsite. This requirement will be met by providing vehicle swept paths utilising the 85th percentile turning circle as outlined in AS 2890.1: Off-street Car Parking.

A Construction Certificate cannot be issued until full details of the driveway and internal traffic aisles have been supplied to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

- The design of the vehicular access for the service bay facilities must comply with AS 2890. Details demonstrating compliance with these Standards are to be included on the plans submitted in association with a Construction Certificate application.

A design certificate satisfying these requirements is to be issued by a suitably qualified professional engineer and submitted to the Certifying Authority **prior to the issue of a Construction Certificate.**

- The driveway and other ground level hardstand areas shall be graded to the street drainage network where practical or so that water runoff is shed to the approved stormwater drainage system. All ground surface collected stormwater overflows shall be dispersed as sheet flow at ground level in a manner that does not create concentrated or nuisance flows for nearby buildings or neighbouring properties.

The Construction Certificate cannot be issued until full details of driveway/hardstand area grading are provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

- The following details of the stormwater drainage system are required **prior to the issue of any Construction Certificate:**
 - A detailed on site infiltration plan shall be prepared by a suitably qualified and experienced engineer to adequately attenuate ground surface collected stormwater for all storm events up to and including the 1% Annual Exceedance Probability (AEP) event. The approved design infiltration rate (180mm/hr) shall be the minimum specified for the design of the infiltration system.
 - Interallotment drainage, covered by a suitable easement, and an emergency overland flow path for major storm events, that is directed to the public drainage system in accordance with Council requirements.
 - The design shall include details of the location (including levels), type and size of infiltration systems, orifice, roof guttering (with gutter guards to prevent

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The Council of Port Stephens Council

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100-102, Church Street, Nelson Bay, NSW 2263
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- blockage), downpipes, pipes, pits and the boundary pit discharge point to the public drainage system.
- Complete design calculations are to be provided demonstrating the system's capacity to contain/infiltrate and convey concentrated roof stormwater run-off, via guttering and downpipes suitably sized, into a legal point of discharge.
 - Any charged system proposed must provide suitable head from roof gutters / tank overflow to the highest point (typically the property boundary) in the charged line to Council's satisfaction.
 - The stormwater quality treatment train shall treat storm water, prior to discharge, to PSC DCP 2014 targets. Small Scale Site Quality Model or DCP deem to comply methodology may be used to demonstrate how the following targets are met:
 - a) Total nitrogen retention post-development load: 45%
 - b) Total phosphorus retention post-development load: 60%
 - c) Total suspended solids post-development load: 90%
 - d) Gross pollutants post-development load: 90%
10. Detailed engineering plans shall be submitted to Council or an accredited Private Certifier (with the appropriate category of accreditation) for approval prior to issue of the Construction Certificate.
- The details shall be in accordance with this consent, the BCA, Council's Design and Construction Specifications, policies and standards, as a minimum and include but are not limited to:
- Structural and geotechnical details for footings taking into consideration the effects of the proposed stormwater infiltration discharge method;
 - Structural details for concrete or masonry drainage structures;
 - Structural details for boundary retaining walls; and
 - Construction erosion and sediment control.
11. Movable privacy screens shall be installed on the balconies on the eastern and western elevations of the building. The screens must cover at least 50% of the balcony area.
- Amended development plans illustrating the additional privacy screens are to be submitted and be deemed to be satisfactory by the Certifying Authority **prior to the issue of the Construction Certificate.**
12. **Prior to the issue of the Construction Certificate**, an amended landscape plan must be provided showing seven (7) *Tristaniopsis laurina* trees within the Church Street road reserve.
13. **Prior to the issue of a Construction Certificate**, a geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works an ASS

	PORT STEPHENS COUNCIL	Notice of Determination <small>Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).</small>
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Management Plan is to be prepared by a suitably qualified engineer and submitted to the Certifying Authority for approval.

The recommendations and/or mitigation measures contained within the Acid Sulfate Soils (ASS) Management Plan shall be complied with during works.

14. Prior to the issue of a Construction Certificate, evidence that Lots 17 & 18 Sec 7 DP8611 have been consolidated must be provided to the Certifying Authority.

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES

15. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of the Certifying Authority.
16. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
17. Civil Works within the development site are subject to:
- inspection by Council, or the Certifying Authority;
 - testing by a registered NATA Laboratory; and
 - Approval by Council or the Certifying Authority at each construction stage as determined by Council's Design and Construction Specification, policies and standards.
18. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
19. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
- Monday to Friday, 7am to 6pm;
 - Saturday, 8am to 1pm; and
 - No construction work to take place on Sunday or Public Holidays.
- When the construction site is in operation the L₁₀ level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.
20. Construction work associated with piling of the building foundations is to be restricted to the following times:

Notice of Determination No. 16/2016-631-1, Environmental Planning and Assessment Act 1979 (NSW)
Council of Port Stephens, 11 April 2017
The Council of Port Stephens Council
Council Secretary
Council Secretary



- Monday to Friday, 8am to 5pm; and
 - No construction work to take place on Saturday, Sunday or Public Holidays.
21. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
 22. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.
 23. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, if Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
 24. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment, the person undertaking the excavation must preserve and protect the building from damage, which may involve underpinning and supporting the building in an approved manner.

The adjoining property owner shall be given 7 days' notice before excavating below the level of the base of the footings of a building on an adjoining allotment of land. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, allotment of land includes a public road and any other public place.
 25. Building demolition shall be carried out in accordance with Australian Standard AS2601-2001 - The Demolition of Structures.
 26. The demolition and disposal of materials containing asbestos should be carried out in accordance with Workcover Authority Guidelines. The material may be disposed of at the Newline Road Waste Facility in Raymond Terrace, please phone the facility on (02) 4983 4100 to arrange disposal.
 27. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of the Certifying Authority.

Approved by Council on 11 April 2017. Resolution number: 10320/17
Approved by Council on 11 April 2017. Resolution number: 10320/17
The Council's website is available at: www.portstephens.nsw.gov.au

For further information
Please contact:



28. The only fill material that may be received at the development site is:

- Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act 1997 (POEO)*; or
- Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

29. Civil Works within the development site are subject to:

- inspection by Council, or the Certifying Authority;
- testing by a registered NATA Laboratory; and
- Approval by Council or the Certifying Authority at each construction stage as determined by Council's Design and Construction Specification, policies and standards.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

20. Collected roof runoff stormwater shall be piped from the approved drainage system and connected to a **legal point of discharge**.
21. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority **prior to issue of the Occupation Certificate**.
22. Submission of Works-As-Executed plans and accompanying report prepared and certified by a suitability qualified hydraulic engineer confirming all stormwater drainage systems are constructed in accordance with the approved plan.

Minor variations can be accepted providing they are clearly identified in the report and the hydraulic engineer certifies that site flow up to the 1% annual exceedance probability (AEP) rainfall event are conveyed from all roof areas on site to a **legal point of discharge**.

An Occupation Certificate cannot be issued until the Works-As-Executed plans and accompanying reports have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.



- 23. The provision of a reinforced concrete vehicle footpath crossings with a minimum width of 6.235m **prior to the issue of the any Occupation Certificate**. A Driveway Construction Application must be made with Council, as the Roads Authority, prior to the commencement of vehicle footpath crossing works.
- 24. **Prior to the issue of a Final Occupation**, an Operation and Maintenance Plan for the stormwater system shall be prepared by a suitably qualified engineer, detailing a regular maintenance programme for infiltration and pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator.
- 25. All disturbed public footpath areas shall be reinstated with graded compacted topsoil and turfed to the satisfaction of Council. Smooth transitions shall be made with adjoining property frontages and the top-soiling and grassing extended to suit.
- 26. The applicant shall restore, replace or reconstruct any damaged sections of kerb and guttering, road pavement, stormwater, or any other public infrastructure located within the Road Reserve which results from construction activities, as determined by Council's Development Engineers or Civil Assets Engineer. The applicant shall bear all associated costs with restoring the public infrastructure to satisfaction of the Council.

An Occupancy Certificate shall not be issued until all necessary remediation and repair works have been completed to the satisfaction of Council.

- 27. **Prior to the issue of the Occupation Certificate**, the Principal Certifying Authority is to be satisfied that all landscape works have been undertaken in accordance with the approved plans.
- 28. The required street trees shall be replanted to the satisfaction of Council **prior to the release of the Occupation Certificate**.
- 29. **Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall be satisfied that all commitments listed in BASIX Certificate No. **745467M**, or an amended version of this certificate, have been complied with.
- 30. **Prior to the issue of the Occupation Certificate**, the Principal Certifying Authority is to be satisfied that the following swimming pool requirements have been addressed:
 - The swimming pool is to be fully enclosed with fencing and gates to comply with the Swimming Pool Act 1992 and Regulations;
 - All backwash/pool waste water is to be piped/drained to the sewer of the Hunter Water Corporation in accordance with the requirements of the Hunter Water Corporation; and
 - The swimming pool/spa water recirculation and filtration system installation shall comply with AS 1926.3 – 2010 and/or AS 2610.2 – 2007.

Notice of Determination No. 16/2016-631-1, Environmental Planning and Assessment Act 1979 (NSW)
Principal Certifying Authority: Council of Port Stephens
The Council of Port Stephens Council



- 31. **Prior to the issue of the Occupation Certificate**, the Principal Certifying Authority is to be satisfied that the following safety measures have been installed in the storage areas located on the Lower Basement Carpark Level (Sheet DA-02):
 - CCTV surveillance cameras and recording devices must be installed to monitor this area; and
 - Access gates must be installed at the entrance to storage area.
- 32. The title of the respective lots shall be endorsed with the following encumbrances under Section 88B of the Conveyancing Act:
 - Easements for stormwater drainage

Port Stephens Council shall be nominated as the Authority to release, vary or modify the above restrictions. Details that effect the encumbrances must be submitted to Council **prior to the release of the Occupation Certificate.**

CONDITIONS TO BE SATISFIED AT ALL TIMES

- 33. The replacement street trees are to be maintained to maturity through use of mulch and watering to achieve natural height.
- 34. All ground surface collected stormwater overflows shall be dispersed as sheet flow at ground level in a manner that does not create concentrated or nuisance flows for nearby buildings or neighbouring properties.
- 35. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
- 36. Filling shall not obstruct any natural drainage path or water drainage system. Neither shall the fill encroach onto any adjoining property.
- 37. In areas that are disturbed for site filling, all available topsoil shall be stockpiled and re-used at the completion of the earthworks. The topsoil shall be spread evenly and lightly rolled. All disturbed areas shall be stabilised within 14 days of completion of filling operations with grass cover by either turfing or seeding.
- 38. Motor vehicles are only permitted to enter and leave the site in a forward direction. On site manoeuvring areas are to be kept clear for this purpose.
- 39. The storage of materials, placement of toilets and rubbish skips etc. within the road reserve is not permitted by this consent. Separate approval under the Roads Act is required to occupy, close or partially close the road reserve adjacent to the property.
- 40. Deck areas must not be used for laundry purposes, including clothes drying.

Signature of Council Officer: [Signature] Date: 11/04/17
Name: [Name] Title: [Title]
The Council Officer responsible for the consent: [Name] Title: [Title]

MINUTES ORDINARY COUNCIL - 11 APRIL 2017

ITEM 1 - ATTACHMENT 3 NOTICE OF DETERMINATION.



41. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
42. The storage of materials, placement of toilets and rubbish skips etc. within the road reserve is not permitted by this consent. Separate approval under the Roads Act is required to occupy, close or partially close the road reserve adjacent to the property.
43. Vents, antennae, air conditioning units and any plant equipment, are to be located within the basement, chased into the building, or screened so as not to be visible from the street or any public place.
44. Air-conditioning and ventilation systems installed at the premises must be installed and maintained to ensure that no offensive or intrusive noise is created, as defined by the Protection of the Environment Operations Act 1997.
45. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
 - The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

ADVICES

- a. Consideration to the guidance provided by the Australian Institute of Refrigeration, Air Conditioning and Heating (AIRAH) document Air Conditioning Residential Best Practice Guideline (NSW), which provides general information and appropriate locations for air conditioners to be installed to avoid creating noise nuisance is recommended. This is available at www.airah.org.au/Content/NavigationMenu/Resources/BestPracticeGuide.
- b. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- c. Should any Aboriginal 'objects' be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment and Heritage must be informed accordance with Section 89A of the *National Parks and Wildlife Act, 1974* (as amended). Works affecting Aboriginal 'objects' on the site must not continue until the Office of Environment and Heritage has been informed. Aboriginal 'objects' must be managed in accordance with the *National Parks and Wildlife Act, 1974*.
- d. Telecommunications infrastructure to services the premises should be installed which complies with the following:

1. The proposed telecommunications infrastructure should be installed in accordance with the following:
2. The proposed telecommunications infrastructure should be installed in accordance with the following:
3. The proposed telecommunications infrastructure should be installed in accordance with the following:



- The requirements of the Telecommunications Act 1997 (Cth)
 - For a fibre ready facility, the NBN Co's standard specifications current at the time of installation.
 - For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line is located underground.
- e. Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.
- f. Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/the person having the benefit of the development consent to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.

SCHEDULE 2


RIGHT OF APPEAL

If you are dissatisfied with this decision:

- a review of determination can be made under Section 82A of the Act, or
- a right of appeal under Section 97 of the Act can be made to the Land and Environment Court within six (6) months from the date on which that application is taken to have been determined.

NOTES

- This is not an approval to commence work. Building works cannot commence until a construction certificate is issued by Council or an accredited certifier.
- Consent operates from the determination date. For more details on the date from which the consent operates refer to section 83 of the Environmental Planning and Assessment Act 1979.
- Development consents generally lapse five years after the determination date, however different considerations may apply. For more details on the lapsing date of consents refer to section 95 of the Environmental Planning and Assessment Act 1979.
- It is important to note that complying with the Premises Standards does not mean those responsible for buildings are fulfilling all their responsibilities in relation to possible discrimination under the DDA. The Premises Standards state that a building certifier, building developer or building manager of a relevant building must ensure that the building complies with the Access Code.

Approved:  Cr. Peter D'Amico
Mayor, Port Stephens Council
The Council Chambers, Nelson Bay, NSW

Approved:  Cr. Peter D'Amico
Mayor, Port Stephens Council
The Council Chambers, Nelson Bay, NSW

COUNCIL REPORTS

Mayor Bruce MacKenzie left the meeting at 6:52pm. Deputy Mayor, Cr Chris Doohan took the Chair for the remainder of the meeting.

ITEM NO. 1

**FILE NO: 17/72423
RM8 REF NO: PSC2016-0281**

SUPPORT FOR BAN OF EXOTIC ANIMAL PERFORMANCES

REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND
COMPLIANCE SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the submission from Newcastle City Council and continue to approve events in Port Stephens based on our current assessment processes.

**ORDINARY COUNCIL MEETING - 9 MAY 2017
MOTION**

098	Councillor Ken Jordan Councillor Steve Tucker It was resolved that Council move into Committee of the Whole.
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COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Paul Le Mottee Councillor Ken Jordan That the recommendation be adopted.
--	---

**ORDINARY COUNCIL MEETING - 9 MAY 2017
MOTION**

099	Councillor Ken Jordan Councillor Paul Le Mottee It was resolved that Council note the submission from Newcastle City Council and continue to approve events in Port Stephens based on our current assessment processes.
------------	---

BACKGROUND

The purpose of this report is to provide Council with correspondence from Newcastle City Council in relation to their position on exotic animal performances in circuses.

Newcastle City Council wrote to Port Stephens Council on 13 March 2017 advising they had recently received a number of complaints in relation to the Star Dust Circus performances which include exotic animal performances carried out on land managed by Venues NSW adjacent the McDonald Jones Stadium in Newcastle.

At the Newcastle City Council Ordinary Council Meeting held on 28 February 2017, Council resolved a notice of motion that:

- Reaffirms its prohibition of the use of performing exotic animals in circuses on Council owned land.
- Respects widespread community concern that the welfare of animals is given recognition through appropriate legislation at a local, state and national level.
- Calls on all state government agencies that are responsible for the leasing of land within the Newcastle Local Government Area for circus use to implement a policy of prohibition on the use of performing exotic animals in circuses.
- Write to our adjacent Councils in the Hunter recommending their consideration of a similar position towards exotic circus animals.

The correspondence from Newcastle City Council is included as **(ATTACHMENT 1)**.

Strategic Direction	Delivery Program 2013-2017
Community Safety.	Use Council's regulatory powers and Government legislation to enhance public safety.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resourcing implications resulting from the proposed recommendation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Assessment and approval of events involving circus animals on Council land are undertaken under current legislation with approval granted based on the merits of the application.

There are no legal requirements or current policy position for Council to consider a ban on exotic circus animals.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There may be a reputational risk to Council if consideration to banning exotic circus animals is not supported.	Low	Consider supporting Newcastle City Council's position to ban exotic circus animals.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social implications may arise as a result of local groups holding protests at Council facilities.

CONSULTATION

Consultation with key stakeholders has been undertaken.

Internal

Coordinator of Planning and Developer Relations and Coordinator of Environmental Health and Compliance both advised that processes are adhered to and approvals granted based on the merit of the application.

External

Nil.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Correspondence from Newcastle Council.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

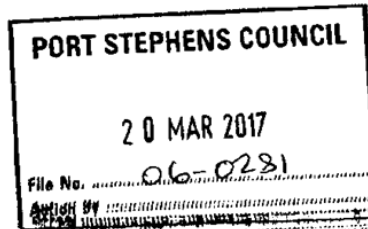
Nil.

ITEM 1 - ATTACHMENT 1 CORRESPONDENCE FROM NEWCASTLE COUNCIL.

Planning and Regulatory.ABaxter/PMcMurray
Ref: 5101600
Phone: 02 4974 2000

13 March 2017

Wayne Wallis
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324



PO Box 489, Newcastle
NSW 2300 Australia
Phone 02 4974 2000
Facsimile 02 4974 2222
Email mail@ncc.nsw.gov.au
www.newcastle.nsw.gov.au

Dear Mr Wallis

SUPPORT FOR BAN OF EXOTIC ANIMAL PERFORMANCES

Newcastle City Council has recently received a number of complaints in relation to the Star Dust Circus performances which include exotic animal performances carried out on land managed by Venues NSW adjacent the McDonald Jones Stadium in Newcastle.

At an Ordinary Council Meeting held on 28 February 2017, Council resolved a notice of motion that:

- Reaffirms its prohibition of the use of performing exotic animals in circuses on Council owned land.
- Respects widespread community concern that the welfare of animals is given recognition through appropriate legislation at a local, state and national level.
- Calls on all state government agencies that are responsible for the leasing of land within the Newcastle Local Government Area for circus use to implement a policy of prohibition on the use of performing exotic animals in circuses.
- Write to our adjacent Councils in the Hunter recommending their consideration of a similar position towards exotic circus animals.

I am writing to you to seek your Council's consideration of Newcastle City Council's position on this matter.

Council has also written to Venues NSW and the Department of Primary Industries. A copy of the correspondence sent to these agencies is attached for your information.

Yours faithfully

A black rectangular redaction box covering the signature of Frank Cordingley.

Frank Cordingley
ACTING INTERIM CHIEF EXECUTIVE OFFICER

Great Place, Great Lifestyle, Great Future

ITEM NO. 2

**FILE NO: 16/438244
RM8 REF NO: PSC2016-01484**

PROPOSED KOALA HOSPITAL AND TOURISM FACILITY AT TREESCAPE

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the development and operation of the proposed Koala Hospital and Tourism Facility at Treescape Holiday Park based on the appropriate funding model depending outcomes of grant applications.
- 2) Endorse the Business Case (**TABLED DOCUMENT 1**) for the operation of the facility.
- 3) Commit to capital funding in accordance with the Business Case subject to the success of the grant fund applications made.

**ORDINARY COUNCIL MEETING - 9 MAY 2017
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Steve Tucker Councillor Sally Dover</p> <p>That the recommendation be adopted.</p>
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**ORDINARY COUNCIL MEETING - 9 MAY 2017
MOTION**

100	<p>Councillor Ken Jordan Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the development and operation of the proposed Koala Hospital and Tourism Facility at Treescape Holiday Park based on the appropriate funding model depending outcomes of grant applications.2) Endorse the Business Case (TABLED DOCUMENT 1) for the operation of the facility.3) Commit to capital funding in accordance with the Business Case subject to the success of the grant fund applications made.
------------	---

BACKGROUND

The purpose of this report is to provide Council with the outcome of the feasibility study undertaken on the concept of a koala hospital and tourism facility at Treescape Holiday Park.

In April 2016 Council endorsed \$64,000 in funding in order to undertake a study into the feasibility of a koala hospital and tourism facility. That funding has been utilised to undertake:

- The preparation of a Business Case;
- Full financial models based on different funding assumptions;
- Site survey including topography and vegetation mapping;
- The completion of architectural design plans;
- Cost estimate report on the construction of the main facility;
- Bushfire assessment;
- Traffic engineer's assessment;
- Key state agency engagement.

The concept of such a facility was initiated by Port Stephens Koalas (PSK) (formally known as Hunter Koala Preservation Society) in response to the challenges facing the region's koala population. Council recently commissioned a distribution and abundance study of koalas in the Port Stephens LGA. A key finding from the study stated:

At this point in time there is no indication that the PSLGA's population is endangered; there is also evidence of population recovery in the west in the form of widespread records over the last two koala generations which, if the reporting trends continue, will result in the identification of new areas of generational persistence in coming years. In this context however, there is evidence that decline is ongoing in the east, the occupancy estimate for the current koala generation (2010-2015) being approximately 35% of available habitat. This latter situation mandates against complacency and so requires further assessment and monitoring.

The findings of this study that incorporates treatment, release and mortality rates for koalas as recorded by Port Stephens Koalas emphasises the urgent requirement for a centralised facility to treat sick and injured koalas to assist with the wider strategic management of free living koalas in Port Stephens.

Port Stephens koalas are one of the last remaining populations located on the east coast of Australia. The population at best estimates may be as many as 1200, but may be as low as 250. PSK has recorded on average 50 koala deaths per year over the last three years, and mortality rates are increasing.

Koala populations face a number of significant threats in Port Stephens including habitat loss and fragmentation, disease, vehicle strikes, dog attacks and bushfires. There is strong scientific evidence to suggest that the koala populations in the east of

MINUTES ORDINARY COUNCIL - 9 MAY 2017

the LGA are in decline over the last three generations, and that there is no evidence that the population has increased across the LGA from 2000 when the Port Stephens Comprehensive Koala Plan of Management was prepared.

Evidence does suggest that some koala populations in the west of the LGA are increasing, which lends scientific weight to the argument that populations can recover in the area.

Council is currently developing and implementing an integrated strategy for the conservation of koalas and their habitat. This strategy will look to give effect to the NSW State Government's own strategy and recommended actions. The hospital and tourism facility will play a significant role in this wider approach to species and habitat management through its treatment and rehabilitation of sick and injured koalas.

The feasibility study has taken the concept of a koala hospital, and developed it into a one of a kind hospital and tourism facility, that still has the primary driver of koala care at its core. The proposed facility will incorporate three main areas of activity:

- 1) Koala hospital incorporating the care, rehabilitation, and breeding of koalas.
- 2) Education and research into koala population management.
- 3) Koala based tourism and unique accommodation.

The concept facility is ultimately a self-sufficient business model that will deliver the environmental, social and economic benefits detailed in the Business Case. In summary the key outcomes are:

- The unique facility and required associated infrastructure will have a capital construction cost of \$3M;
- The hospital component will play an integral role in the preservation of the Port Stephens koala population;
- The Business Case demonstrates that the concept is financially viable including assumed borrowings, ensuring the continued operation and success of Treescape;
- The tourism component of the facility is expected to generate \$675,000 in revenue per year, and uplift in accommodation of \$345,000 per year.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Economic Development.	Provide processes and services that deliver benefit to tourism in Port Stephens. Provide Economic Development services to local business.

FINANCIAL/RESOURCE IMPLICATIONS

The proposed facility has had a preliminary capital cost estimate of \$3M. Included in this figure is the construction and fit out of the facility, a new amenities building for the koala facility and Treescape, all pens, enclosures, fencing and boardwalk, and all required infrastructure including utilities and road and car park improvements. The business model demonstrates that the concept is financially viable and ongoing external funding is not required.

Council has applied for grant funding from two possible sources:

The first is for \$1.5M through the Federal Government's Building Better Regions program. The grant fund program is a dollar for dollar contribution, so if Council is successful the matching co-contribution will need to be made. Port Stephens Koalas has committed \$200,000 towards this, leaving the balance of \$1.3M to be funded.

The second is for the total \$2.8M through the State Government's Regional Growth – Environment and Tourism Fund. The grant fund program does not require any co-funding from Council.

The final funding solution for the facility will not be able to be determined until the grant applications have been finalised but will consist of one of the following options in order of preference:

- 1) \$2.8M through the State Government's Regional Growth – Environment and Tourism Fund plus \$200,000 from Port Stephens Koalas.
- 2) \$1.5M through the Federal Government's Building Better Regions Program, \$1.3M from Port Stephens Council, and \$200,000 from Port Stephens Koalas.
- 3) \$2.8M from Port Stephens Council, and \$200,000 from Port Stephens Koalas.

Simple financial budget sheets have been included in the Business Case for each of the three possible funding solutions.

If the grant fund applications are not successful, it is recommended that Council continues to seek funding from Federal and State Government to reduce the capital contribution made from Council. The Business Case includes this scenario and indicates that the financial outcome remains positive.

The Business Case and financial modelling has been independently audited by PKF (Councils Internal Auditor). The audit examined the base assumptions used for the business case and the details within the financial workings with no concerns raised.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No	3M	From borrowings if no grant fund application is successful; or
Existing budget	No	1.3M	From borrowings as a co-funding contribution to Federal Government Building Better Regions Fund.
Reserve funds	No		
Section 94	No		
External grants	Yes	3M	From the State Government Rebuilding NSW Regional Growth – Environment and Tourism Fund; or
External grants	Yes	1.5M	From the Federal Government Building Better Regions Fund application.
Other	Yes	200,000	Co-funding commitment from Port Stephens Koalas.

LEGAL, POLICY AND RISK IMPLICATIONS

Through the feasibility study several risk factors have been preliminarily identified and addressed. The facility requires several licences to care for and show koalas in the way proposed. Initial conversations with the respective agencies have established that there should be no impediment to the success of the applications.

Department of Industry - Lands has indicated a similar positive position with regards to lease arrangements, both extending the current lease period for Treescape and agreeing to a sublease arrangement for the proposed facility

Operational matters regarding bushfire and the like have all been assessed and can be satisfactorily addressed through the consent process and operational controls.

Governance of the facility is an issue to be addressed fully to ensure smooth and successful operation of the facility. It is suggested that this will be best undertaken by way of a board of management. While this has not been created at this time, other working examples have been considered and there is confidence that a successful governance structure will be put in place following endorsement of the proposal.

Alternate options were considered, including just constructing a standalone hospital and alternate locations for the facility. Risks associated with a standalone facility are that without an income stream, the facility will be reliant on continual funding from Council or external sources in order to continue operations. The proposed model

removes this risk through the income received through the tourism component. Alternate locations were considered but ruled out of consideration for various site constraints or issues that were identified.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that external funding won't be sourced, and the facility won't be constructed.	Moderate	Borrow required capital.	No
Without an effective governance structure, the facility will not be effective.	Moderate	Design and implement a proven governance structure, board or committee, with the required skill sets.	Yes
Construct a standalone hospital facility that does not have recurrent income to operate.	Moderate	Include revenue stream from tourism and accommodation component to ensure continued operations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The facility will deliver significant social, economic and environmental benefits to the community of Port Stephens. The hospital will focus and deliver high quality care and rehabilitation to sick and injured koalas. The research into disease control and the breeding program will further assist with population conservation. The education component of the facility will provide an opportunity for people to learn what they can do to assist with the conservation effort, and strengthen the community's affiliation with the koala and build community identity. Economic benefits will include increased job and volunteer opportunities, and offer training to Certificate 3 level through the facility. The tourism and accommodation business will return an additional \$8.1M in profit to Council over the next 10 years, and potentially add \$1M per year into the local economy.

CONSULTATION

Extensive consultation with key stakeholders has been undertaken by the Property Section to ensure that this proposed facility is integrated into Council's approach to koala and habitat management. Finance has been heavily involved in assisting with the financial modelling that is incorporated in the business model. The Business Development Unit that are located at the Treescape facility staff have assisted with market testing and sensitivity analysis with regards to visitor numbers and tariffs for day visitors and accommodation nights.

Internal

- Natural Resources.
- Business Development Unit - Holiday Parks.
- Finance Section.
- Koala Strategy Working Group.

External

In addition to planning matters in forming the Business Case, and recognising that the management of the Port Stephens koala population involves a number of various agencies and groups, significant discussion has been undertaken with the following agencies to gain input and manage obstacles and opportunities in their respective areas:

- Port Stephens Koalas.
- NSW Minister for the Environment.
- NSW Parliamentary Secretary for the Hunter.
- NSW Department of Industry - Lands.
- NSW Department of Primary Industry.
- NSW Department of Premier and Cabinet.
- Office of Environment and Heritage.
- Destination NSW.
- Meryl Swanson, Member for Paterson.
- Kate Washington, Member for Port Stephens.
- Port Macquarie Koala Hospital.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Business Case including financial models and concept plans.

ITEM NO. 3

**FILE NO: 16/477367
RM8 REF NO: PSC2016-02172**

**COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE
NELSON BAY FOR ROAD PURPOSES.**

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Proceed with the compulsory acquisition of part of Lot 567 DP1033413 for the purpose of public road in accordance with the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- 2) Make an application to the Minister and the Governor for approval to acquire part Lot 567 DP1033413 by compulsory process under Section 186(1) of the *Local Government Act 1993*.
- 3) Upon acquisition classify the land as Operational Land.
- 4) Authorise the General Manager and the Mayor to sign and affix the Seal of Council to all required documentation.

**ORDINARY COUNCIL MEETING - 9 MAY 2017
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Steve Tucker Councillor Ken Jordan</p> <p>That the recommendation be adopted.</p>
--	--

**ORDINARY COUNCIL MEETING - 9 MAY 2017
MOTION**

101	<p>Councillor Ken Jordan Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Proceed with the compulsory acquisition of part of Lot 567 DP1033413 for the purpose of public road in accordance with the requirements of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>.2) Make an application to the Minister and the Governor for approval to acquire part Lot 567 DP1033413 by compulsory process under
------------	---

MINUTES ORDINARY COUNCIL - 9 MAY 2017

	Section 186(1) of the <i>Local Government Act 1993</i> .
3)	Upon acquisition classify the land as Operational Land.
4)	Authorise the General Manager and the Mayor to sign and affix the Seal of Council to all required documentation.

BACKGROUND

The purpose of this report is to recommend Council proceed with the compulsory acquisition of approximately 342sqm of the Victoria Parade Reserve Nelson Bay **(black hatch on ATTACHMENT 1)** to allow Council to extend Yacaaba Street through to the Victoria Parade roundabout. Victoria Parade Reserve is formally known as Crown Reserve R64421.

Council purchased 106 and 108 Magnus Street, Nelson Bay **(green tint on ATTACHMENT 1)** between 2000 and 2012 for the future purpose of alleviating traffic congestion and providing better traffic and pedestrian flow by extending Yacaaba Street from Magnus Street to the Victoria Parade roundabout. The Yacaaba Street extension is included in the Nelson Bay Town Centre and Foreshore Strategy 2012 as one of the actions to implement Recommendation 2.1 "Improve pedestrian access across Victoria Parade".

The recent design for the Yacaaba Street extension requires approximately 342sqm of Crown Land. This land will be compulsorily acquired to accommodate the new road along with existing and proposed Council infrastructure such as footpaths and stormwater detention.

Crown Lands (the Crown) own all of Crown Reserve R64421 for the purpose of Public Recreation. Council has submitted a "Proposed Acquisition of Crown Land" application to the Crown seeking 'in principle' agreement to apply to compulsorily acquire the Crown Land. The Crown has accepted this application and the Compulsory Acquisition process can now proceed however this can take between 6 and 12 months to complete. Due to the road work being planned to commence directly, the Crown has agreed that Section 175 of the Roads Act 1993 can be utilised to permit Council access to the Crown Land for construction prior to finalisation of the compulsory acquisition process.

The Crown has advised that Compulsory Acquisition should apply when Council seeks to establish infrastructure on Crown Land where the associated improvements will vest with Council. While negotiation of a private treaty sale is an option, the Crown has advised this may take considerable time to progress hence compulsory acquisition is preferred.

Following this resolution, Council will make application to the Office of Local Government for the Minister and the Governor's approval to acquire the Crown Land by compulsory process under Section 186 (1) of the Local Government Act 1993 and in accordance with the requirements of the Land Acquisition (Just Terms

MINUTES ORDINARY COUNCIL - 9 MAY 2017

Compensation) Act 1991. Compensation will be assessed by the NSW Valuer General.

The recent road design also requires acquisition of approximately 18sqm of the Common Property land (**red tint on ATTACHMENT 1**) within Strata Scheme 20977 at 110 Magnus Street, Nelson Bay. This separate acquisition will be the subject of negotiations and a future Business Paper to recommend either a negotiated purchase or compulsory acquisition should negotiations fail.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Transport.	Promote sustainable and improved, accessible and flexible transport modes.

FINANCIAL/RESOURCE IMPLICATIONS

This acquisition from the Crown is not expected to exceed \$20,000 plus costs estimated at no more than \$5,000.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No	Nil at present	Grants have been applied for, though no announcements have been made.
Other	Yes	\$25,000	External loan as per the Notice of Motion dated 14 February 2017.

LEGAL, POLICY AND RISK IMPLICATIONS

There are no apparent legal implications from the recommendations.

There are no apparent policy implications from the recommendations. The Acquisition & Divestment of Land Policy will be followed to finalise the acquisition.

There are risk implications if the recommendations are not adopted in that the acquisition will not be able to be finalised.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the acquisition will not be finalised.	High	Adopt the recommendations.	Yes
There is a risk that the Minister will not approve the compulsory acquisition.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social implications include improved vehicle and pedestrian access between the town centre and the foreshore

Economic implications include Council having to fund the works without benefit of Government funding, improved access to the advantage of local businesses.

Environmental Implications include a minor increase in traffic noise to the neighbouring residential developments.

CONSULTATION

Consultation with key stakeholders has been undertaken by Council to determine that acquisition of this Crown Land is essential to complete works and the processes necessary to secure access for the works and complete the compulsory acquisition of the land.

Internal

- Senior Survey & Land Information Manager.
- Asset Section Manager.
- Civil Projects Engineer.
- Land Acquisition & Development Manager.
- Property Services Manager.
- Property Officer.

External

- Crown Land Offices – Maitland and Newcastle.
- Office of Local Government.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Locality Map.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



ITEM NO. 4

**FILE NO: 17/62085
RM8 REF NO: PSC2011-03812**

DEVELOPMENT OF 14 BAGNALL AVENUE SOLDIERS POINT

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Develop 8 townhouses at 14 Bagnall Ave Soldiers Point and endorse the funding strategy.

**ORDINARY COUNCIL MEETING - 9 MAY 2017
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor Sally Dover That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 9 MAY 2017
MOTION**

102	Councillor Ken Jordan Councillor Paul Le Mottee It was resolved that Council develop 8 townhouses at 14 Bagnall Ave Soldiers Point and endorse the funding strategy.
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BACKGROUND

The purpose of this report is to obtain Council resolution to develop 8 townhouses at 14 Bagnall Ave, Soldiers Point.

At its ordinary meeting of 14 February 2017, Council resolved to approve Development Application 16-2016-679-1 for 8 x 3 bedroom townhouses on Council land. This replaces an earlier approval for 6 townhouses deemed to be not in keeping with current contemporary design and urban design outcomes. A Construction Certificate application is now being prepared and once secured, Council will run an open tender to select a builder for the development.

A recent construction cost estimate prepared by a Quantity Surveyor for the Development Application was \$2,686,000. The Quantity Surveyor advises that a lower construction cost is likely to be achieved through the open tender process. Allowing for contingencies at 5%, total construction cost should not exceed \$2,820,000. The estimate of total development cost is \$3,325,000 made up of the above construction cost estimate, GST, real estate agency fees, legal fees and the Section 94 contribution.

Local real estate agents have provided opinions on end sale price ranging from \$550,000 to \$575,000. Based on these opinions, development of the approved scheme should return Council between \$1,100,000 and \$1,275,000. This compares favourably with the land's value "As Is" estimated at \$650,000 to \$750,000. A 4 lot residential subdivision has also been briefly modelled and returns around \$800,000 to Council. Consequently to progress with the DA approved 8 townhouse development is recommended.

It is recommended that marketing and sales of the individual townhouses should be undertaken by a local real estate agent to be appointed at a later date following a competitive process. The marketing and sales strategy and recommended sales prices will be determined at that time in consultation with the Property Advisory Committee and Council will require an independent valuation.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
A Sustainable Council.	Council will maintain its underlying financial performance to budget at break even or better. Council will increase its revenue from non-rates sources. Manage risks across Council. Attract, retain and develop staff to meet current and future workforce needs. Provide enabling business support services for Council's operations.

FINANCIAL/RESOURCE IMPLICATIONS

The completed development is expected to generate gross sales revenue in the order of \$4,400,000 to \$4,600,000. The funding strategy developed with assistance from the Finance Section is to fund the construction cost of \$2,820,000 to build the proposed townhouses from the proceeds of sales from the commercial subdivision at 155 Salamander Way Salamander Bay.

This strategy may require delay of construction until early 2018 however Council will continue to progress the development by way of securing a Construction Certificate, running an open tender for construction and awarding the tender.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget			
Reserve Funds			
Section 94			
External Grants			
Other	Yes	\$2,820,000	Funded from the Property Reserve through sale proceeds from 155 Salamander Way Salamander Bay

LEGAL, POLICY AND RISK IMPLICATIONS

Legal implications extend to the open tender and appointment of a builder however these will be mitigated by utilising the HROC standard tender and contract documents.

There are no apparent policy implications. The open tender will be run by Council's Finance Section and a Tender Panel will be appointed to include Council officers from Finance and Property Services with external independent advisors as required.

There is a risk that if the resolutions are not secured, Council will not benefit from additional returns from the development of the land over and above its current estimated value. There is also a risk that the completed townhouses may sell for less than estimated. At present there are only three 3 bedroom medium density dwellings listed for sale in Soldiers Point and the surrounding suburbs, none of which are new construction. Two recent sales in the adjoining 3 dwelling development at 16 Bagnall Avenue are a 3 bedroom 2 bathroom double garage single level dwelling for \$660,000 and a 4 bedroom 2 bathroom double garage single level dwelling for \$685,000. With the current buoyant market conditions for residences in the location together with the new construction, the risk of lower than estimated sale prices is considered to be low. Should this risk be evident leading up to completion of the development Council has the option of renting the completed townhouses then selling them at some future time to capitalise on price increases.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will over capitalise the development.	Med	Significant feasibility undertaken to confirm expected expense and revenue, buoyant market assists this outcome.	Yes
There is a risk that a reduced return to Council will result if the land is sold undeveloped	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social implications include the likelihood that some purchasers will be investors and this will provide much needed rental accommodation in the location.

Economic implications include Council utilising proceeds of commercial land sales at 155 Salamander Way Salamander Bay into the Property Reserve funds for the development. The timing of the availability of these funds may see the need to delay the commencement of construction on the subject development until early 2018. Funding of the development should generate a return between \$1,100,000 and \$1,275,000. This return is in excess of the land's estimated current value of \$650,000 to \$750,000.

There are no known environmental implications.

CONSULTATION

Consultation with key stakeholders has been undertaken by Council to determine support for the development and the preferred funding model.

Internal

- Property Advisory Committee supports this development.
- Financial Services Manager has determined the funding option being bank borrowings.

External

- Local real estate agents for market sentiment and opinions of value.
- Quantity Surveyor for development cost estimate.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Stamped Plans.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

PORT STEPHENS COUNCIL
 This plan relates to
 Development Consent No.
 16-2016-679-1
 and is subject to conditions
 as shown on that Consent



DA SITE PLAN

EJE ARCHITECTURE
 ACK 932 543 | AIN 42 848 548
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 107A Adelaide Road, Adelaide SA 5000
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REV	DATE	COMMENTS
A	16/05/16	ISSUE FOR LANDSCAPING
B	01/08/16	ALTER UNIT LAYOUT
C	08/09/16	ISSUE TO CONSULTANTS
D	15/09/16	ISSUE FOR PRE-DEVELOPMENT
E	22/09/16	ISSUE FOR DA
F	20/10/16	RELOCATE WATER TANK AND CLOTHES LINE - UNIT 5 - TO BE ERECTIONARY

CHKD	HWG	PROJECT
LE	DE	Townhouse Development
LE	DE	
LE	DE	
LE	DE	
LE	DE	
LE	DE	
LE	DE	
LE	DE	

DATE: 14 Bagnall Ave
 Soldiers Point 2317
 CLIENT: Sean Fox
 DRAWING: Site Plan

WORK IN DIMENSIONED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF SHORINGUP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.
 PROJECT: 11044 2016-11-20 Bagnall Avenue Townhouse
 DRAWN: LE
 DATE: AUG 2016
 SCALE: 1:200/A1



PORT STEPHENS COUNCIL
This plan relates to
Development Consent No.
16-2016-679-1
and is subject to conditions
as shown on that Consent



EJE ARCHITECTURE
ACK 902 932 643 | AIN 02 848 648 648
100 Adelaide Street West, Suite 2000
Toronto, Ontario M5H 4B1, Canada
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REV	DATE	COMMENTS
A	10/05/16	ISSUE FOR LANDSCAPING
B	01/08/16	ALTER UNIT 6 LAYOUT
C	09/09/16	ISSUE TO CONSULTANTS
D	10/09/16	ISSUE FOR PRE-GAMEETING
E	22/09/16	ISSUE FOR B.A.
F	29/09/16	RELOCATE WATER TANK AND G.D. LINE - UNIT 6 - TO BE BOUNDARY

PROJECT: Townhouse Development
SITE: 14 Bagnall Ave Soldiers Point 2317
CLIENT: Sean Fox
DRAWING: Ground Floor Plan

WORK IN FIGURED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.
FILENAME: 1104 2016-11-23 Bagnall Avenue Townhouse EJE ARCHITECTURE
DRAWN: LE
DATE: AUG 2016
SCALE: 1:100(A1)
PROJECT NO: 11044
PHASE: DA
DRAWING NO: DA03
REV: F



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16-2016-679-1
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as shown on that Consent

1:100



SOLDIERS POINT ROAD

BAGNALL AVENUE

LEVEL 1

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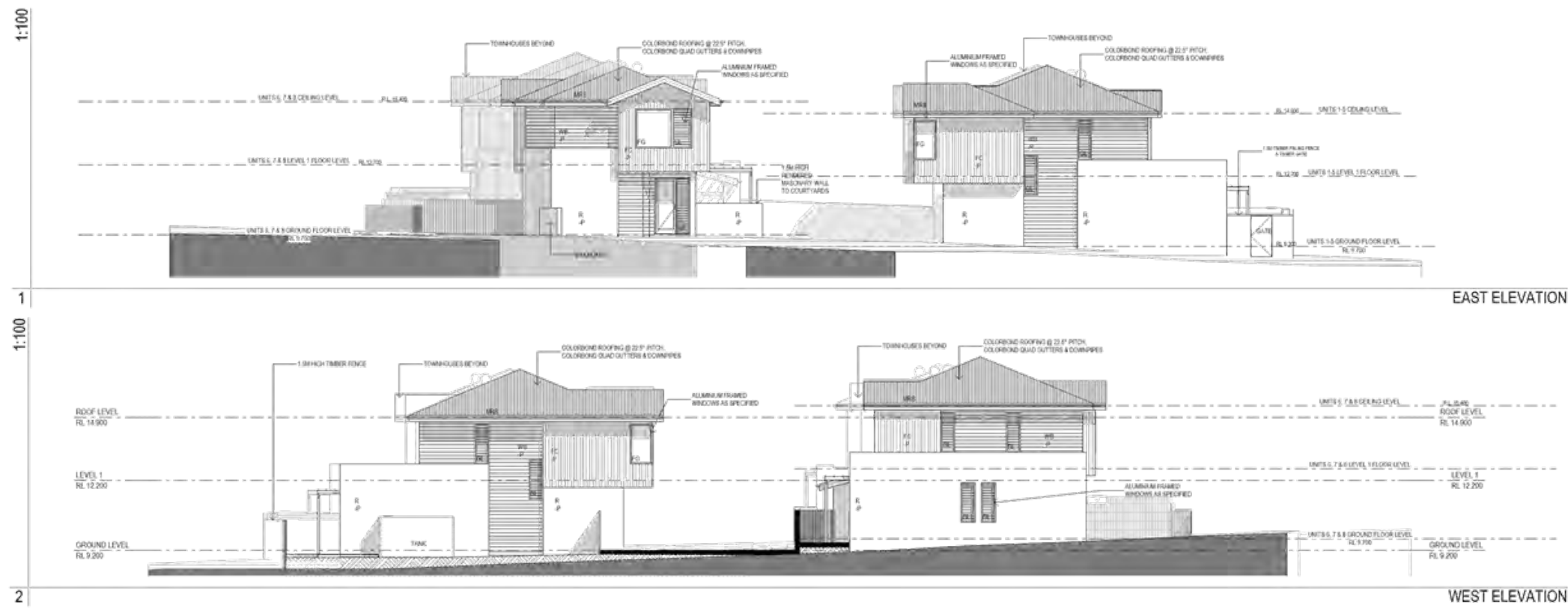


REV	DATE	COMMENTS
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B	01/08/16	ALTER UNIT 2 LAYOUT
C	09/09/16	ISSUE TO CONSULTANTS
D	15/09/16	ISSUE FOR PRE-GAMESTHIS
E	22/09/16	ISSUE FOR DA

PROJECT: Townhouse Development
SITE: 14 Bagnall Ave Soldiers Point 2317
CLIENT: Sean Fox
DRAWING: First Floor Plan

WORK IN DIMENSIONED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.
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DRAWN: LE DATE: AUG 2016 SCALE: 1:100
PROJECT NO: 11044 PHASE: DA DRAWING NO: DA04 REV: E





KEY

AW	AWNING WINDOW
FC	FIBRE CEMENT
GL	GLASS
GL	GLASS EGGFRAMES
HWS	HOT WATER SYSTEM
MRS	METAL ROOF SHEETING
O	OBSCURE
PF	PAINT FINISH
R	RENDER
SG	SLIDING GLASS DOOR
SL	SKYLIGHT
WB	WEATHERBOARDS

PORT STEPHENS COUNCIL
 This plan relates to
 Development Consent No.
 16-2016-679-1
 and is subject to conditions
 as shown on that Consent

EJE ARCHITECTURE
 ACK 903 937 643 | AIN 02 844 645 548
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REV	DATE	COMMENTS
A	10/05/16	ISSUE FOR LANDSCAPING
B	01/08/16	ALTER UNIT & LAYOUT
C	08/09/16	ISSUE TO CONSULTANTS
D	15/09/16	ISSUE FOR PRE-DEVELOPMENT MEETING
E	22/09/16	ISSUE FOR D.A.

PROJECT: Townhouse Development
 SITE: 14 Bagnall Ave Soldiers Point 2317
 CLIENT: Sean Fox
 DRAWING: East and West Elevations

WORK IN FIGURED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF SHOROTERM DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.
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 DRAWN: LE DATE: AUG 2016 SCALE: 1:100
 PROJECT NO: 11044 PHASE: DA DRAWING NO: DA05 REV: E



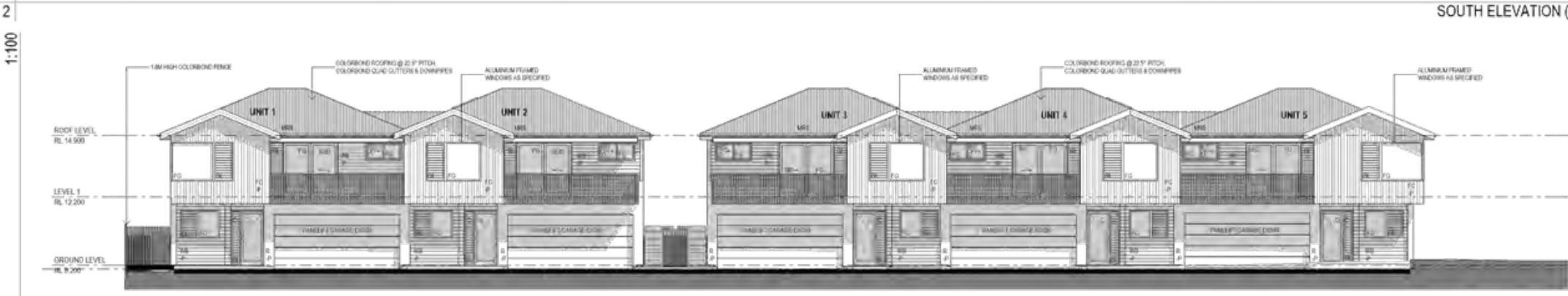


NORTH ELEVATION (Block A & B)

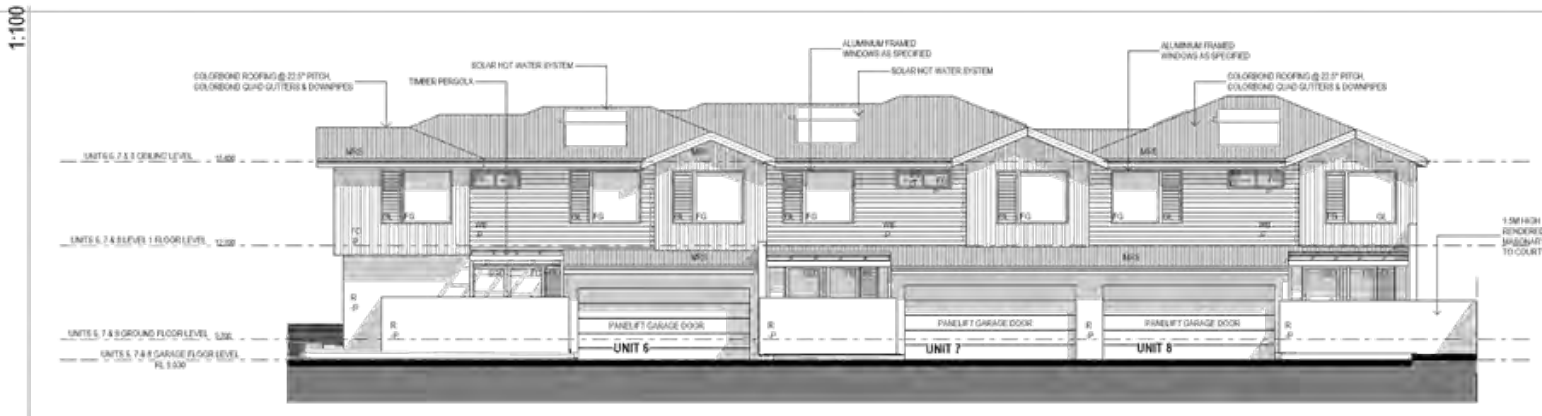
PORT STEPHENS COUNCIL
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 as shown on that Consent



SOUTH ELEVATION (Block C)



SOUTH ELEVATION (blocks A & B)



NORTH ELEVATION (Block C)

- KEY**
- AW AWNING WINDOW
 - FC FIBRE CEMENT
 - FG FIXED GLASS
 - GL GLASS LOUVRES
 - RWS HOT WATER SYSTEM
 - MRS METAL ROOF SHEETING
 - O OBSCURE
 - P PAINT FINISH
 - R RENDER
 - SG SLIDING GLASS
 - SGD SLIDING GLASS DOOR
 - SL SKYLIGHT
 - WB WEATHERBOARDS

EJE ARCHITECTURE
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REV	DATE	COMMENTS
A	10/05/16	ISSUE FOR LANDSCAPING
B	01/08/16	ALTER UNIT 6 LAYOUT
C	09/09/16	ISSUE TO CONSULTANTS
D	10/09/16	ISSUE FOR PRE-GAMEETING
E	22/09/16	ISSUE FOR D.A.

PROJECT: Townhouse Development

SITE: 14 Bagnall Ave
 Soldiers Point 2317

CLIENT: Sean Fox

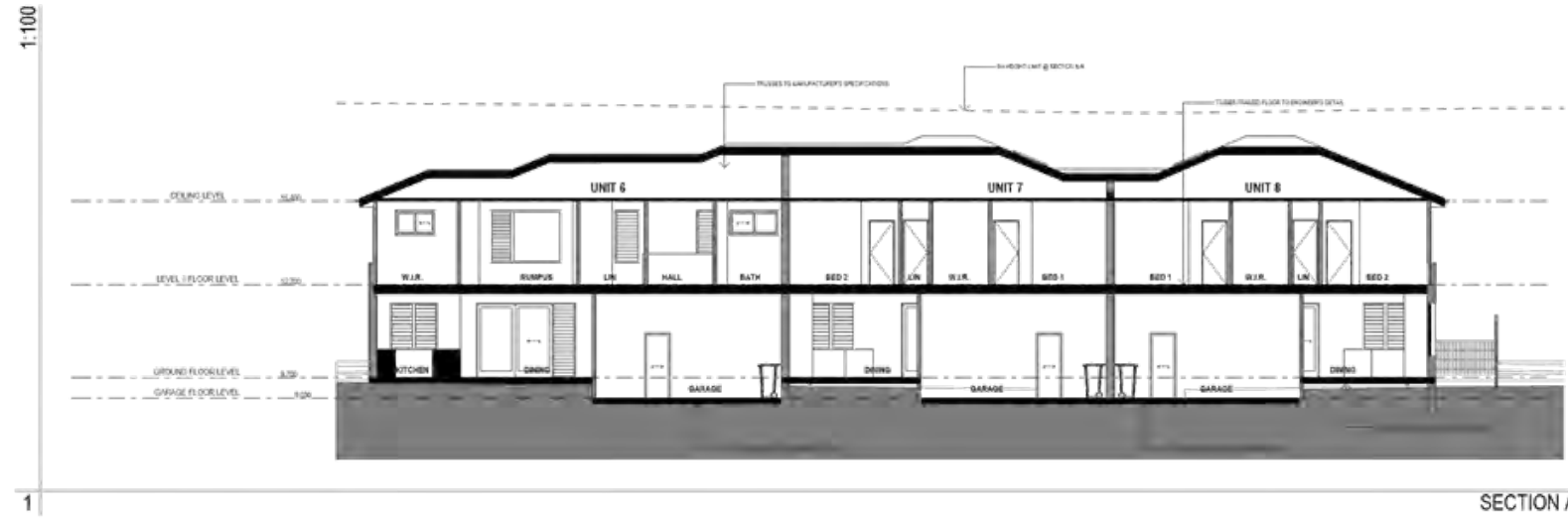
DRAWING: North & South Elevations

WORK IN DIMENSIONED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.
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 DATE: 22/09/2016
 SCALE: 1:100

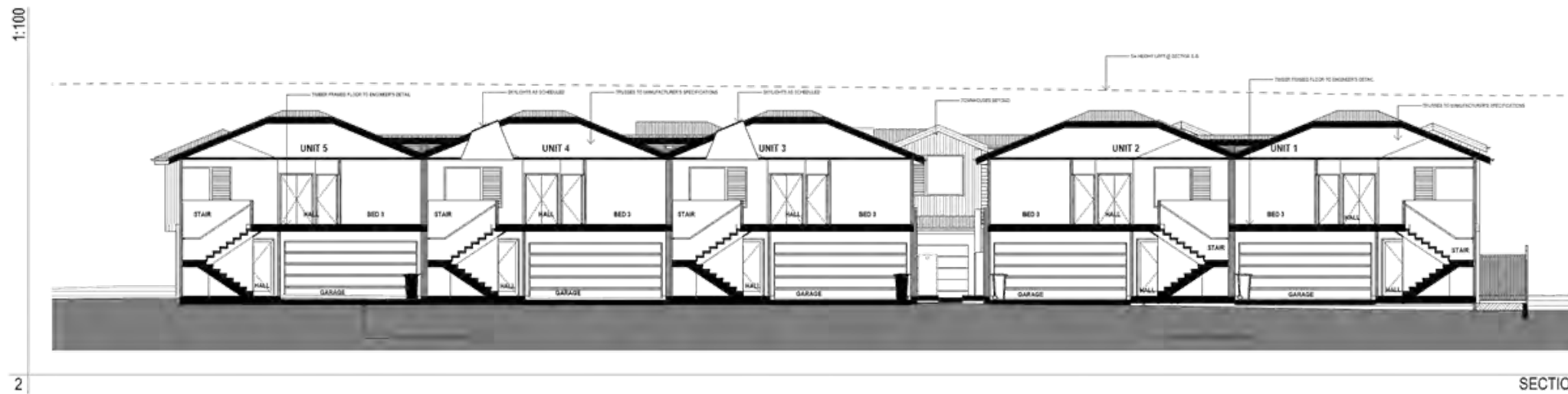
PROJECT NO: 11044
 PHASE: DA
 DRAWING NO: DA06
 REV: E



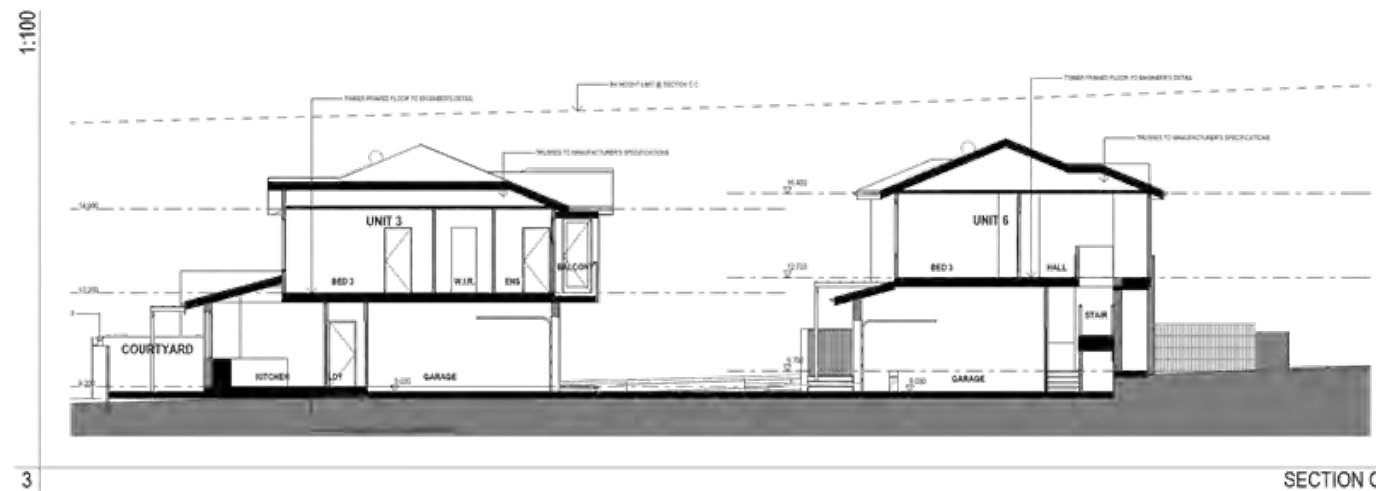
PORT STEPHENS COUNCIL
 This plan relates to
 Development Consent No.
 16-2016-679-1
 and is subject to conditions
 as shown on that Consent



SECTION A-A



SECTION B-B



SECTION C-C

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REV	DATE	COMMENTS
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C	09/09/16	ISSUE TO CONSULTANTS
D	10/09/16	ISSUE FOR PRE-GAME MEETING
E	22/09/16	ISSUE FOR B.A.

PROJECT: Townhouse Development
 DATE: 14 Bagnall Ave Soldiers Point 2317
 CLIENT: Sean Fox
 DRAWING: Sections

WORK IN FIGURED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.
 FILENAME: 11044 2016 08 16 Bagnall Avenue Townhouse (16-2016-679-1) 22/09/2016
 DRAWN: LE DATE: AUG 2016 SCALE: 1:100
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