

PORT STEPHENS
C O U N C I L

SUPPLEMENTARY INFORMATION

**ORDINARY COUNCIL MEETING
28 FEBRUARY 2023**

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COUNCIL REPORTS

2. DEVELOPMENT APPLICATION (DA) 16-2021-703-1 FOR A
RESIDENTIAL FLAT BUILDING AT 11 TO 15 CHURCH STREET,
NELSON BAY3

SUPPLEMENTARY INFORMATION

ITEM NO. 2

FILE NO: 23/50813
EDRMS NO: 16-2021-703-1

DEVELOPMENT APPLICATION (DA) 16-2021-703-1 FOR A RESIDENTIAL FLAT BUILDING AT 11 TO 15 CHURCH STREET, NELSON BAY

REPORT OF: KATE DRINAN - DEVELOPMENT AND COMPLIANCE SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

BACKGROUND

The purpose of this report is to provide the full suite of attachments to the original report. The attachments were numbered incorrectly in the body of the report and the Addendum Planners Assessment Report was omitted.

The Addendum Planners Assessment Report, although not included as an attachment, was significantly reproduced throughout the Council Report.

ISSUES

The attachments were numbered incorrectly within the body of the report and the Addendum Planners Assessment Report was omitted.

ATTACHMENTS

- 1) Recommended Conditions of Consent. [↓](#)
- 2) Council Meeting Minutes - 13 September 2022. [↓](#)
- 3) Original Planners Assessment Report. [↓](#)
- 4) Locality Plan. [↓](#)
- 5) Clause 4.6 Report. [↓](#)
- 6) Addendum Planners Assessment Report. [↓](#)

SCHEDULE 1 – CONDITIONS OF CONSENT**1.0 - General Conditions of Consent**

The following conditions of consent are general conditions applying to the development.

- (1) **Approved plans and supporting documentation** – Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
A-A100	Q	Floor Plan – Basement	Holdsworth Design	23.02.2022
A-A101	T	Floor Plan – Lower Ground	Holdsworth Design	15.04.2022
A-A102	V	Floor Plan – Ground Level	Holdsworth Design	18.05.2022
A-A103	V	Floor Plan –Level 1	Holdsworth Design	22.06.2022
A-A104	T	Floor Plan –Level 2	Holdsworth Design	18.05.2022
A-A105	T	Floor Plan –Level 3	Holdsworth Design	18.05.2022
A-A106	T	Floor Plan –Level 4	Holdsworth Design	18.05.2022
A-A107	R	Floor Plan –Level 5	Holdsworth Design	18.05.2022
A-A108	T	Floor Plan –Level 6	Holdsworth Design	18.05.2022
A-A109	T	Floor Plan –Level 7	Holdsworth Design	18.05.2022
A-A110	Y	Floor Plan – Level 8	Holdsworth Design	27.09.2022
A-A111	U	Floor Plan – Roof Level	Holdsworth Design	27.09.2022
A-A400	M	Elevations – Sheet 1	Holdsworth Design	27.09.2022
A-A401	N	Elevations – Sheet 2	Holdsworth Design	27.09.2022
A-A450	O	Sections	Holdsworth Design	27.09.2022
LP.01/G	G	Landscape Plan – Ground Floor	Meraki Green Landscape Architecture	17.06.2022
LP.02/E	E	Landscape Plan – First Floor	Meraki Green Landscape Architecture	20.06.2022
LP.03/D	D	Landscape Plan – Fourth Floor	Meraki Green Landscape	02.03.2022

ITEM 2 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
			Architecture	
LP.04/D	D	Landscape Plan – Seventh Floor	Meraki Green Landscape Architecture	02.03.22
LP.05/D	D	Landscape Plan – Eighth Floor	Meraki Green Landscape Architecture	02.03.22
LP.06/C	C	Landscape Plan – Specifications Sheet	Meraki Green Landscape Architecture	02.03.22
12549041-C100	F	Civil Stormwater Basement Stormwater Plan	GHD	30.06.2022
12549041-C200	F	Civil Stormwater Lower Ground Floor Stormwater Plan	GHD	30.06.2022

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

- (2) **Surrender of Development Consent** – The applicant must surrender the consents relating to **DA No. 16-2000-1014** (as amended) for a Urban Housing Development (21 units) and **DA No. 16-2016-631** (as amended) for a Residential Flat Building (Incorporating 8 Storey Apartment Complex with Underground Car Parking) by submitting an application for ‘Surrender of a Consent’ to Port Stephens Council in accordance with *Clause 68 of the Environmental Planning & Assessment Regulation 2021*. This must be done prior to the issue of the first Construction Certificate.
- (3) **Limits of consent** – This consent does not approve:
 - a) The fit out or hours of operation of the neighbourhood shop and ancillary café.
 - b) Signage.

The above must be approved under a separate development application.
- (4) **Design Amendments** – Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.



- a) The Landscape Plan is to be updated to remove any bamboo species of plants along the sites southern and eastern boundaries and should be replaced by a species that can be easily maintained.
- b) The Landscape Plan is to be updated to include permanent intermittent panels of climbing structures on the blank concrete wall on the eastern elevation at the lower ground and ground levels. In the planter in the base, install *Ficus pumila* (under the blank sections) and *Trachelospermum jasmenoides* (under the climbing structures). The bed should also be planted with native grass like *Poa labillardieri* and *Lomandra tanika* to form a long-term living mulch.
- This should also be repeated on the southern side using *Parthenocissus tricuspidate* instead of the *Ficus pumila*. Any climbing structure should be high quality stainless using Ronstan Greening System or equivalent.
- The above plan amendments are to be endorsed by Council.
- (5) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (6) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation; and
- b) where necessary, underpin the adjoining premises to prevent any such damage.
- This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.
- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.
- The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
- (8) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (9) **Reflectivity** – The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.



- (10) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., are required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
- (11) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.
- Materials and colours are to be consistent with the Finishes Schedule on the approved Elevations – Sheet 1 and Sheet 2 by Holdsworth Design referenced in Part 1.0 Condition 1 of this consent.
- (12) **Installation of graphics and artwork on temporary site structures (graphic displays)** - A graphic display must be installed on temporary site structures in accordance with the following requirements:
- the graphic display must be complimentary to the surrounding character;
 - required site signage (including developer or corporate identification) must be sympathetic to the graphic display and must not exceed more than 5% (combined) of the surface area of the temporary site structure,
 - no third party advertising is permitted to be displayed at any time,
 - graphic displays must be installed to ensure long-term durability with a clean finish to the face of the temporary site structure;
 - graphic displays must be maintained in good repair for the duration of the project or until such time that the construction works no longer results in an adverse visual impact to the surrounding locality.

2.0 – Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Certification from a Structural and Geotechnical Engineer** to be provided for all retaining structures with consideration given specifically referencing walls adjacent to neighbouring properties, possible settlement influenced by the water table and stormwater infiltration system, water proofing and stability.

All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.

Details demonstrating compliance must be provided to the Certifying Authority.

- (2) **Ausgrid** – The applicant must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid which must be received before a Construction Certificate is issued.



- (3) **Potential acid sulfate soils** - A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.

The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.

- (4) **Civil engineering plans** – Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, access ways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications. The plans are also to include:

- a) Details shall be in accordance with this consent, the BCA, Councils Infrastructure Specification, as a minimum and include by 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;
 - Construction erosion and sediment control.
- b) Certification from a Structural and Geotechnical Engineer for the 50mm concrete binding layer on the internal face of the detention tanks where it is attached to the outlet emergency pipe to ensure that the external pressure from groundwater and the soil will not result in collapse.

Details demonstrating compliance must be provided to the Certifying Authority and Council.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

- (5) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council). The plans must include:

- a) The stormwater quality treatment train shall treat stormwater, prior to discharge, to Port Stephens Council Development Control Plan requirements. Before water is released into public drainage it must achieve Council's water quality stripping targets which are:
- a. Total nitrogen retention post-development load: 45%
 - b. Total phosphorus retention post-development load: 60%
 - c. Total suspended solids post-development load: 90%

Gross pollutants post-development load: 90%.



- b) All downpipes and associated guttering to cater for 1% AEP storm events in order to direct all runoff to infiltration areas.

Details such as plans and models demonstrating compliance must be provided to the Certifying Authority and Council.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

- (6) **Stormwater system Operation and Maintenance Procedure Plan** – An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal.

Details demonstrating compliance must be provided to the Certifying Authority.

- (7) **Erosion and sediment control plan**– Before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- Council's development control plan,
- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
- the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.

- (8) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.

- (9) **Landscape plan / street tree plan** – Street trees must be planted at no cost to Council and in the location(s) specified on the Landscape Plan prepared by Meraki Green Landscape Architecture, dated 22 April 2022 Rev F.

Details demonstrating compliance must be provided to the Certifying Authority.

- (10) **Design verification – SEPP 65** – A design verification statement from a qualified NSW Registered Architect must be submitted to the Certifying Authority confirming the Construction Certificate plans and specifications are consistent with the Development Application approval.

- (11) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:



- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;
- b) The floor must be impervious material covered at the intersection with the walls, graded and drained to an approved floor waste within the room; and
- c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

(12) **Hunter Water Corporation Approval** - A Section 50 application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC).

(13) **Car parking details** – Before the issue of a construction certificate, a suitably qualified engineer must review the plans, which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities - Off- Street Carparking and Council's development control plan.

(14) **Construction site management plan** - Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- a) location and materials for protective fencing and hoardings to the perimeter on the site
- b) provisions for public safety
- c) pedestrian and vehicular site access points and construction activity zones
- d) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- f) details of any bulk earthworks to be carried out
- g) location of site storage areas and sheds
- h) equipment used to carry out all works
- i) a garbage container with a tight-fitting lid
- j) dust, noise and vibration control measures
- k) location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Note. Condition only applies to dual occupancy developments and above.

ITEM 2 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



- (15) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of 59 additional dwellings pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$655	\$38,645
Civic Administration – Works Depot	\$1,266	\$74,694
Town Centre Upgrades	\$3,412	\$201,308
Public Open Space, Parks and Reserves	\$2,085	\$123,015
Sports & Leisure Facilities	\$1,961	\$115,699
Cultural & Community Facilities	\$1,332	\$78,588
Road Works	\$3,570	\$210,630
Shared Paths	\$3,286	\$193,874
Bus Facilities	\$9	\$531
Fire & Emergency Services	\$245	\$14,455
Flood & Drainage	\$1,877	\$110,743
Kings Hill Urban Release Area	\$302	\$17,818
TOTAL	\$20,000	\$1,180,000

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

- a) Prior to the issue of the Construction Certificate.

Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be indexed at the time of actual payment in accordance with the applicable Index.

- (16) **Roads Act Application** – The following information must be provided to Council as Roads Authority with the Roads Act application:
- a) A design for a public footpath along Church Street, which will join into the existing footpath on either side of the development site. The footpath must be designed in accordance with Councils Infrastructure Specifications.
- (17) **Long service levy** – In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (18) **Dilapidation Report – Adjoining Property** - A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.
- a) 19 Church Street, Nelson Bay
 b) 9 Church Street, Nelson Bay



- c) 18 Tomaree Street, Nelson Bay
- d) 61 Donald Street, Nelson Bay

The dilapidation report is to be prepared by a qualified engineer. All costs incurred in achieving compliance with this condition must be borne by the applicant.

- (19) **Dilapidation Report – Council Property** - A Dilapidation Report prepared by a qualified Structural/Civil Engineer must be submitted to the Certifying Authority.

The report must include a photographic survey of existing public roads, kerbs, footpaths, drainage structures, street trees and any other existing public infrastructure within the immediate area of the subject site.

All costs incurred in achieving compliance with this condition must be borne by the applicant.

Details demonstrating compliance must be provided to the Certifying Authority and Council.

3.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Home Building Act requirements** - Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —

- a) In the case of work for which a principal contractor is required to be appointed—
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) In the case of work to be done by an owner-builder—
 - (iii) the name of the owner-builder, and
 - (iv) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (2) **Home Building Act – Insurance** - In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in



accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

- (3) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:
- a) a description of the work to be carried out;
 - b) the address of the land on which the work is to be carried out;
 - c) the Registered number and date of issue of the relevant development consent;
 - d) the name and address of the Principal Certifier and the person who appointed the principal certifier;
 - e) if the principal certifier is a registered certifier
 - i) the certifier's registration number, and
 - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
 - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

- (4) **Notice commencement of work** – Notice must be given to Council and the Principal Certifier, if not the Council, of the person's intention to commence the erection of the building or undertake subdivision work at least two days prior to subdivision and/or building works commencing in accordance with Sections 6.6 (2) and 6.12 (2) (c) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:
- a) the name and address of the person;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the Registered numbers and date of issue of the development consent and construction certificate;
 - e) a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied; and
 - f) the date on which the work is intended to commence.

The notice must be lodged on the NSW planning portal.

- (5) **Signs on site** – A sign must be erected in a prominent position on any site on which



building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

- (6) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- a) a Construction Certificate has been issued by a Consent Authority;
- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
- c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (7) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.

An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

- (8) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.

Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.

Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.

- (9) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved



over any bare ground on site).

- (10) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

No materials, waste or the like are to be stored on the all-weather access at any time.

- (11) **Rubbish generated from the development** – Where not already available, 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 must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.

- (12) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

4.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Implementation of BASIX commitments** - While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

- (2) **Shoring and adequacy of adjoining property (if applicable)** - If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —

- a) Protect and support the building, structure or work from possible damage from the excavation, and
- b) Where necessary, underpin the building, structure or work to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

- (3) **Hours of work** – The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:



7.00am to 5.00pm on Monday to Saturday

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

- (4) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.

- (5) **Compliance with the Building Code of Australia** – Building work must be carried out in accordance with the requirements of the Building Code of Australia.

- (6) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:

- a) preserve and protect the building from damage; and
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.

The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

- (7) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

- (8) **Surveys by a registered surveyor** – While building work is being carried out, a



registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

- a) All footings/ foundations
 - b) At other stages of construction – any marks that are required by the principal certifier.
- (9) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved construction site management plan must be introduced during construction of the development.
- (10) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.
- (11) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.
- Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (12) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.
- In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
- Where remediation work is required, the applicant will be required to obtain consent for the remediation works.
- (13) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (14) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.
- (15) **Construction noise** – While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction



does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

- (16) **Delivery register** - The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered.

This register must be made available to Council officers on request and be provided to the Council at the completion of the development.

- (17) **Cut and fill** – While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.

- (18) **Uncovering relics or Aboriginal objects** - While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- "relic" means any deposit, artefact, object or material evidence that:
 - (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
 - (b) is of State or local heritage significance; and
- "Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

5.0 - Prior to Issue of a Subdivision Certificate

The following conditions of consent shall be complied with prior to the issue of a Subdivision Certificate.



- (1) **Strata Plan of Subdivision** – Sections 37 and 37A of the Strata Schemes (Freehold Development) Act 1973 require an application to be provided to Council for approval prior to the issue of the certified Strata Plan of subdivision.

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2021-703-1 and of compliance with the relevant conditions of consent, prior to the issuing of a Strata Plan of Subdivision.

Note: The final Strata Plan of Subdivision must be prepared to a quality suitable for lodgement with the NSW Land Registry Services.

- (2) **Restriction on issue of Strata Plan of Subdivision** – An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2021-703-1.

Documentary evidence of the issue of the Occupation Certificate must be provided to Council in conjunction with the application for the Strata Plan of Subdivision.

- (3) **Show easements / restrictions on the Plan of Subdivision** - The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.

- (4) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.

Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.

- (5) **Outstanding works** – The applicant is to lodge a bond with Council for the construction of outstanding works, including concrete footpath and/or pedestrian/cycle shared way and a bond can only be lodged once the agreement has been made with Council to accept this.

- (6) **Surveyor's Report** – A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.

Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.

- (7) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a) Electricity.
- b) Water.
- c) Sewer.



- d) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

- (8) **Section 88B Instrument** – The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
- a) easement for services;
 - b) easement to drain water and drainage easement/s over overland flow paths;
 - c) easement for on-site detention;
 - d) positive covenant over the on-site detention / water quality facility for the maintenance, repair and insurance of such a facility;
 - e) retaining wall, positive covenant, and restriction to user;
 - f) restriction as to user over sub-surface drainage pipes contained within the building area of allotments;
 - g) restriction as to user over any lots adjacent to a public reserve stipulating dividing fence type;
 - h) restriction as to user preventing the alteration of the final overland flow path shape, and the erection of any structures (other than open form fencing) in the overland flow path without the written permission of Council;
 - i) restriction as to user creating an easement for support and maintenance 900mm wide adjacent to the “zero” lot line wall;

6.0 - Prior to Issue of an Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.
- The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
- a) Electricity;
 - b) Water;



- c) Sewer; and
- d) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

- (4) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.

The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.

- (5) **Repair of infrastructure** – Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

- (6) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings and footpaths, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.

- (7) **Works as Executed Plans and any other documentary evidence** - Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems

The principal certifier must provide a copy of the plans to Council with the occupation certificate.

- (8) **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.

This certificate must accompany the Works as Executed plans.

- (9) **Street tree planting** – All street trees must be planted in accordance with the approved Street Tree Planting plan (as required under condition 2.0(1) of 16-2021-703-1).

- (10) **Completion of landscape and tree works** – Before the issue of an occupation



certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

- (11) **Car parking requirements** – A minimum of 15 car parking spaces including 2 disabled car parking spaces are to be dedicated to the Neighbourhood Shop and ancillary café tenancy. Parking must be permanently marked on the pavement surface.

There are to be a minimum 27 parking spaces marked for visitors, which must be signposted as “visitor parking”.

Car parking for residential units must be provided in accordance with the following minimums:

- One bedroom unit – 1 car space
- Two bedroom unit – 1 car space
- Three bedroom unit – 2 car spaces
- Four bedroom unit – 2 car spaces

Residential car parking is to be permanently numbered on the pavement.

There are to be 8 motorcycle parking spaces provided in accordance with the approved plans.

The electric vehicle parking space must be available for the use of all residents.

All car parking is to be provided in accordance with AS2890 and the approved plans.

- (12) **Bicycle requirements** – Bicycle parking racks to accommodate 5 bicycles must be installed on Ground Level.
- (13) **Loading/unloading facilities** – Loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.
- (14) **SEPP 65 – Design verification** – A design verification statement from a Registered and qualified architect must be submitted to the Principal Certifying Authority demonstrating the development has been constructed in accordance with the approved plans and the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (unless superseded by this DA Consent).
- (15) **Hunter Water Corporation approval** - A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (16) **Lot Consolidation** - Before the issue of any occupation certificate, Lot 156 DP 1094233 and Lot 178 DP 1235236 are to be consolidated.



A copy of the Registered Plan of consolidation must be provided to the Principal Certifying Authority.

7.0 – Ongoing Use

The following conditions of consent are operational conditions applying to the development.

- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (3) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (4) **Privacy screen** – Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **Residential air conditioning units** – During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa at the boundary adjacent to any habitable room of an adjoining residential premises.
- (6) **Maintenance of landscaping** – Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
- (7) **Waste management and collection** – The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.
- (8) **Operation of Neighbourhood Shop and ancillary café** – The café component must only operate whilst the Neighbourhood Shop operates and never independently. If the use of the Neighbourhood Shop ceases, the use of the ancillary café also ceases.
- (9) **Gym** – The gym is for the use of residents only. It must not be operated or leased in any commercial form.



- (10) **Communal Area Access** – All residents of the development are to have access to all communal areas, including:
- The enclosed and open communal areas on Ground Level and Level 8; and
 - Resident gym on ground floor.

Advice Note(s):

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.
- Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (5) **Works near/adjoining electricity network assets** – There are electricity network assets adjacent to the proposed development in Church Street. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables
- (6) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.



**SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS
REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning (Resilience and Hazards) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development.
- Council has considered and accepted the proposed development standard variation request to Clause 4.3 of the PSLEP. The proposed 32.18m building height and subsequent 4.18m variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, or result in negative privacy issues.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

1. Confirm and clarify the terms of Council's Approval;
2. Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
3. Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
4. Set standards and performance measures for acceptable environmental performance; and
5. Provide for the ongoing management of the development.

SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW

RIGHT OF APPEAL

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act



1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

RIGHT OF REVIEW

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. **(See exclusions note below).**

Exclusions: A request to review the determination of a development application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- a) A determination to issue or refuse to issue a complying development certificate, or
- b) A determination in respect of designated development, or
- c) A determination made by the Council under Division 4 in respect of an application by the Crown.

MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

ITEM NO. 5

**FILE NO: 22/202840
EDRMS NO: 16-2021-703-1**

DEVELOPMENT APPLICATION 16-2021-703-1 FOR A RESIDENTIAL FLAT BUILDING AT 11 TO 15 CHURCH STREET, NELSON BAY

REPORT OF: KATE DRINAN - DEVELOPMENT AND COMPLIANCE SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

**ORDINARY COUNCIL MEETING - 13 SEPTEMBER 2022
MOTION**

	<p>Councillor Steve Tucker Mayor Ryan Palmer</p> <p>That Council:</p> <ol style="list-style-type: none">1) Approve Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) subject to the conditions contained in (ATTACHMENT 1).2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.
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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: Mayor Ryan Palmer, Crs Matthew Bailey and Steve Tucker.

Those against the Motion: Crs Leah Anderson, Giacomo Arnott, Peter Francis and Jason Wells.

MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

The motion was lost.

Cr Giacomo Arnott gave notice of 2 foreshadowed motions.

- 1) Defer the DA to allow for conversations between Council staff and the proponent, with the aim of reducing the building height by one floor so the infraction against the building height limit is negligible.
- 2) Refuse Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) on the following grounds:
 - a) The proposal is inconsistent with S4.15(1)(a)(i) of the Environmental Planning and Assessment Act (the Act) as it breaches the height limit contained within the Port Stephens Local Environment Plan.
 - b) The proposal is inconsistent with S4.15(1)(b) of the Act as it will have a significant impact on the natural and built environments, including sight lines, views, overshadowing and height.
 - c) The proposal is inconsistent with S4.15(1)(c) of the Act as the site is not suitable for a building of the height that is proposed, and would be better served by a building that is built within the applicable height limit.
 - d) The proposal is inconsistent with S4.15(1)(d) of the Act, as the majority of submissions made by the public are opposed to the development due to it breaching the applicable height limit.
 - e) The proposal is inconsistent with S4.15(1)(e) of the Act, as it is not in the public interest to allow the proposal to breach the height limit and be forever imposed on the people of Port Stephens who went to significant effort to make submissions on the height limits, and this proposal.

**ORDINARY COUNCIL MEETING - 13 SEPTEMBER 2022
MOTION**

242	Councillor Giacomo Arnott Councillor Leah Anderson It was resolved that Council defer Development Application No. 16-2021-703-1 to allow for conversations between Council staff and the proponent, with the aim of reducing the building height by one floor so the infraction against the building height limit is negligible.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

Those for the Motion: Crs Leah Anderson, Giacomo Arnott, Peter Francis and Jason Wells.

Those against the Motion: Mayor Ryan Palmer, Crs Matthew Bailey Steve Tucker.

The motion was carried.

BACKGROUND

The purpose of this report is to present a Development Application (DA) 16-2021-703-1 for a residential flat building comprising 81 units, neighbourhood shop (including ancillary café), basement parking and strata subdivision at 11-15 Church Street, Nelson Bay, to Council for determination.

A summary of the DA and property details is provided below.

Subject Land:	11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236)
Total Area:	4628.79m ²
Zoning:	R3 Medium Density Residential
Submissions:	136 (108 on first notification, 28 on second notification)
Key Issues:	The key issues identified throughout the assessment of the DA relate to building height, bulk and scale, overshadowing, view loss and visual impact.

This DA has been reported to Council in accordance with Council's 'Planning Matters to be Reported to Council Policy' as the DA includes a request to vary a development standard by greater than 10%. The development standard is Clause 4.3 – Height of Buildings and the extent of the variation is 14.9%.

A Locality Plan is provided at **(ATTACHMENT 2)**.

Proposal

The DA seeks consent for a residential flat building (RFB), neighbourhood shop with ancillary café and strata subdivision. The DA specifically proposes:

- An 11 storey building containing 81 residential dwellings
- 159 car parking spaces (for residents and the neighbourhood shop/café tenancy)
- 8 motorcycle parking spaces
- A neighbourhood shop on the ground floor with ancillary café
- Gym for residents use
- Strata subdivision of the units and common property.

The apartment mix is comprised of the following unit configurations:

- 5 x 1 bedrooms units

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- 46 x 2 bedroom units
- 25 x 3 bedrooms units
- 5 x 4 bedroom units.

The main entry to the building is from the forecourt created along Church Street, which leads to dual lobby areas that provide elevator and stair access to the upper levels within the building. There is a basement and lower ground level semi-basement, which both are dedicated to resident car parking and waste storage. The ground level also contains car parking for residents and the neighbourhood shop.

A neighbourhood shop is proposed on the ground level accessible from the forecourt on Church Street. The neighbourhood shop is 99.7m² in size and includes an ancillary café. The café will only operate as part of the neighbourhood shop and not as an independent use. There is a communal gym also located on the ground level that will only be for residents, not for public use.

The ground level is the main entry to the building from Church Street and includes a landscaped forecourt with trees and low shrubs as well as street trees along the verge. The first floor level of the development includes communal open space with landscaping treatments, furniture and various pieces of outdoor recreational equipment. Outdoor planting has been included at the upper levels in the form of planter boxes along the balconies primarily facing Church Street.

Site Description

The subject site comprises 2 lots being Lot 178 DP 1235236 and Lot 156 DP 1094233, known as 11 and 15 Church Street, Nelson Bay (the 'site'). Generally rectangular in shape, the site has a fall from the west to north-east and is 4628.79m² in size.

The site has undergone significant earthworks that were approved under previous development approvals, including partially constructed basement foundations from a previously approved development, which has ceased construction. There is also a crane present on site.

To the south of the site is the Oaks Nelson Bay Lure Suites. To the north of the site are the Seaview at the Bay holiday units and Donald Street beyond the units, which contains a variety of retail and business uses. To the east of the site is the Cote D'Azur serviced apartments and a block of townhouses. To the west are residential dwellings, primarily single and 2 storey in height.

The site is located approximately 400m from D'Albora Marina to the north, 500m to Nelson Bay Golf Course to the south-east and 1.3km from Gan Gan Lookout to the south-west.

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History

The site the development is proposed upon has been subject to several historical DAs, which are outlined below.

11-13 Church Street, Nelson Bay

On 9 May 2017, a DA 16-2016-631-1 for a residential flat building (incorporating an 8 storey apartment complex with underground car parking) was approved on the site. The DA included 56 residential apartments with a building height of 32m above ground level.

Prior to this, DA 16-2008-236-1 was approved on site for a 5 storey residential apartment complex comprising 33 units over 2 buildings. A modification to the consent was approved to increase the number of units to 36 with a building height of 16.8m.

15 Church Street, Nelson Bay

On 16 May 2002, a DA 16-2000-1014-1 was approved on site for an Urban Housing Development containing 21 residential units. This application was subsequently modified to increase the floor to ceiling heights from 2.5m to 2.8m, and was approximately 15.5m in building height.

Key issues

The key issues identified throughout the assessment of the DA relate to building height, bulk and scale, overshadowing, view loss and visual impact.

Building Height

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The proposed development at its highest point is 30.18m which exceeds the 28m height limit and represents a 14.9% (4.18m) variation to the development standard.

The building design has undergone multiple iterations from the pre-lodgement concept stage through consultation with Council staff and the Urban Design Panel (UDP) to the final design presented in the DA. The architect has reduced the bulk of the section over the 28m height plane by centralising the massing within the site and setting the top level in further from both side boundaries to the south and north.

A request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP. That request has been reviewed and the following is noted:

- Only a small portion of the overall building exceeds the height limit which is centralised on the site and as such reduces its visibility from the public domain
- The development is compliant with the floor space ratio controls applying to the site

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- When considering the impact of the portion of the building over the height limit, there is considered to be a minor impact in terms of visual impact, view loss, overshadowing and privacy. A building design that is completely contained under the 28m height limit would produce a negligible difference in terms of visual impact, view loss, overshadowing and privacy
- The portion of the building that exceeds the 28m height limit is not habitable floor area for the units, rather it is communal and private open space areas which benefits all residents of the building
- The proposed design is able to integrate into the existing context and reflects the building height hierarchy desired in the area
- The development is consistent with the vision of the 'Nelson Bay Town Centre Strategy' as the exceedance does not interrupt any important view corridors.

Based on the above, the zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance. There are sufficient planning grounds to justify contravening the height of buildings standard and compliance with the standard is unnecessary in the circumstances of this application.

Whilst height limits are described as a maximum in PSLEP, Clause 4.6 is a mechanism to allow flexibility where a development standard is not considered necessary or reasonable to achieve the best design outcome on a particular site.

When considering the site specific development characteristics, objectives of the relevant policies and the proposed design, it is considered that the proposed height variation can be supported in its current form.

A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report (**ATTACHMENT 3**).

Bulk and Scale

Several of the community submissions received consider that the scale of the building will have a negative impact on adjoining development and character on the area.

The numerical bulk and scale of a development is controlled through the floor space ratio (FSR) control applicable to the site as prescribed by PSLEP. The objective of the FSR control is to achieve a building compatible with the bulk and scale of the desired future character of the locality. The FSR of the proposed development is 2.56:1 which is below the maximum 3:1.

Further to the compliance with the FSR controls, the development has been appropriately articulated so that the bulk and scale has been moderated. The Urban Design Panel (UDP) noted the design appropriately responded to neighbouring properties and the locality. This has been achieved through the following design features:

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- Tapering the sides of the building down to be a similar height to the adjoining northern and southern neighbours to assist in providing a transition of height and scale.
- Indenting the forecourt and centre of the building along Church Street.
- Placing the building on an angle which reduces any box like shapes, whilst also providing better solar access.
- Setting the top level covered communal space in from the sides so it is not visually dominant.

These design elements provide a building that achieves a compatible relationship to the adjacent built form and which will positively contribute to the architectural quality of development within the locality.

Overshadowing

Solar access and overshadowing is a key consideration for any new residential apartment development as required under the Apartment Design Guide (ADG), specifically Objective 3B-2. The ADG requires solar access to living rooms, balconies and private open spaces of neighbours to be considered and overshadowing should be minimised through building design and separation. The winter solstice is the 'worst case scenario' for solar access throughout a calendar year and forms the basis for solar impact assessment. The ADG design guidance outlines a new building should not decrease surrounding buildings solar access by more than 20% and adjoining buildings should allow living spaces to receive a minimum of 3 hours direct sunlight between 9am and 3pm at mid winter for 70% of apartments. As discussed below, Oaks Lure to the south is the main building affected.

Oaks Lure

Shadow diagrams submitted with the application demonstrate the Oaks Lure apartments overshadow its own communal space gradually from 12pm until 3pm. After 3pm, the whole communal space is overshadowed. Prior to 3pm, some overshadowing occurs from the existing tall trees planted around the pool area.

The DA will overshadow the Oaks Lure western elevation and approximately one third of the communal space at 9am. The overshadowing of the western elevation reduces as the day progresses. The overshadowing of the communal area is increased by the DA (in addition to the Oaks own internal overshadowing) from 10am. This primarily impacts the pool area on the northern boundary and approximately half the outdoor area.

Eleven of the 58 units will be impacted by additional overshadowing as a result of the DA. This does not result in a 20% decrease of solar access to the neighbouring properties as stipulated under the ADG. It is noted that a large portion of the impacted units are dual aspect, having a western aspect fronting Church Street, allowing sun light in from the west.

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The DA will increase the overshadowing of the Oaks Lure in winter, however the summer months are only impacted to a minor scale. Whilst the DA will create additional overshadowing in some instances, the increase is primarily within mid-winter and will not considerably decrease the amenity of neighbouring properties, noting overshadowing already occurs from the existing built form.

Importantly, reducing the height of the building to the maximum LEP height of 28m would result in minimal to no change on the existing state of overshadowing, as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and ADG setback controls. Accordingly, the proposal satisfies the objectives of the ADG.

18 Tomaree Street and 61 Donald Street

18 Tomaree Street, which is to the south east of the site, will be overshadowed partially from 1pm, which increases into the afternoon. To the north east, 61 Donald Street, becomes partly overshadowed from 2pm onwards. Both of these buildings will retain sufficient solar access to private and communal areas during the 'winter solstice'.

The public domain along Church Street is overshadowed by the DA from 9am to 11am, however, this area is already overshadowed by the existing Oaks Lure and Seaview Apartments.

Overall, the impact of overshadowing on the surrounding properties and public domain from the proposed development is considered acceptable. As discussed previously, reducing the height of the building to the maximum LEP height of 28m would result in minimal to no change on the existing state of overshadowing, as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and ADG setback controls. Given the Level 8 internal space/roof is setback considerably, these elements do not cast a shadow that extends onto the Oaks Lure site.

Council's Urban Design Panel reviewed the shadow diagrams and level of overshadowing impact to adjoining properties and raised no objection to the proposed building on these grounds.

A more detailed assessment of overshadowing is contained within the Planners Assessment Report (**ATTACHMENT 3**).

View Loss

The proposed development will result in some apartments located to the south of the site (Oaks Lure) having their views impacted to the north and north-west, along with some single residential dwellings to the west on the upslope from the site that maintain views towards Nelson Bay and the headlands. Some level of view loss is expected to occur as a result of the proposed development, noting the site is currently vacant and a 28m height limit applies to the site. View loss has been

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assessed based on site inspections, planning principles and the information included in the submitted Visual Impact Assessment (VIA).

Tenacity Consulting v Warringah Council (2004) NSWLEC 140 ('Tenacity'), establishes the general principles for assessing view loss. Assessment against the 4 step process concluded:

- 1) The type of views from the affected sites is varied depending on location. The most valued views are the water views of Port Stephens and distant hills beyond. Less valued views include the views over the Nelson Bay town centre.
- 2) Views are generally obtained from balcony areas or living rooms. In the case of some affected locations, views are captured as a result of the site being cleared in its current state.
- 3) The extent of views lost range from negligible to severe depending on location.
- 4) The proposal is generally compliant with the applicable environmental planning instruments with the exception of building height. Despite this, a design with a compliant building height would result in a negligible change, as the view loss is primarily caused by the lower levels of the building. Taking into account the design is generally compliant with the applicable environmental planning instruments and given the relatively small site area, there is considered to be little or no opportunity to reduce view loss through a redesign of the building, without a reduction in building height, significantly below the maximum limit.

The building envelope does not remove the entire view for all Oaks Lure northern facing units, given only half of the view will be obstructed. The view loss from the most north-eastern units is likely to be minor, as the angle of the proposed development will allow them to retain the majority or entirety of their view. For the Oaks Lure eastern facing units, these views are held from an angled position from a window or balcony. It is unrealistic to maintain these views as they already require the occupant to stand in a certain direction to obtain them. These units however, may retain a partial view of the water towards Tomaree headlands.

Whilst the building height is not compliant, an important consideration is that the portion of the proposed building obstructing the views is within the compliant height limit of 28m. If the whole building was reduced to 28m in height, it would not change the view impact to the water from the Oaks Lure. The building would need to be lower than the height of the Oaks Lure for all apartments to retain the same or similar views, which is unreasonable and not consistent the objectives of the zone, height limit or the desired built form character under Nelson Bay Town Centre Strategy. It would also result in an underdevelopment of the site.

The existing topography and current subdivision pattern results in the Oaks Lure losing views, noting the Oaks is not built to its full height potential under current planning controls and has so far benefitted from being adjacent to undeveloped lots. Changes to the design of the proposed building may not warrant a better outcome in

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terms of view loss as it may result in a bulkier design spanning across the site, rather than the proposed angle form.

Having regard to the Tenacity principles, whilst the loss of views for some dwellings and units would be significant, on balance the impact is acceptable within the context of the proposed development, given a compliant building height would result in the same or similar impact. Additionally, the proposed development would not obstruct any of the significant vistas identified in the PSDCP 2014.

With consideration to the assessment above, the submitted VIA and advice from Councils Urban Design Panel, the proposed development is considered to be acceptable in terms of impact on views.

Visual Impact

The Urban Design Analysis that accompanied the Nelson Bay Town Centre Strategy, identified that a primary view corridor exists from the water, looking south along Stockton Street towards Kurrara Hill. The proposed development is considered to have minimal impact on this view corridor.

At a human scale, when pedestrians are traversing the Nelson Bay Centre, primarily the village area bound by Stockton Street, Victoria Parade, Yacaaba Street and Tomaree Street, the existing buildings will block the view towards the proposed development when viewed from people on the ground. This is represented in the Visual Impact Assessment (VIA) submitted with the application to address the view impact of the proposal on the broader locality.

The main visibility of the building from pedestrians and in the local context is along Church Street, and the view lines between buildings on Donald Street and Government Road. The building will blend into the scale of built form in those views however, and not obstruct vistas towards Kurrara Hill.

The building will be visible from the water (on boats or from the marinas' wharf) as the distance provides an expansive view of Kurrara Hill and the city centre. Multiple existing high rise buildings are already visible from this viewpoint, and the proposal does not detract or remove the ability to view Kurrara Hill.

Accordingly, the scale of the building does not detract from the existing visual quality or scenic amenity of Nelson Bay to a greater extent than the existing built form.

Traffic Impact and Parking

The development provides parking that is compliant with the DCP. An electric vehicle car space is provided for vehicle charging.

The building has 2 main vehicle entries. It is proposed that all traffic will enter left (from the north) to the site and exit left (to the south) from the site along Church

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Street. This removes the ability for cars to queue along Church Street northbound to turn right into the development, potentially blocking traffic into Nelson Bay Centre.

Traffic modelling was provided as part of the Traffic Impact Assessment (TIA) to assess the capacity of the road network and ability to cater for the proposed development. The modelling showed that all intersections are currently operating well within intended capacity and will continue to do so post development.

Conclusion

This DA has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported. On balance, the proposed development is suitable for the site and adequately responds to environmental, social and economic impacts from the development and therefore, is within the public interest.

The proposed development is considered to be a positive addition to Nelson Bay Town Centre. When considering the applicable planning controls and objectives, the proposed development will positively contribute to the desired future character of Nelson Bay in addition to contributing additional housing supply in a well serviced area of Port Stephens. The key planning considerations including view loss, building height and overshadowing have all been considered as acceptable.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

The application could be potentially challenged in the Land and Environment Court. Defending Council's determination could have financial implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		

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Source of Funds	Yes/No	Funding (\$)	Comment
Developer Contributions (S7.11)	Yes		Should Council determine to approve the DA, s.7.11 development contributions would be applicable and would be levied in accordance with conditions of consent. The s7.11 contributions applicable to the proposal are \$1,139,703.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application, with the exception of a variation to building height, is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), Port Stephens Local Environmental Plan 2013 (PS LEP), Port Stephens Development Control Plan 2014 (DCP 2014), Port Stephens Comprehensive Koala Plan of Management and associated State Environmental Planning Policies. A detailed assessment against the relevant environmental planning instruments is contained within the Planners Assessment Report contained at **(ATTACHMENT 3)**.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if he DA is approved, the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendation	Yes
There is a risk that if the DA is refused, the determination of the DA may be challenged by the applicant in the Land and Environment Court.	High	Accept the recommendation	Yes

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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Impact

The development will increase housing in Nelson Bay and is considered to have a positive social impact as it will provide for a range of housing sizes to meet the needs of the community. The neighbourhood shop and ancillary café will provide an additional retail use which can service not only the residents but wider community.

During the construction phase, the development will generate more jobs on site. The neighbourhood shop and ancillary café will be staffed which will generate several jobs into the future, as may the strata management, waste collection and maintenance of the overall building.

Built Environment Impact

The proposed development will result in a positive addition to the built form of Nelson Bay with acceptable offsite impacts. Whilst the building will create additional overshadowing in some instances, the increase is primarily within mid-winter and will not significantly decrease the amenity of neighbouring properties, noting overshadowing already occurs to some capacity within these properties. There will be view loss to some properties to the south, however that has been assessed in this report as being acceptable with consideration to the relevant case law.

The applicant provided detailed architectural plans for consideration as well as a Visual Impact Assessment (VIA), 3D renderings of the building within its adjacent context, and overshadowing diagrams. Based on this information, the proposed design and built form has been assessed by both the UDP and Council staff as being supportable.

Overall, the development will provide a high quality architecturally designed building, which will have a positive impact on the streetscape and positive impact on the public domain.

Environmental Impact

The proposed development site does not contain any Koala habitat, critical habitat, threatened species or ecological communities. The existing site is devoid of any natural habitat or native vegetation. None of these vegetation types are present on adjoining sites either, removing any potential interference with flora or fauna habitat or corridors.

There are weeds present on site, which will be removed once construction commences. On these grounds, the proposed development will not have an adverse impact on the natural environment.

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CONSULTATION

Consultation with key stakeholders has been undertaken for the purposes of the assessment of the application, including consultation with the public through the notification and advertising process.

Internal

Consultation was undertaken with Council's Development Engineering, Environmental Health, Building Surveyor, Strategic Planning, Council's Urban Design Panel (UDP) and Developer Contributions teams. The referral comments from these officers have been considered as part of the Planners Assessment Report **(ATTACHMENT 3)**. The internal referral officers and UDP supported the DA, subject to recommended conditions of consent **(ATTACHMENT 1)**.

Developer Contributions

Section 7.11 contributions apply to the development of a residential flat building. Under the previously approved DA 16-2000-1014-1 on the site, contributions amounting to \$87,308 were paid on 15 February 2006. On this basis, a credit has been applied to the applicable s7.11 monetary contribution to reflect the previous payment.

The total contributions payable, as calculated in May 2022 are \$1,139,703 (subject to CPI increases).

External

Consultation was undertaken with Ausgrid who provided conditions to be met prior to the issue of a Construction Certificate. A condition is recommended accordingly.

Public Exhibition

The application was exhibited from 7 September 2021 to 21 September 2021, in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. There were 108 submissions received during this period.

The application was re-notified after the submission of amended plans and documentation from the applicant from 7 April 2022 to 21 April 2022. There were 28 submissions received during this period.

A detailed response to these submissions is provided in the Planners Assessment Report in **(ATTACHMENT 3)**.

OPTIONS

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

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- 3) Reject the recommendations.

ATTACHMENTS

- 1) Recommended Conditions of Consent.
- 2) Locality Plan.
- 3) Planners Assessment Report. (Provided under separate cover)

COUNCILLORS ROOM

- 1) Development Plans.
- 2) Unredacted submissions.

Note: Any third party reports referenced in this report can be inspected upon request.

TABLED DOCUMENTS

Nil.

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ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

SCHEDULE 1 – CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

- (1) **Approved plans and supporting documentation** – Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
A-A100	Q	Floor Plan – Basement	Holdsworth Design	23.02.2022
A-A101	T	Floor Plan – Lower Ground	Holdsworth Design	15.04.2022
A-A102	V	Floor Plan – Ground Level	Holdsworth Design	18.05.2022
A-A103	U	Floor Plan –Level 1	Holdsworth Design	18.05.2022
A-A104	T	Floor Plan –Level 2	Holdsworth Design	18.05.2022
A-A105	T	Floor Plan –Level 3	Holdsworth Design	18.05.2022
A-A106	T	Floor Plan –Level 4	Holdsworth Design	18.05.2022
A-A107	R	Floor Plan –Level 5	Holdsworth Design	18.05.2022
A-A108	T	Floor Plan –Level 6	Holdsworth Design	18.05.2022
A-A109	T	Floor Plan –Level 7	Holdsworth Design	18.05.2022
A-A110	X	Floor Plan – Level 8	Holdsworth Design	18.05.2022
A-A400	L	Elevations – Sheet 1	Holdsworth Design	23.02.2022
A-A401	M	Elevations – Sheet 2	Holdsworth Design	15.04.2022
A-A450	N	Sections	Holdsworth Design	23.02.2022
LP.01/G	G	Landscape Plan – Ground Floor	Meraki Green Landscape Architecture	17.06.2022
LP.02/E	E	Landscape Plan – First Floor	Meraki Green Landscape Architecture	20.06.2022
LP.03/D	D	Landscape Plan – Fourth Floor	Meraki Green Landscape Architecture	02.03.2022



Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
LP.04/D	D	Landscape Plan – Seventh Floor	Meraki Green Landscape Architecture	02.03.22
LP.05/D	D	Landscape Plan – Eighth Floor	Meraki Green Landscape Architecture	02.03.22
LP.06/C	C	Landscape Plan – Specifications Sheet	Meraki Green Landscape Architecture	02.03.22
12549041-C100	F	Civil Stormwater Basement Stormwater Plan	GHD	30.06.2022
12549041-C200	F	Civil Stormwater Lower Ground Floor Stormwater Plan	GHD	30.06.2022

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

- (2) **Surrender of Development Consent** – The applicant must surrender the consents relating to **DA No. 16-2000-1014** (as amended) for a Urban Housing Development (21 units) and **DA No. 16-2016-631** (as amended) for a Residential Flat Building (Incorporating 8 Storey Apartment Complex with Underground Car Parking) by submitting an application for 'Surrender of a Consent' to Port Stephens Council in accordance with *Clause 68 of the Environmental Planning & Assessment Regulation 2021*. This must be done prior to the issue of the first Construction Certificate.
- (3) **Limits of consent** – This consent does not approve:
 - a) The fit out or hours of operation of the neighbourhood shop and ancillary café.
 - b) Signage.

The above must be approved under a separate development application.
- (4) **Design Amendments** – Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.
 - a) The Landscape Plan is to be updated to remove any bamboo species of plants along the sites southern and eastern boundaries and should be replaced by a species that can be easily maintained.

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ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



- b) The Landscape Plan is to be updated to include permanent intermittent panels of climbing structures on the blank concrete wall on the eastern elevation at the lower ground and ground levels. In the planter in the base, install *Ficus pumila* (under the blank sections) and *Trachelospermum jasmenoides* (under the climbing structures). The bed should also be planted with native grass like *Poa labillardieri* and *Lomandra tanika* to form a long-term living mulch.

This should also be repeated on the southern side using *Parthenocissus tricuspidate* instead of the *Ficus pumila*. Any climbing structure should be high quality stainless using Ronstan Greening System or equivalent.

The above plan amendments are to be endorsed by Council.

- (5) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (6) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- protect and support the adjoining premises from possible damage from the excavation; and
 - where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.

- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.

The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

- (8) **Outdoor lighting** – All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (9) **Reflectivity** – The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.
- (10) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., are required to be installed must be concealed

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ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



within the external walls of the development or adequately screened so as not to be visible from a public place.

- (11) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.

Materials and colours are to be consistent with the Finishes Schedule on the approved Elevations – Sheet 1 and Sheet 2 by Holdsworth Design referenced in Part 1.0 Condition 1 of this consent.

- (12) **Installation of graphics and artwork on temporary site structures (graphic displays)** - A graphic display must be installed on temporary site structures in accordance with the following requirements:

- a) the graphic display must be complimentary to the surrounding character;
- b) required site signage (including developer or corporate identification) must be sympathetic to the graphic display and must not exceed more than 5% (combined) of the surface area of the temporary site structure,
- c) no third party advertising is permitted to be displayed at any time,
- d) graphic displays must be installed to ensure long-term durability with a clean finish to the face of the temporary site structure;
- e) graphic displays must be maintained in good repair for the duration of the project or until such time that the construction works no longer results in an adverse visual impact to the surrounding locality.

2.0 – Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Certification from a Structural and Geotechnical Engineer** to be provided for all retaining structures with consideration given specifically referencing walls adjacent to neighbouring properties, possible settlement influenced by the water table and stormwater infiltration system, water proofing and stability.

All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.

Details demonstrating compliance must be provided to the Certifying Authority.

- (2) **Ausgrid** – The applicant must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid which must be received before a Construction Certificate is issued.
- (3) **Potential acid sulfate soils** - A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS

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ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.

The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.

- (4) **Civil engineering plans** – Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, access ways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications. The plans are also to include:

- a) Details shall be in accordance with this consent, the BCA, Councils Infrastructure Specification, as a minimum and include by 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;
 - Construction erosion and sediment control.
- b) Certification from a Structural and Geotechnical Engineer for the 50mm concrete binding layer on the internal face of the detention tanks where it is attached to the outlet emergency pipe to ensure that the external pressure from groundwater and the soil will not result in collapse.

Details demonstrating compliance must be provided to the Certifying Authority and Council.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

- (5) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council). The plans must include:

- a) The stormwater quality treatment train shall treat stormwater, prior to discharge, to Port Stephens Council Development Control Plan requirements. Before water is released into public drainage it must achieve Council's water quality stripping targets which are:
- a. Total nitrogen retention post-development load: 45%
 - b. Total phosphorus retention post-development load: 60%
 - c. Total suspended solids post-development load: 90%
- Gross pollutants post-development load: 90%.

- b) All downpipes and associated guttering to cater for 1% AEP storm events in order to direct all runoff to infiltration areas.

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ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



Details such as plans and models demonstrating compliance must be provided to the Certifying Authority and Council.

Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.

- (6) **Stormwater system Operation and Maintenance Procedure Plan** – An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal.

Details demonstrating compliance must be provided to the Certifying Authority.

- (7) **Erosion and sediment control plan**– Before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- Council's development control plan,
- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
- the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.

- (8) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.

- (9) **Landscape plan / street tree plan** – Street trees must be planted at no cost to Council and in the location(s) specified on the Landscape Plan prepared by Meraki Green Landscape Architecture, dated 22 April 2022 Rev F.

Details demonstrating compliance must be provided to the Certifying Authority.

- (10) **Design verification – SEPP 65** – A design verification statement from a qualified NSW Registered Architect must be submitted to the Certifying Authority confirming the Construction Certificate plans and specifications are consistent with the Development Application approval.

- (11) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:

- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;

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ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



- b) The floor must be impervious material covered at the intersection with the walls, graded and drained to an approved floor waste within the room; and
- c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (12) **Hunter Water Corporation Approval** - A Section 50 application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC).

- (13) **Car parking details** – Before the issue of a construction certificate, a suitably qualified engineer must review the plans, which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities - Off- Street Carparking and Council's development control plan.

- (14) **Construction site management plan** - Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- a) location and materials for protective fencing and hoardings to the perimeter on the site
- b) provisions for public safety
- c) pedestrian and vehicular site access points and construction activity zones
- d) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- f) details of any bulk earthworks to be carried out
- g) location of site storage areas and sheds
- h) equipment used to carry out all works
- i) a garbage container with a tight-fitting lid
- j) dust, noise and vibration control measures
- k) location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Note. Condition only applies to dual occupancy developments and above.

- (15) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of 59 additional dwellings pursuant to Section 7.11 of the

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Environmental Planning & Assessment Act 1979 and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$472	\$27,848
Civic Administration – Works Depot	\$1,231	\$72,629
Town Centre Upgrades	\$3,316	\$195,644
Public Open Space, Parks and Reserves	\$2,012	\$118,708
Sports & Leisure Facilities	\$1,914	\$112,926
Cultural & Community Facilities	\$1,296	\$76,464
Road Works	\$3,489	\$205,851
Shared Paths	\$3,196	\$188,564
Bus Facilities	\$12	\$708
Fire & Emergency Services	\$240	\$14,160
Flood & Drainage	\$1,846	\$108,914
Kings Hill Urban Release Area	\$293	\$17,287
	TOTAL	\$1,139,703

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

- a) Prior to the issue of the Construction Certificate.

Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be indexed at the time of actual payment in accordance with the applicable Index.

- (16) **Roads Act Application** – The following information must be provided to Council as Roads Authority with the Roads Act application:
 - a) A design for a public footpath along Church Street, which will join into the existing footpath on either side of the development site. The footpath must be designed in accordance with Councils Infrastructure Specifications.
- (17) **Long service levy** – In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (18) **Dilapidation Report – Adjoining Property** - A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.
 - a) 19 Church Street, Nelson Bay
 - b) 9 Church Street, Nelson Bay
 - c) 18 Tomaree Street, Nelson Bay
 - d) 61 Donald Street, Nelson Bay

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The dilapidation report is to be prepared by a qualified engineer. All costs incurred in achieving compliance with this condition must be borne by the applicant.

- (19) **Dilapidation Report – Council Property** - A Dilapidation Report prepared by a qualified Structural/Civil Engineer must be submitted to the Certifying Authority.

The report must include a photographic survey of existing public roads, kerbs, footpaths, drainage structures, street trees and any other existing public infrastructure within the immediate area of the subject site.

All costs incurred in achieving compliance with this condition must be borne by the applicant.

Details demonstrating compliance must be provided to the Certifying Authority and Council.

3.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Home Building Act requirements** - Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —

- a) In the case of work for which a principal contractor is required to be appointed—
- (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) In the case of work to be done by an owner-builder—
- (iii) the name of the owner-builder, and
 - (iv) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (2) **Home Building Act – Insurance** - In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

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- (3) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:
- a) a description of the work to be carried out;
 - b) the address of the land on which the work is to be carried out;
 - c) the Registered number and date of issue of the relevant development consent;
 - d) the name and address of the Principal Certifier and the person who appointed the principal certifier;
 - e) if the principal certifier is a registered certifier
 - i) the certifier's registration number, and
 - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
 - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

- (4) **Notice commencement of work** – Notice must be given to Council and the Principal Certifier, if not the Council, of the person's intention to commence the erection of the building or undertake subdivision work at least two days prior to subdivision and/or building works commencing in accordance with Sections 6.6 (2) and 6.12 (2) (c) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:
- a) the name and address of the person;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the Registered numbers and date of issue of the development consent and construction certificate;
 - e) a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied; and
 - f) the date on which the work is intended to commence.

The notice must be lodged on the NSW planning portal.

- (5) **Signs on site** – A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:
- a) showing the name, address and telephone number of the principal certifier for the work, and

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- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

- (6) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:
 - a) a Construction Certificate has been issued by a Consent Authority;
 - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
 - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (7) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.

An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.
- (8) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.

Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.

Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.
- (9) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).

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- (10) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.
No materials, waste or the like are to be stored on the all-weather access at any time.
- (11) **Rubbish generated from the development** – Where not already available, 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 must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.
- (12) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.
Evidence of this Policy must be provided to Council and the Certifying Authority.

4.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Implementation of BASIX commitments** - While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.
- (2) **Shoring and adequacy of adjoining property (if applicable)** - If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —
 - a) Protect and support the building, structure or work from possible damage from the excavation, and
 - b) Where necessary, underpin the building, structure or work to prevent any such damage.This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.
- (3) **Hours of work** – The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:
7.00am to 5.00pm on Monday to Saturday
The principal certifier must ensure building work, demolition or vegetation

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removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

- (4) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.

- (5) **Compliance with the Building Code of Australia** – Building work must be carried out in accordance with the requirements of the Building Code of Australia.

- (6) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:

- a) preserve and protect the building from damage; and
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.

The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

- (7) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

- (8) **Surveys by a registered surveyor** – While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier –

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- a) All footings/ foundations
 - b) At other stages of construction – any marks that are required by the principal certifier.
- (9) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved construction site management plan must be introduced during construction of the development.
- (10) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.
- (11) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.
Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (12) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.
In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
Where remediation work is required, the applicant will be required to obtain consent for the remediation works.
- (13) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (14) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.
- (15) **Construction noise** – While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

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- (16) **Delivery register** - The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered.

This register must be made available to Council officers on request and be provided to the Council at the completion of the development.

- (17) **Cut and fill** – While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.

- (18) **Uncovering relics or Aboriginal objects** - While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- "relic" means any deposit, artefact, object or material evidence that:
 - (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
 - (b) is of State or local heritage significance; and
- "Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

5.0 - Prior to Issue of a Subdivision Certificate

The following conditions of consent shall be complied with prior to the issue of a Subdivision Certificate.

- (1) **Strata Plan of Subdivision** – Sections 37 and 37A of the Strata Schemes (Freehold Development) Act 1973 require an application to be provided to Council for approval prior to the issue of the certified Strata Plan of subdivision.

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The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2021-703-1 and of compliance with the relevant conditions of consent, prior to the issuing of a Strata Plan of Subdivision.

Note: The final Strata Plan of Subdivision must be prepared to a quality suitable for lodgement with the NSW Land Registry Services.

- (2) **Restriction on issue of Strata Plan of Subdivision** – An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2021-703-1.
Documentary evidence of the issue of the Occupation Certificate must be provided to Council in conjunction with the application for the Strata Plan of Subdivision.
- (3) **Show easements / restrictions on the Plan of Subdivision** - The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.
- (4) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.
Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.
- (5) **Outstanding works** – The applicant is to lodge a bond with Council for the construction of outstanding works, including concrete footpath and/or pedestrian/cycle shared way and a bond can only be lodged once the agreement has been made with Council to accept this.
- (6) **Surveyor's Report** – A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.
Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.
- (7) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
 - a) Electricity.
 - b) Water.
 - c) Sewer.
 - d) Gas (where available).

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Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

- (8) **Section 88B Instrument** – The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
- a) easement for services;
 - b) easement to drain water and drainage easement/s over overland flow paths;
 - c) easement for on-site detention;
 - d) positive covenant over the on-site detention / water quality facility for the maintenance, repair and insurance of such a facility;
 - e) retaining wall, positive covenant, and restriction to user;
 - f) restriction as to user over sub-surface drainage pipes contained within the building area of allotments;
 - g) restriction as to user over any lots adjacent to a public reserve stipulating dividing fence type;
 - h) restriction as to user preventing the alteration of the final overland flow path shape, and the erection of any structures (other than open form fencing) in the overland flow path without the written permission of Council;
 - i) restriction as to user creating an easement for support and maintenance 900mm wide adjacent to the "zero" lot line wall;

6.0 - Prior to Issue of an Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.
The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
- a) Electricity;
 - b) Water;
 - c) Sewer; and

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d) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

(4) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.

The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.

(5) **Repair of infrastructure** – Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

(6) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings and footpaths, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.

(7) **Works as Executed Plans and any other documentary evidence** - Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

(a) All stormwater drainage systems and storage systems

The principal certifier must provide a copy of the plans to Council with the occupation certificate.

(8) **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.

This certificate must accompany the Works as Executed plans.

(9) **Street tree planting** – All street trees must be planted in accordance with the approved Street Tree Planting plan (as required under condition 2.0(1) of 16-2021-703-1).

(10) **Completion of landscape and tree works** – Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works,

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including pruning in accordance with AS 4373-2007 *Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

- (11) **Car parking requirements** – A minimum of 15 car parking spaces including 2 disabled car parking spaces are to be dedicated to the Neighbourhood Shop and ancillary café tenancy. Parking must be permanently marked on the pavement surface.

There are to be a minimum 27 parking spaces marked for visitors, which must be signposted as "visitor parking".

Car parking for residential units must be provided in accordance with the following minimums:

- One bedroom unit – 1 car space
- Two bedroom unit – 1 car space
- Three bedroom unit – 2 car spaces
- Four bedroom unit – 2 car spaces

Residential car parking is to be permanently numbered on the pavement.

There are to be 8 motorcycle parking spaces provided in accordance with the approved plans.

The electric vehicle parking space must be available for the use of all residents.

All car parking is to be provided in accordance with AS2890 and the approved plans.

- (12) **Bicycle requirements** – Bicycle parking racks to accommodate 5 bicycles must be installed on Ground Level.
- (13) **Loading/unloading facilities** – Loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.
- (14) **SEPP 65 – Design verification** – A design verification statement from a Registered and qualified architect must be submitted to the Principal Certifying Authority demonstrating the development has been constructed in accordance with the approved plans and the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (unless superseded by this DA Consent).
- (15) **Hunter Water Corporation approval** – A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (16) **Lot Consolidation** - Before the issue of any occupation certificate, Lot 156 DP 1094233 and Lot 178 DP 1235236 are to be consolidated.

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A copy of the Registered Plan of consolidation must be provided to the Principal Certifying Authority.

7.0 – Ongoing Use

The following conditions of consent are operational conditions applying to the development.

- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (3) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (4) **Privacy screen** – Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **Residential air conditioning units** – During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa at the boundary adjacent to any habitable room of an adjoining residential premises.
- (6) **Maintenance of landscaping** – Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
- (7) **Waste management and collection** – The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.
- (8) **Operation of Neighbourhood Shop and ancillary café** – The café component must only operate whilst the Neighbourhood Shop operates and never independently. If the use of the Neighbourhood Shop ceases, the use of the ancillary café also ceases.
- (9) **Gym** – The gym is for the use of residents only. It must not be operated or leased in any commercial form.

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- (10) **Communal Area Access** – All residents of the development are to have access to all communal areas, including:
- The enclosed and open communal areas on Ground Level and Level 8; and
 - Resident gym on ground floor.

Advice Note(s):

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.
- Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (5) **Works near/adjoining electricity network assets** – There are electricity network assets adjacent to the proposed development in Church Street. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables
- (6) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

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ITEM 2 - ATTACHMENT 2 COUNCIL MEETING MINUTES - 13 SEPTEMBER 2022.

MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS

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MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning (Resilience and Hazards) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development.
- Council has considered and accepted the proposed development standard variation request to Clause 4.3 of the PSLEP. The proposed 32.18m building height and subsequent 4.18m variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, or result in negative privacy issues.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

1. Confirm and clarify the terms of Council's Approval;
2. Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
3. Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
4. Set standards and performance measures for acceptable environmental performance; and
5. Provide for the ongoing management of the development.

SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW

RIGHT OF APPEAL

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act

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1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

RIGHT OF REVIEW

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. (See **exclusions note below**).

Exclusions: A request to review the determination of a development application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- a) A determination to issue or refuse to issue a complying development certificate, or
- b) A determination in respect of designated development, or
- c) A determination made by the Council under Division 4 in respect of an application by the Crown.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49600259 Fax: (02) 49673612 Email: co.ansd@portstephens.nsw.gov.au



DEVELOPMENT ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2021-703-1
Development Description	Residential flat building comprising 81 units, neighbourhood shop (including ancillary café), basement parking and strata subdivision
Applicant	PERCEPTION PLANNING PTY LTD
Land owner	KINALA PTY LTD
Date of Lodgement	25/08/2021
Value of Works	\$29,706,291.00
Submissions	136

PROPERTY DETAILS

Property Address	15 Church Street NELSON BAY, 11-13 Church Street NELSON BAY
Lot and DP	LOT: 156 DP: 1094233, LOT: 178 DP: 1235236
88B Restrictions on Title	Nil
Current Use	Partially constructed residential basement
Zoning	R3 MEDIUM DENSITY RESIDENTIAL
Site Constraints	Acid Sulfate Soils – Class 5 Koala Habitat Planning Map – Clear SEPP (Coastal Management) Combined Footprint Stormwater drainage requirements area – 100year ARI infiltration required
State Environmental Planning Policies	State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021
 State Environmental Planning Policy (Transport and Infrastructure) 2021
 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

PLANNERS PRE-ASSESSMENT CHECKLIST

OWNERS CONSENT	YES / N/A
Land owners consent	Yes
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	N/A
For works occurring outside property, neighbouring consent provided.	N/A
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	N/A
DA FORM AND AUTHORITY	
Applicant's description of proposal consistent with DA plans.	Yes
DA description correct in Authority (i.e. LEP definition).	Yes
DA lodged over all affected properties and Authority correct.	Yes
Satisfactory cost of works.	Yes
NOTIFICATION	
Application notified correctly (i.e. check properties notified).	Yes
REFERRALS	
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days cl.66(2) EPA Regs 2000	Yes
Call applicant and send email acknowledgement.	Yes

PROPOSAL

The proposed development is for a Residential Flat Building (RFB), neighbourhood shop with ancillary café and strata subdivision. The development specifically includes:

- An eleven (11) storey building containing 81 residential dwellings;
- 159 car parking spaces;
- 8 motorcycle parking spaces;
- A neighbourhood shop on the ground floor with ancillary café;
- Gym for residents use;
- Strata subdivision of the units and common property.

The apartment configuration is as below:

Table 1: Apartment configuration

Bedrooms	Quantity
One bedroom units	5
Two bedrooms units	46
Three bedroom units	25
Four bedroom units	5
Total	81

The main entry to the building is from the forecourt created along Church Street, which leads to two lobby areas that provide lift and stair access to the levels within the building.

A neighbourhood shop is proposed on the Ground Floor Level accessed from the forecourt on Church Street. The neighbourhood shop is 99.7m² in size and includes an ancillary café. The applicant has indicated the café will only operate as part of the neighbourhood shop and not be an independent use. There is a communal gym located on the Ground Floor Level, which will only be for residents use, not for public use.

The Ground Floor Level is the main entry to the building from Church Street and includes a landscaped forecourt with trees and low shrubs as well as street trees along the verge. The First Floor Level of the development includes communal open space with landscaping treatments, a mini golf area and various pieces of outdoor gym equipment. Outdoor planting has been included at the upper levels in the form of planter boxes along the balconies mainly facing Church Street.

Figures 1 and 2 below show the architectural renders of the proposed development.



Figure 1: View of building along Church Street.



Figure 2: South-eastern view of the proposed building.

SITE DESCRIPTION

The subject site comprises two lots being Lot 178 DP 1235236 and Lot 156 DP 1094233, known as 11-15 Church Street, Nelson Bay (the 'site'). Generally rectangular in shape, the site has a downslope from the west to north-east and is 4628.79m² in size.

The site has undergone significant earthworks that were approved under previous DAs, including partially constructed basement foundations from a previously approved development, which has ceased construction. There is also a crane present on site.

To the south of the site is the Oaks Nelson Bay Lure Suites. To the north of the site are the Seaview at the Bay holiday units and Donald Street beyond the units, which contains a variety of retail and business uses. To the east of the site is the Cote D'Azur serviced apartments and a block of townhouses. To the west are residential dwellings primarily single and two storey in height.

The site is located approximately 400m from D'Albora Marina to the north, 500m to Nelson Bay Golf Course to the south-east and 1.3km from Gan Gan Lookout to the south-west.



Figure 3: Aerial view of the site (outlined in white).



Figure 4: Surrounding context (site outlined in red).

SITE HISTORY

The site has been subject to multiple development application (DAs), which are outlined below.

11-13 Church Street, Nelson Bay

On 9 May 2017, a DA 16-2016-631-1 for a Residential Flat Building (incorporating 8 storey apartment complex with underground car parking) was approved on the site. The DA included 56 residential apartments and had a height of 32m above ground level.

Prior to this, DA 16-2008-236-1 was approved on site for a five storey residential apartment complex comprising 33 units over two buildings. A modification to the consent was approved to increase the number of units to 36 and the building height to 16.8m.

15 Church Street, Nelson Bay

On 16 May 2002, DA 16-2000-1014-1 was approved on site for an Urban Housing Development containing 21 residential units. This application was subsequently modified to increase the floor to ceiling heights from 2.5m to 2.8m, and was approximately 15.5m in height.

SITE INSPECTION

A site inspection was carried out on 6 September 2021. The subject site can be seen in the images below.



Image 1: View from west of Church Street looking east towards the site.



Image 2: Looking north-east towards the site.



Image 3: View into site where crane and partially constructed footings exist.



Image 4: Southern boundary of site shared with the Oaks Lure to the south.



Image 5: Existing works on site.



Image 6: View north-west from site towards neighbouring properties.



Image 7: View south-west to neighbouring properties.



Image 8: Seaview Apartments located on adjacent northern site.

PLANNING ASSESSMENT

The application was assessed, and comments provided, by the following external agencies and internal specialist staff:

Internal

Development Engineer – Supported with conditions. The recommended conditions relate to water quality and on-site storage requirements.

Environmental Health – Supported with conditions. The recommended conditions relate to the neighbourhood shop and ancillary café, and require the construction and fit-out of the food premises to accord with the relevant Health and Food Acts and Regulations.

Building Surveyor – Supported with conditions. The recommended conditions relate to ensuring the construction of the building is in accordance with the BCA.

Strategic Planning – Supported unconditionally. The referral outlined that the proposed development is consistent with the objectives of the applicable planning strategies such as the Hunter Regional Plan 2036, Port Stephens Local Housing Strategy, Port Stephens Local Strategic Planning Statement and Nelson Bay Strategy.

Developer Contributions – Supported with conditions. Section 7.11 contributions apply to the portion of the development that is a residential flat building. Under DA 16-2000-1014-1, contributions were paid on 15 February 2006 for the creation of 19 additional dwellings over two lots (21 units in total). This proposal is over two lots, and therefore, a 22 lot credit has been applied and contributions apply for an additional 59 dwellings. The s7.11 contributions will be spent in accordance with the work schedule within the Tomaree catchment, as indicated in the Section 7.11 Contributions Plan.

Waste Management – Supported unconditionally. The development will remain to be rated for residential waste services as required, though the applicant will use a private waste contractor to service the development.

Comment: All internal referral officers have supported the application.

External

Ausgrid – Supported with conditions. The applicant will be required to submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid which must be received before a Construction Certificate is issued.

Environmental Planning and Assessment Act 1979

Section 4.46 - Integrated development

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is not integrated development for the purposes of this section of the Act.

Section 4.15 - Matters for consideration

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Section 4.15(a)(i) - any environmental planning instrument

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 – Koala habitat protection 2021

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

The site is mapped as 'Clear' on the Koala habitat map. The site only contains weeds and no other vegetation, and none of the adjacent sites contain any koala feed species or preferred habitat. The development will not have an impact on koala habitat or the koala population.

State Environmental Planning Policy (Building Sustainability Index: 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.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2 – State and regional development

In accordance with Schedule 6 of this SEPP, general development with a capital investment value (CIV) over \$30 million is classified as regionally significant development and must be determined by the Hunter and Central Coast Regional Planning Panel.

The cost summary provided by the applicant outlined the CIV was \$29,706,291.00. Considering this, the application is classified as local development to be determined by the elected Council.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal management

The site is mapped within the Coastal Environment Area, as such the following general matters are required to be considered when determining an application.

As per Section 2.10 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The development is sufficiently setback from the coastal area, being the combination of Nelson Bay/Dutchman's Bay/Karuah River, by approximately 380 metres. Water runoff from the building will be managed on site, as will sediment runoff during the construction process.

Therefore, the application would generally comply with the aims of the SEPP and can therefore be supported.

Chapter 4 Remediation of land

The object of this Chapter is to provide for a State-wide planning approach to the remediation of contaminated land. Section 4.6 requires that a consent authority must consider whether land is contaminated prior to granting development consent.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the residential and neighbourhood shop proposed uses are not listed as possible contaminating uses, per Table 1 of the Guidelines. Noting this, and that the existing and future site are of residential use, the proposed development satisfies the requirements of this chapter.

State Environmental Planning Policy (Transport and Infrastructure) 2021**Chapter 2 Infrastructure**

The development was referred to Ausgrid as per Section 2.48 of this SEPP. Ausgrid has underground electricity assets in the vicinity of the development, and additionally there are overhead power lines along the western side of Church Street. Ausgrid provided no objection to the application and outlined the required applications the developer would need to apply for prior to commencing any electricity works.

The development is not traffic generating development as per Schedule 3 of SEPP (Transport and Infrastructure) 2021. The proposal includes residential accommodation, which contains more than 75 dwellings as per column 3 of Schedule 3, notwithstanding, Church Street is not a classified road and does not connect to a classified road within 90 metres. Therefore, no referral to TfNSW for concurrence is required.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

State Environmental Planning Policy State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development (SEPP 65) aims to improve the quality of residential apartment development and provides an assessment framework in the Apartment Design Guide (ADG) to facilitate the assessment of 'good design'. This policy applies, as the development is for a residential flat building that is more than three storeys in height and contains at least four dwellings. The application was referred to Council's Urban Design Panel (UDP) for assessment against the ADG and the principles of Schedule 1 of this policy.

The application was initially reviewed in a Pre-DA Meeting (18-2021-16-1) prior to DA lodgement on 13 May 2021. The plans were conceptual at this stage, however the Panel gave design recommendations such as; optimising deep soils planting and landscaping in the streetscape and around the building to balance the size of the development, setbacks from neighbouring properties, detail in regard to solar access to building and building impact on neighbours solar access, and increasing the communal spaces, particularly the one on the top level if it is proposed to be above the height limit.



Figure 5: Pre-DA Concept

The UDP reviewed the submitted DA design on 14 October 2021, and raised the following matters:

- Generally unsupportive of height exceedance if used primarily for private use and not communal space.
- Areas for landscaping, planting and deep soil needed complete revision to offset bulk and scale.
- Ground level/podium communal open space should have less hardstand and offer a variety of uses.
- Recommended Visual Impact Assessment (VIA) is updated due to some outdated references.
- Mid-rise section of the south-western wing should be reduced in bulk.

The UDP outlined support could not be given to the design without the design being further amended to incorporate the matters outlined above.



Figure 6: DA lodged concept

The applicant revised the design and the UDP subsequently reviewed the proposal as amended on 14 April 2022. The amended design incorporated the changes as suggested by the UDP, such as changing the top level (above the height limit) to be predominately communal space for all residents, rather than private space for few residents. The UDP was generally supportive of the revised design, though required the following changes to be made to receive final support:

- Additional landscaping to be provided as a buffer between residential units facing communal area.
- More 'soft' landscaping along the ground level units frontage required.
- Comments in regard to species proposed and ability to survive and be well maintained.

The applicant made the above changes and the Panel provided support for the application.



Figure 7: Proposed final concept

Considering the final iteration of plans, the following table outlines each objective and how the final design has addressed each principle.

Table 2: SEPP 65 Schedule 1 Design Quality Principles

Criteria	Comments
Principle 1: Context and neighbourhood character	<p>The site is located within the Nelson Bay Town Centre. The site is zoned R3 Medium Density Residential to encourage the construction of denser residential housing on the fringe of the Nelson Bay Village.</p> <p>The sites location is at an elevated position on the western edge of the town centre, with close access to the main retail and commercial core of the town.</p> <p>The area is undergoing significant change, with more RFBs being developed in the area amongst the existing lower density and tourist accommodation developments.</p>

Criteria	Comments
	<p>The proposal responds to these emerging changes by providing a high quality design which caters for the future desired character of Nelson Bay.</p>
<p>Principle 2: Built form and scale</p>	<p>The design of the building, whilst large in scale, provides a compatible connection to the adjacent neighbours and will improve the architectural quality that exists within the locality.</p> <p>The objectives of the height controls are to achieve buildings with appropriate heights for the character on context whilst reflecting the hierarchy of centres and the land use structure. The objectives of the FSR control is to achieve a building compatible with the bulk and scale of the desired future character of the locality, a balance between built form and landscaping and to minimise the effects of bulk and scale.</p> <p>The design does achieve a height suitable for the area and desired hierarchy of buildings in accordance with the Nelson Bay Town Centre Strategy. It also achieves the desired built form character, as it is a modern building that will improve the aesthetic quality of the existing area. The design also provides ample landscaping and communal space to residents whilst remaining below the FSR.</p> <p>The buildings interface with Church Street and the public domain, provides a positive addition to the streetscape through clear pedestrian and vehicle connection and provision of landscaping and areas for social interaction, which the street does not currently have.</p>
<p>Principle 3: Density</p>	<p>The design and size of each unit provides a high level of amenity for future residents. The units are all above the minimum size required per the ADG and include a desirable mix to meet the requirements of small to large households.</p> <p>The FSR is 2.56:1, below the maximum 3.1:1.</p> <p>The development is located within a well serviced area with public transport options available and is within walking distance to the retail and commercial core of Nelson Bay.</p>

Criteria	Comments
Principle 4: Sustainability	<p>The application has provided a BASIX certificate which outlines the buildings ability to meet the required standards per SEPP BASIX.</p> <p>The development has also incorporated:</p> <ul style="list-style-type: none"> • An electric vehicle car charging space. • Units are dual aspect and have cross-ventilation where possible. • On-site water detention is included. • Solar panels are provided at roof level to power common areas.
Principle 5: Landscape	<p>The proposal incorporates ample landscaping in the communal areas on the Ground Level and Level 8, as well as being interspersed on the outdoor areas on other levels.</p> <p>There is an architecturally landscaped forecourt that is a positive addition to the street frontage which provides a well designed space for pedestrians and residents and will encourage social interaction along the street.</p>
Principle 6: Amenity	<p>Internally, the proposal achieves good amenity through the design and location of units within the building that optimise ventilation, solar access and visual privacy.</p> <p>Communal open space is provided on multiple levels with landscaping adding to the quality of these spaces.</p> <p>Externally, the proposal is located in a well serviced area, with access to public transport and a short walking distance to the retail and commercial core of the town.</p>
Principle 7: Safety	<p>The proposal has addressed safety through the following measures:</p> <ul style="list-style-type: none"> • The residential and vehicular entries are well located in high activity and visibility areas on Church Street. • The building entry has been designed to provide an appropriate, identifiable, secure, safe and accessible entry. • Separate entries are provided for pedestrians and vehicles. • There will be passive surveillance from apartments addressing Church Street. • Access lobbies are to be well lit and suitably scaled. • Secure car parking spaces for residential apartments are provided

ITEM 2 - ATTACHMENT 3 ORIGINAL PLANNERS ASSESSMENT REPORT.

Criteria	Comments																											
	<ul style="list-style-type: none"> External areas will be well lit with clear lines of sight from active frontages <p>The principles of CPTED (Crime Prevention Through Environmental Design) have been addressed as follows:</p> <ul style="list-style-type: none"> Casual surveillance of the street through balconies and communal open space fronting the street. Landscaping has been used to delineate private and public space. Security entry to the resident car park and pedestrian entries. 																											
<p>Principle 8: Housing diversity and social interaction</p>	<p>A range of apartment designs and sizes are provided catering to different household sizes. The development provides housing choice responsive to market demand, with a mix of apartment sizes proposed including the following:</p> <table border="1" data-bbox="799 875 1214 1294"> <tbody> <tr> <td>5</td> <td>1 Bed.</td> <td>6.2%</td> </tr> <tr> <td>40</td> <td>2 Bed.</td> <td>49.4%</td> </tr> <tr> <td>6</td> <td>2 Bed. + Study</td> <td>7.4%</td> </tr> <tr> <td>21</td> <td>3 Bed.</td> <td>25.9%</td> </tr> <tr> <td>4</td> <td>3 Bed. + Study</td> <td>4.9%</td> </tr> <tr> <td>1</td> <td>3 Bed. + Study + 2 Living</td> <td>1.2%</td> </tr> <tr> <td>2</td> <td>4 Bed. + Study</td> <td>2.5%</td> </tr> <tr> <td>2</td> <td>4 Bed. + Study + 2 Living</td> <td>2.5%</td> </tr> <tr> <td>81</td> <td></td> <td>100.0%</td> </tr> </tbody> </table> <p>A large communal room and associated outdoor space including swimming pool is proposed at the top most floor to take advantage of the expansive views over the bay, ocean and bush.</p> <p>A large communal terrace at Level 1 incorporating a walking track, exercise equipment, yoga/tai chi space and mini-golf course all within a landscaped setting.</p>	5	1 Bed.	6.2%	40	2 Bed.	49.4%	6	2 Bed. + Study	7.4%	21	3 Bed.	25.9%	4	3 Bed. + Study	4.9%	1	3 Bed. + Study + 2 Living	1.2%	2	4 Bed. + Study	2.5%	2	4 Bed. + Study + 2 Living	2.5%	81		100.0%
5	1 Bed.	6.2%																										
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81		100.0%																										
<p>Principle 9: Aesthetics</p>	<p>The proposed design provides a balanced composition of elements including a well-defined base level, middle or 'body' and top.</p> <ul style="list-style-type: none"> The base is envisaged as a solid form anchoring the building to the site. 																											

Criteria	Comments
	<ul style="list-style-type: none"> • The middle or body of the building is conceived as a screened element which extends to the ground fronting Church Street to the west. The buildings two cores and lobbies to the west are expressed as vertical elements with hanging gardens between, defining the residential entry points. • To the east the body of the building is a more horizontal expression although carefully articulated with landscape planter recesses to break down the length of the building. • The top of the building provides the iconic statement, with a bird/flight inspired roof hovering over the development, a wet edge pool & communal spaces, and the township below. <p>The materials used on the elevations are modern, durable and provide visual interest. They add to the articulation of the building by breaking up large areas with material changes, alternative materials are used for balconies (some solid and some metal) and assist in defining the major components of the building (base, middle and top).</p>

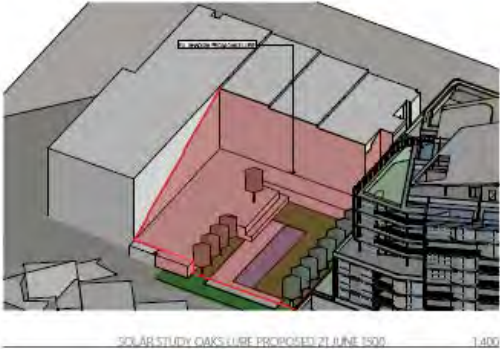
Apartment Design Guide (ADG) Assessment

The ADG provides consistent planning and design standards for apartments across the State.

It provides design criteria and general guidance about how development proposals can achieve the nine design quality principles identified in SEPP 65. Table 3 below contains an assessment of the proposal against the relevant controls.

Table 3: Apartment Design Guide Assessment

Control / Requirement	Compliance/Comment
<p><i>3A-1 – Site analysis</i></p> <p>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.</p>	<p>A site analysis plan was provided outlining the existing site conditions and constraints.</p>
<p><i>3B-1 Orientation</i></p> <p>Building types and layouts respond to the streetscape and site while optimising solar access within the development.</p>	<p>The development site runs lengthwise on a north-south axis. The building is orientated on an angle to maximise eastern and northern exposure and views towards Nelson Bay.</p>
<p><i>3B-2 Orientation</i></p>	<p><u>Winter Solstice (21 June)</u></p>

Control / Requirement	Compliance/Comment
<p>Overshadowing of neighbouring properties is minimised during mid-winter.</p>	<p>The Winter Solstice is the 'worst case scenario' for solar access throughout a calendar year.</p> <p>The Oaks Lure apartments overshadow its own communal space gradually from its inner western elevation from 12pm until 3pm, see Diagram 1. After 3pm, the whole communal space is overshadowed. Prior to 3pm, some overshadowing occurs from the existing tall trees planted around the pool area.</p>  <p>Diagram 1: Oaks Lure overshadowing 3pm mid-winter.</p> <p>The proposed new building will overshadow the Oaks Lure inner western elevation and approximately one third of the communal space at 9am. The overshadowing of the western elevation reduces as the day progresses. The overshadowing of the communal area is increased by the proposal (in addition to the Oaks own overshadowing) from 10am. This mainly impacts the pool area on the northern boundary and approximately half the outdoor area.</p> <p>18 Tomaree Street, which is to the south east of the site, is overshadowed partially from 1pm, which increases into the afternoon. To the north east, 61 Donald Street becomes partly overshadowed from 2pm onwards.</p> <p>The public domain along Church Street is overshadowed by the proposal from 9am to 11 am. Noting however, this area is already overshadowed by the existing Oaks Lure and Seaview Apartments.</p> <p><u>Summer Solstice (22 December)</u> The Summer Solstice is the 'best case scenario' for solar access throughout a calendar year.</p>

Control / Requirement	Compliance/Comment
	<p>The Oaks Lure apartments overshadow its own communal space gradually from its inner western elevation from 1pm until 5pm. After 5pm, the whole communal space is overshadowed.</p> <p>The proposed new building has minimal overshadowing of the Oaks Lure during the summer solstice due to the higher angle of the sun. The setback upper levels of the proposal allow for the sun to penetrate the ground plane for the Oaks Lure.</p> <p>18 Tomaree Street is negligibly overshadowed at 2pm, with two units being overshadowed at 3pm. The front of the Oaks Lure currently overshadows the front of 18 Tomaree Street from 3pm.</p> <p>61 Donald Street becomes overshadowed from 4pm onwards for a small southern portion of the building, which increases until sunset.</p> <p>The public domain along Church Street is overshadowed by the proposal at 9am to 10am and then ceases.</p> <p>The ADG design guidance outlines a proposed building should not decrease surrounding buildings solar access by more than 20%. As demonstrated, Oaks Lure is the main building affected.</p> <p>The additional overshadowing from the proposed building occurs in the morning between 9am to 12pm and affects a portion of the eastern facing units. Many of the eastern units are also dual aspect, having a frontage to the west/Church Street. Eleven of the 58 units will be impacted by additional overshadowing though not at the same time and this occurs on the eastern elevation. This would not result in a 20% increase from the proposed building.</p> <p>The proposal will increase the overshadowing of the Oaks Lure in winter, however the summer months are only impacted to a minor scale. Considering the Oaks Lure is tourist and residential accommodation, solar access is more vital in the summer months with higher tourist rates. It is unlikely the pool area would be utilised to the same extent in mid-winter due to the weather and existing overshadowing occurring.</p> <p>Considering the overshadowing documentation provided with the application, the increase of overshadowing on the surrounding properties and</p>

Control / Requirement	Compliance/Comment
	public domain from the proposal is not considered to adversely impact the amenity of adjacent buildings to an unacceptable level. The documentation has demonstrated that these buildings already overshadow the internal communal areas currently based on the existing built form.
<p><i>3C-1 Public Domain Interface</i></p> <p>Transition between private and public domain is achieved without compromising safety and security.</p>	<p>The vehicular and pedestrian entries to the building are clearly defined along the Church Street frontage. The landscaping structures and planting direct people throughout the spaces, and have been designed to avoid areas of concealment.</p> <p>Fencing is provided for the properties on the ground level facing Church Street and are also elevated to provide a good buffer and delineation between public and private space.</p>
<p><i>3C-2 Public Domain Interface</i></p> <p>Amenity of the public domain is retained and enhanced.</p>	<p>The proposed landscaping enhances the natural environment and streetscape. There are multiple trees proposed in the public verge as well as throughout the forecourt that will increase the amenity of the street.</p> <p>There are two main vehicle entries to the site along Church Street, which are clearly defined but conceal the park from visually impacting the streetscape.</p>
<p><i>3D-1 Communal and Public Open Space</i></p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Communal open space has a minimum area equal to 25% of the site area. • Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter). 	<p>The communal open space is provided on Ground Level, Level 1 and Level 8.</p> <p>Ground Level provides 469.1m², Level 1 provides 697.8m² and Level 8 provides 267.7m².</p> <p>This provides a total of 1,434.6m² or 31% communal space, compliant with the 25% minimum requirement.</p> <p>The communal open space located to the north-east, will receive at least 3 hours sunlight to more than 50% of the area during mid-winter satisfying the requirements of the ADG.</p>
<p><i>3D-2 Communal and Public Open Space</i></p> <p>Communal open space is designed to allow for a range of activities, respond to</p>	<p>The design incorporates a mini golf course, outdoor yoga area, walking track and outdoor gym equipment in the ground level communal space to attract residents and provide opportunities for social interaction.</p>

Control / Requirement	Compliance/Comment						
site conditions and be attractive and inviting							
<p><i>3D-3 Communal and Public Open Space</i></p> <p>Communal open space is designed to maximise safety.</p>	<p>The communal open space on the Ground Level will be overlooked by the eastern facing units.</p> <p>The western facing units will overlook the forecourt. The top level communal area, which includes a pool, is not overlooked due to buffers being provided between the space and the adjacent residential units to reduce noise and overlooking into private areas. It is considered the top level communal space can still remain safe as it is an open design with little opportunity for concealment.</p>						
<p><i>3D-4 Communal and Public Open Space</i></p> <p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.</p>	<p>Public open space is provided in the western frontage along Church Street as a gesture to the street. There is currently no public open space or existing pattern along Church Street that is similar to the proposed, however, the forecourt area is a positive change in this streetscape.</p>						
<p><i>3E-1 Deep Soil Zones</i></p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Site area greater than 1,500 m² – minimum dimension 6m and 7% of site area. <p>However, the design criteria may not be possible on some sites including:</p> <ul style="list-style-type: none"> • Central business district. • Constrained sites. • High density areas. • Commercial centres. • Where there is 100% site coverage or non-residential uses at ground floor. 	<p>The site provides 12.16% of the landscaped area as a deep soil zone, more than the 7% minimum requirement.</p>						
<p><i>3F-1 Visual Privacy</i></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p>	<table border="1"> <thead> <tr> <th data-bbox="727 1576 1015 1606">ADG Requirement</th> <th data-bbox="1021 1576 1311 1606">Proposed</th> </tr> </thead> <tbody> <tr> <td data-bbox="727 1608 1015 1659">Building height up to 12m</td> <td data-bbox="1021 1608 1311 1659">(4 storeys):</td> </tr> <tr> <td data-bbox="727 1662 1015 1742">Habitable rooms and balconies - 6m.</td> <td data-bbox="1021 1662 1311 1742">0m to 6m. See below comments for further details.</td> </tr> </tbody> </table>	ADG Requirement	Proposed	Building height up to 12m	(4 storeys):	Habitable rooms and balconies - 6m.	0m to 6m. See below comments for further details.
ADG Requirement	Proposed						
Building height up to 12m	(4 storeys):						
Habitable rooms and balconies - 6m.	0m to 6m. See below comments for further details.						

Control / Requirement	Compliance/Comment		
Numerical design criteria: <ul style="list-style-type: none"> • Building height up to 12m (4 storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 6m. • Non-habitable rooms – 3m. • Building height up to 25 metres (5-8 storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 9m. • Non-habitable rooms – 4.5m. • Building height over 25m (9+ storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 12m. • Non-habitable rooms – 6m. • No separation is required between blank walls. • An additional 3 m separation is required when adjacent to a different zone, which permits lower density residential development to provide a transition in scale and increased landscaping. 	Non-habitable rooms – 3m	NA	
	Building height up to 25 metres (5-8 storeys):		
	Habitable rooms and balconies - 12m.	4.5m to 9m See below comments for further details.	
	Non-habitable rooms – 6m.		
	Building height over 25m (9+ storeys):		
	Habitable rooms and balconies - 12m.	8.7m to 14m. See below comments for further details.	
	No separation is required between blank walls.	No separation towards elevations with blank walls.	
	An additional 3 m separation is required when adjacent to a different zone, which permits lower density residential development to provide a transition in scale and increased landscaping.	NA	
	<p>The building provides a minimum 6m side setback to the eastern portion of the southern boundary for the first three levels and a 9m setback for levels 4 to 8.</p> <p>There is a zero lot setback on the south west and north west corner elements of the building fronting Church Street for levels 1 to 3, and a 4.5m to 8.7m setback for the remaining upper levels on the respective boundaries.</p> <p>The adjacent rooms are habitable (with no windows, doors or balconies) though are blank facades which can be considered to not require separation., the zero lot setback is adjacent to the service stairs and blank façade of the Oaks Lure (south of site) and Seaview Apartments (north of site), therefore results in no amenity impact in terms of visual privacy.</p> <p>The eastern (rear of building) aspect of the building is setback from 5.6m to 35.4m from the boundary due to the angle of the building. These setbacks provide adequate separation to the eastern neighbours.</p>		

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Control / Requirement	Compliance/Comment
	Councils UDP supported the building separation and concluded the visual privacy was acceptable with regard to the ADG.
<p><i>3F-2 Visual Privacy</i></p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	There are three ground floor units along Church Street, which have been raised to have adequate separation and privacy from the street. The private open space and windows are adequately separated from the communal areas and common circulation areas with retaining, fencing and landscaping.
<p><i>3G-1 Pedestrian Access and Entries</i></p> <p>Building entries and pedestrian access connects to and addresses the public domain.</p>	Two vehicle entries and two pedestrian entries are located along the western frontage to Church Street, which connects from the public domain.
<p><i>3G-2 Pedestrian Access and Entries</i></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	The Landscape Plan includes paving and defined plantings to indicate the main entrance to the building. This makes the entrance easy to identify.
<p><i>3G-3 Pedestrian Access and Entries</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations.</p>	Pedestrian links are clearly provided from the entries to the public domain and existing pathways along Church Street.
<p><i>3H-1 Vehicle Access</i></p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	Two vehicle entries are proposed off the western frontage to Church Street. These are located on the opposite ends of the building and separated from the main pedestrian entry, which is centrally located along the frontage. This configuration allows the pedestrian entry and forecourt area to be centralised and provide an attractive connection to the streetscape avoiding the fragmentation multiple vehicle entries can create.
<p><i>3J-1 Bicycle and Car Parking</i></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400m of land zoned, B3 Commercial Core, 	The off-street parking provided is compliant with the requirements of the DCP.

Control / Requirement	Compliance/Comment
<p>B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.</p> <p>The car parking need for a development must be provided off-street.</p>	
<p><i>3J-2 Bicycle and Car Parking</i></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>There are eight motorcycle spaces provided on the lower ground floor. No bicycle parking is provided.</p> <p>A bicycle rack will be conditioned to be included on the ground floor level.</p>
<p><i>3J-3 Bicycle and Car Parking</i></p> <p>Car park design and access is safe and secure</p>	<p>There is a waste and recycling storage area provided adjacent to the lift on the ground level.</p> <p>The main waste sorting and collection area is on the lower ground level, which can be accessed from the lifts or stair wells and does not require travel over car spaces or across ramps.</p>
<p><i>3J-4 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of underground car parking are minimised.</p>	<p>The basement car park provides a logical grid design. The car park is located to the east of the building, with only the vehicle access visible along Church Street.</p>
<p><i>3J-5 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of on-grade car parking are minimised.</p>	<p>Car parking is provided in the basement, not on-grade.</p>
<p><i>3J-6 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of above ground enclosed car parking area minimised.</p>	<p>No above ground car parking is proposed.</p>
<p><i>4A-1 Solar and Daylight Access</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p>	<p>Most units in the building are dual aspect.</p> <p>The units central to the building utilise the north-eastern orientation and include the main living area, a bedroom and a balcony on the north-east to optimise solar access. This provides solar exposure typically from 9am to 1pm.</p>

Control / Requirement	Compliance/Comment
<p>Numerical design criteria:</p> <ul style="list-style-type: none"> In all other areas (i.e. areas outside Sydney metropolitan area, Newcastle and Wollongong local government areas), living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>The units on the northern corner all have optimal orientation, most with exposure north, east and west. This provides solar exposure to parts of the unit throughout the whole day.</p> <p>The units on the southern corner have either a western or an eastern orientation as well to optimise either morning or afternoon solar access into the unit. The western units gain solar access 1pm onwards and the eastern from 9am to 1pm.</p> <p>The solar access to the building has been maximised through the design and achieves a good outcome.</p>
<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>Sunlight access is abundant to the units due to their orientation. Daylight will also be available due to the height of surrounding developments, which do not create areas that will block or obstruct daylight.</p>
<p><i>4A-3 Solar and Daylight Access</i></p> <p>Design incorporates shading and glare control, particularly for warmer months.</p>	<p>The windows are generally setback from the balconies, which provides some shading from the roof, and also assists in glare control to reduce direct exposure, mainly on the east, north and west aspects. Louvres have been included on the western façade to manage evening glare.</p>
<p><i>4B-1 Natural Ventilation</i></p> <p>All habitable rooms are naturally ventilated.</p>	<p>All habitable rooms have openable windows providing natural ventilation. There are 'studies' included in some units which are not considered a room as they do not meet the BCA habitable room definition.</p>
<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>Most units are dual aspect to allow cross ventilation. There are some units on the western façade orientated north with one aspect. For these single aspect units, the width of the unit has been maximised to allow large balconies and multiple rooms with openable windows and doors to achieve adequate ventilation.</p>
<p><i>4B-3 Natural Ventilation</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for Residents.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. 	<p>More than 60% of the units have cross ventilation with dual or multiple aspects. The use of openable windows and sliding doors optimises natural ventilation.</p>

Control / Requirement	Compliance/Comment
<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. 	
<p><i>4C-1 Ceiling Heights</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access.</p> <p>Numerical design criteria: Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable rooms – 2.7m. Non-habitable rooms – 2.4m, Two storey apartments – 2.7m for main living area floor and 2.4 m for second floor where it does not exceed 50% of the apartment area. Attic spaces – 1.8m at the edge of the room with a 30 degree minimum ceiling slope. If located in mixed use areas – 3.3m for ground floor and first floor to promote future flexibility of use. 	<p>Each unit provides 2.7m ceilings throughout to the habitable and non-habitable rooms. Additional space is provided between the finished ceiling level and the under floor level of the slab above for services.</p> <p>The entry level, including the gym and neighbourhood shop have a floor to ceiling height of 3.13m. This is considered acceptable as the building is within an R3 zone and the bottom floor cannot be used for commercial premises, only resident related uses or the neighbourhood shop.</p>
<p><i>4C-2 Ceiling Heights</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>The 2.7m ceiling heights provide a sense of space throughout the unit and provide well-proportioned rooms.</p>
<p><i>4C-3 Ceiling Heights</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>Greater ceiling heights are not required on the ground floor. The site is located in a R3 zoned area with no commercial ground floor uses permissible.</p>
<p><i>4D-1 Apartment Size and Layout</i></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p> <p>Numerical design criteria: Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio – 35 m² One bedroom – 50 m² 	<p>The units are achieve the minimum internal size required by the ADG as outlined below (excludes balconies):</p> <p>One bedroom – 59m² Two bedroom – 92.9m² Three bedroom – 135m² Four bedroom – 180m²</p> <p>These are all compliant with the required minimums.</p>

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<ul style="list-style-type: none"> • Two bedroom – 70m² • Three bedroom – 90m² • An additional 5m² is required for apartments with more than one bathroom. • An additional 12m² is required for a fourth, and further additional bedrooms. • Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. 	<p>Each habitable room has a window included to comply with the BCA.</p>
<p><i>4D-2 Apartment Size and Layout</i></p> <p>Environmental performance of the apartment is maximised.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Habitable room depths are limited to a maximum of 2.5 x the ceiling height. • In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. 	<p>Due to the open plan layout and multiple aspects of units, every habitable room complies with the habitable room depths and spacing from windows.</p>
<p><i>4D-3 Apartment Size and Layout</i></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). • Bedrooms have a minimum dimension of 3m (excluding wardrobe space). • Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> - One bedroom apartments - 3.6m. - Two or three bedroom apartments – 4m. • The width of cross-over or cross-through apartments are at least 4m 	<p>The master bedrooms are typically 12.9m².</p> <p>Each bedroom has a minimum dimension of 3m excluding the built in robes or walk in robes.</p> <p>The open plan living and dining areas have a minimum width of 4m, compliant with the requirement.</p> <p>No units are less than 4m wide.</p>

Control / Requirement	Compliance/Comment
internally to avoid deep narrow apartment layouts.	
<p><i>4E-1 Private Open Space and Balconies</i></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Numerical design criteria – all apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> • Studio apartments – 4m². • One bedroom apartments – 8m² with a depth of 2m. • Two bedroom apartments – 10m² with a depth of 2m. • Three + bedroom apartments – 12m² with a depth of 2.4m. • For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m 	<p>The units provide the following primary balcony sizes at a minimum:</p> <p>One bedroom – 8.4m² Two bedroom – 10.5m² Three bedroom – 9.5m² (second balcony 6.8m²) Four bedroom – 21.5m²</p> <p>Three of the 3 bedroom units do not comply with the 12m² on one balcony, however each has a second balcony, which is considered a suitable alternative.</p> <p>None of the balconies are less than 2m deep. The three Ground Level units have private paved terraces and turfed courtyards that are a minimum combined area of 48.4m².</p> <p>The private open space and balconies provided generally comply with the ADG requirements.</p>
<p><i>4E-2 Private Open Space and Balconies</i></p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p>	<p>All balconies are accessed from the main living area, and several are provided access from a bedroom as well, achieving good useability and functionality of private open space areas.</p>
<p><i>4E-3 Private Open Space and Balconies</i></p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p>	<p>The balconies have either a soft bronze matte metal balustrade or blonde brick balustrade. This allows view corridors through the balcony but retains a sense of separation and privacy that glass balustrades do not provide.</p> <p>The two balustrade types are an attractive addition to the elevations and sympathetic to the overall architectural design.</p>

Control / Requirement	Compliance/Comment
<p><i>4E-4 Private Open Space and Balconies</i></p> <p>Private open space and balcony design maximises safety.</p>	<p>The design does not incorporate features that would encourage climbing of balconies.</p>
<p><i>4F-1 Common Circulation and Spaces</i></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • For buildings less than ten storeys in height the maximum number of apartments off a circulation core on a single level is eight. 	<p>There are two separate lift cores, one servicing the south half of the building and the other the north half.</p> <p>The maximum amount of units serviced by one lift on each floor is 8.</p>
<p><i>4F-2 Common Circulation and Spaces</i></p> <p>Common circulation spaces promote safety and provide for social interaction between residents.</p>	<p>There are two main entrances into the building. Each has a lobby area, which has the lifts in easy view.</p> <p>When exiting the lift there is a short sight line before the corner to the main corridor. Doors are easily visible and no areas of concealment are throughout.</p>
<p><i>4G-1 Common Circulation and Spaces</i></p> <p>Adequate, well designed storage is provided in each apartment.</p> <p>Numerical design criteria –in addition to storage in kitchens, bathrooms and bedrooms the following storage is provided:</p> <ul style="list-style-type: none"> • Studio apartments – 4m². • One bedroom apartments – 6m². • Two bedroom apartments – 8m². • Three + bedroom apartments – 10m². • At least 50% of the required storage is to be located within the apartment. 	<p>Each unit includes built in or walk-in robes in each bedroom. There is storage within the kitchen, with some kitchens having additional pantry storage. Many units have studies or walk in storage rooms.</p> <p>The proposed internal storage is adequate for the size of each unit.</p>
<p><i>4G-2 Common Circulation and Spaces</i></p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>There is some storage proposed within the private car garages in the basements levels.</p> <p>There is communal storage provided on each level, ranging from 8.96m² to 30.10m².</p>

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<p><i>4H-1 Acoustic Privacy</i></p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>The building is adequately separated from the adjoining neighbours, reducing the transmission of noise emission between units.</p> <p>The car park is located in the basement, which may reduce the sound transmission compared to open air car parking. There are bedrooms located above the north western car park entrance, notwithstanding however, the design and materials used should mitigate nuisance noise from cars entering and exiting via that access.</p>												
<p><i>4H-2 Acoustic Privacy</i></p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>Each unit concentrates the living and main trafficable areas together and the bedrooms and less trafficked areas together. This provides separation between the noisier and quieter areas of the home.</p>												
<p><i>4J-1 Noise and Pollution</i></p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.</p>	<p>The locality is primarily residential and commercial, and experiences higher traffic through the seasonal peaks due to its location near Nelson Bay Town Centre. However, the area is not considered a noisy or hostile environment and no additional treatment is considered necessary to mitigate against external noise impacts outside of the proposed building setbacks.</p>												
<p><i>4J-2 Noise and Pollution</i></p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>The development is not located in an environment that causes adverse noise impacts, which need to be mitigated through further attenuation.</p>												
<p><i>4K-1 Apartment Mix</i></p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p>	<p>The building proposes the following unit mix to cater for a range of household sizes:</p> <table border="1"> <thead> <tr> <th>Bedrooms</th> <th>Quantity</th> </tr> </thead> <tbody> <tr> <td>One bedroom units</td> <td>5</td> </tr> <tr> <td>Two bedrooms units</td> <td>46</td> </tr> <tr> <td>Three bedroom units</td> <td>25</td> </tr> <tr> <td>Four bedroom units</td> <td>5</td> </tr> <tr> <td>Total</td> <td>81</td> </tr> </tbody> </table>	Bedrooms	Quantity	One bedroom units	5	Two bedrooms units	46	Three bedroom units	25	Four bedroom units	5	Total	81
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Total	81												
<p><i>4K-2 Apartment Mix</i></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The larger units are concentrated towards the top of the building, with the one, two and three bedroom units primarily on the lower floors.</p>												

ITEM 2 - ATTACHMENT 3 ORIGINAL PLANNERS ASSESSMENT REPORT.

Control / Requirement	Compliance/Comment
<p><i>4L-1 Ground Floor Apartments</i></p> <p>Street frontage is maximised where ground floor apartments are located.</p>	<p>The ground floor unit is raised to provide more privacy.</p>
<p><i>4L-2 Ground Floor Apartments</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>The ground floor unit is raised to provide privacy to the residents, but still provides ample opportunity for passive surveillance.</p>
<p><i>4M-1 Facades</i></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>The building has been thoughtfully designed to include visual interest on all elevations. The western façade to Church Street has been designed to provide an inviting entrance with an indented forecourt, range of landscaping and mixture of materials.</p> <p>The other elevations all use a combination of materials and stepping in of building.</p> <p>Councils UDP were supportive of the aesthetic design of the facades.</p>
<p><i>4M-2 Facades</i></p> <p>Building functions are expressed by the façade.</p>	<p>The pedestrian entry and vehicle entry are both clearly defined along the frontage of Church Street.</p>
<p><i>4N-1 Roof Design</i></p> <p>Roof treatments are integrated into the building designed and positive respond to the streets.</p>	<p>The roof structure is a flat form with overhang elements. It allows the roof to be setback in from the elevations reducing height and bulk.</p>
<p><i>4N-2 Roof Design</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>Ample undercover and open communal space is provided on the roof.</p>
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	<p>The roof design does not hinder the solar access to the units.</p>

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Control / Requirement	Compliance/Comment
<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	<p>A Landscape Plan has been provided, which incorporates an environmentally sustainable and maintainable design.</p>
<p><i>4O-2 Landscape Design</i></p> <p>Landscape design contributes to the streetscape and amenity.</p>	<p>The landscaping will contribute to the natural environment along Church Street. The planting will be a positive addition to the streetscape, which is currently underutilised.</p>
<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	<p>The planting proposed was assessed as adequate by the UDP.</p>
<p><i>4P-2 Planting on Structures</i></p> <p>Plant growth is optimized with appropriate selection and maintenance.</p>	<p>The planting proposed was assessed as adequate by the UDP.</p>
<p><i>4P-3 Planting on Structures</i></p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces.</p>	<p>The planting proposed will create a quality environment for the public and private spaces.</p>
<p><i>4Q-1 Universal Design</i></p> <p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • A benchmark of 20% of the total apartments incorporate the Liveable Housing Guidelines silver level universal design features. 	<p>Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.</p>
<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable designed are provided.</p>	<p>Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.</p>

Control / Requirement	Compliance/Comment
<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	<p>Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.</p>
<p><i>4R-1 Adaptive Reuse</i></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	<p>Not applicable.</p>
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	<p>Not applicable.</p>
<p><i>4S-1 Mixed Use</i></p> <p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.</p>	<p>The forecourt design clearly defines the location of the neighbourhood shop and public space and where the private space begins at the residential entries.</p>
<p><i>4S-2 Mixed Use</i></p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.</p>	<p>The ground level is designed to clearly define the area of the neighbourhood shop from the resident entries.</p>
<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	<p>No awnings are proposed.</p>
<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	<p>No signage is proposed.</p>
<p><i>4U-1 Energy Efficiency</i></p> <p>Development incorporates passive environmental design.</p>	<p>Adequate natural light and ventilation is provided to each unit.</p>

Control / Requirement	Compliance/Comment
<p><i>4U-2 Energy Efficiency</i></p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p>	<p>The development will comply with the BASIX requirements as required.</p>
<p><i>4U-3 Energy Efficiency</i></p> <p>Adequate natural ventilation minimises the need for mechanical ventilation.</p>	<p>Natural ventilation is ample throughout all units due to the openable windows, door location and aspect orientation of units.</p>
<p><i>4V-1 Water Management and Conservation</i></p> <p>Potable water use is minimised.</p>	<p>Water fixtures complying with BASIX requirements will be installed.</p>
<p><i>4V-2 Water Management and Conservation</i></p> <p>Urban stormwater is treated on site before being discharged to receiving waters.</p>	<p>A stormwater drainage plan has been provided which provides for water re-use.</p>
<p><i>4V-3 Water Management and Conservation</i></p> <p>Flood management systems are integrated into the site design.</p>	<p>The site is not flood affected.</p>
<p><i>4W-1 Waste Management</i></p> <p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p>	<p>A bin storage area is located in the basement and out of view of the street. A private contractor will collect waste from within the car park and lot along the street.</p>
<p><i>4W-2 Waste Management</i></p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	<p>Each kitchen has a waste storage area to be used prior to placing in the council bins in the basement carpark.</p>
<p><i>4X-1 Building Maintenance</i></p> <p>Building design detail provides protection from weathering.</p>	<p>The designer has used materials that are durable and easily maintained or can be replaced if required.</p>

Control / Requirement	Compliance/Comment
<p><i>4X-2 Building Maintenance</i></p> <p>Systems and access enable ease of maintenance.</p>	<p>Windows and glass doors can be cleaned from the balconies or internally where required.</p> <p>External scaffolding should not be required to carry out general upkeep of the building.</p>
<p><i>4X-3 Building Maintenance</i></p> <p>Material selection reduces ongoing maintenance costs.</p>	<p>The building uses render and cladding as the primarily external materials. These can be easily maintained and should stand the general wear and tear the building will receive.</p>

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.3 – Zone Objectives and Land Use Table

The proposed development is defined as a Residential Flat Building and Neighbourhood Shop with ancillary café.

The residential flat building and neighbourhood shop are permissible in the R3 zone. Cafes, which are defined as food and drinks premises are prohibited in the zone.

The applicant proposes that the café is considered an ancillary use to the neighbourhood shop. The definition of a neighbourhood shop is defined as:

‘means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises’.

It is considered that the café can be considered an ‘ancillary service’ as it does assist in meeting the day to day needs of people who live in the building.

The café will be restricted to operate in the same hours of the neighbourhood shop to ensure that it remains ancillary.

The proposed gym within the building is considered ancillary to the residential flat building. It will be used only by the residents as a communal facility, similar to the outdoor equipment. It will be conditioned that this space is only to be used only by the building residents and cannot be for commercial use.

Considering the above, the development is permissible in the zone.

The development addresses the objectives of the zone as it provides for the housing needs of the community by providing 81 additional homes.

The units vary in size, which caters for several household types in a medium density setting. The neighbourhood shop with ancillary café will assist in providing a desirable service to meet the day to day needs of residents.

Due to this, the development is consistent with the objectives of the zone.

Clause 2.7 – Demolition requiring development consent

Clause 2.7 identifies that the demolition of a building or work may be carried out only with development consent, unless identified as exempt development under an applicable environmental planning instrument.

No demolition is proposed. The applicant proposes to utilise the existing basement and foundations existing on site.

Clause 4.1 – Minimum Subdivision Lot Size

Clause 4.1 outlines the minimum lot size applicable to the subject sites, as identified on the minimum lot size map, to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls.

This clause does not apply in relation to the subdivision of any land by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015.

The lot is also proposed to be consolidated which can occur without consent as it will be above the minimum lot size.

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

Clause 4.1B specifies the minimum lot size required to facilitate development for the purposes of dual occupancies, multi dwelling housing and residential flat buildings in order to achieve planned residential density in certain zones. The site is zoned R3 and requires a minimum lot size of 450m².

The subject site has a total area of approximately 4628.79m², which provides sufficient area to facilitate the proposed development, in accordance with the requirements of this clause.

Clause 4.3 – Height of Buildings

The site has a mapped maximum building height of 28m. The proposed development is 32.18m. This represents a variation of 4.18m or 14.9% above the maximum building height.

The applicant submitted a Clause 4.6 exception to development standard request, to support the variation. A detailed assessment is contained within the Clause 4.6 Assessment Report attached to this report.

Clause 4.6 – Exceptions to development standards

The applicant submitted a Clause 4.6 exception to development standard request, to support the variation for an increase in the building height proposed on site. The building height proposed is 32.18 m, which is 4.18m above the maximum 28m mapped onsite.

An assessment of the applicant Clause 4.6 request was conducted and is included in **Attachment 1** of this report. The assessment concluded that there is merit in applying flexibility to this development standard in this instance and the proposed height variation is supported.

Clause 5.4 Controls relating to miscellaneous permissible uses

The floor area of a neighbourhood shop under this plan must not include a retail area, which exceeds 100m². The proposed neighbourhood shop is 99.7m².

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to entail works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum and by which the water table is likely to be lowered. Most of the excavation has already occurred on site and there are no known issues of acid sulfate soil exposure.

Clause 7.2 – Earthworks

The development incorporates earthworks (cut) to a depth of 3.8m below ground level to establish the basement car park. The large amount of earthworks have already been commenced under DA 16-2016-631-1 through the existing foundations on site. The earthworks are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place, noting that all

boundaries will be suitably stabilised by structurally designed walls with adequate drainage during and at completion of the works.

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 Councils requirements. The subject land also maintains direct access to Church Street, meeting the requirements of this clause.

Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition

There are no draft EPI's relevant to the proposed development.

Section 4.15(a)(iii) – any development control plan

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.

Chapter B1 – Tree Management

There is no tree removal proposed as part of the application.

Chapter B2 – Natural Resources

The subject site is not on land or is within 500m of land that contains items of environmental significance; such as threatened species or communities, listed migratory species, wildlife corridors, wetlands or riparian corridors and has the potential to affect biodiversity. It also is not seeking to use biodiversity offsets; or located on land containing noxious weeds; or located on or is in proximity to land that contains koala habitat.

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 (ASS) and cause environmental damage. As detailed within clause 7.1 discussion above, the proposed development could be undertaken, without resulting in adverse impact to ASS. 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. The impacts of the development during construction could be limited through conditions of consent, which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to conditions, the application is satisfactory in regards to noise management.

Earthworks

As discussed at clause 7.2 above, the proposed development involves 3.8m of additional cut on site. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

Chapter B4 – Drainage and Water Quality

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils infrastructure technical specifications and DCP requirements. The stormwater drainage plan has been assessed as being consistent with the

Infrastructure Specification and a condition of consent has been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a construction certificate.

Chapter B5 – Flooding

The site is not flood prone.

Chapter B8 – Road Network and Parking

The development provides a total of 159 car parking spaces.

Residential Parking

The following table outlines the required car parking under the DCP and the proposed parking.

Bedrooms	DCP required car parking total	Provided car parking
One bedroom x 5	5	5 (min)
Two bedroom x 46	46	46 (min)
Three bedroom x 25	50	50 (min)
Four bedroom x 5	10	16 (some have 4 spaces per unit)
Visitor parking (1 per 3 dwellings)	27	27
	Total - 138	Total – 144

Gymnasium Parking

The gym will only be for the use of the residents and not be open to the public. Considering this, parking is not required for the gym as residents are already provided with parking per unit allocation.

Neighbourhood Shop & ancillary café parking

The proposed neighbourhood shop and café tenancy is approximately 100m².

Under Figure BU of the DCP, a neighbourhood shop requires 1 car space per 20m². Cafes outside of commercial premises require 15 car spaces per 100m² of floor area and one must be an accessible space.

The shop is the dominate use on site and the café is ancillary. It is expected the café component will likely attract residents and staff from the building and pedestrian traffic from the area, more so than specific trips via car to the premises. Accordingly, a total of 5 car spaces are required to be dedicated to the neighbourhood shop with one needing to be an accessible space.

The proposal provides for 15 car spaces, including 2 accessible spaces dedicated to the neighbourhood shop and café. The parking provision for the neighbourhood shop and café is considered acceptable with regard to the DCP parking rates.

Electric Vehicles

There is one car park dedicated to electric vehicle charging shown in space '159' on the Ground Level.

Overall, the 159 car spaces the development provides is a sufficient amount of parking to service the residents and neighbourhood shop.

Traffic Network

The development has two main vehicle entries. It is proposed that all traffic will enter left (from the north) to the site and exit left (to the south) from the site along Church Street. This removes the ability for cars to queue along Church Street northbound to turn right into the development, potentially blocking traffic into Nelson Bay Centre. Signage will be conditioned to make it clear to motorists that entry and exit is to accord with this configuration.

SIDRA analysis was conducted as part of the Traffic Impact Assessment (TIA) prepared by Intersect Traffic, on the capacity of the road network to cater for the development. The main intersections impacted by the development will be the Nelson Bay Road / Stockton Street / Church Street roundabout intersection, the Church Street / Donald Street priority controlled give way sign T-intersection and the Government Road / Church Street roundabout intersection.

The modelling included a 1.5% background growth rate and assessed the intersections at their current design (as no upgrades are currently proposed). The modelling showed that all intersections are currently operating well within capacity and will continue to do so post development, at least through to 2031. There is no overall deterioration in level of service (LoS), with all remaining at LoS A, well within the acceptable criteria set by TfNSW. Average delays and 95 % back of queue lengths are only increased by less than 1 second and less than 2 vehicles through to 2031. It is therefore considered reasonable to conclude the development on the site will not adversely impact on these intersections nor on any other surrounding local and State road intersections.

On consideration of this analysis, the existing road network is capable of catering to the traffic increase generated from the development. Councils Traffic Engineer supported the analysis and findings of the TIA.

Chapter C – Development Types

The proposed development is that of a residential flat building. As such, the assessment of the development is contained above in the SEPP 65 section of the report.

Chapter D5 – Nelson Bay Centre

The development site is located within the land identified in Figure DI as Nelson Bay Centre. The site is specifically located in the Town Living and Commercial Precinct. Figure 8 shows the location of the site.

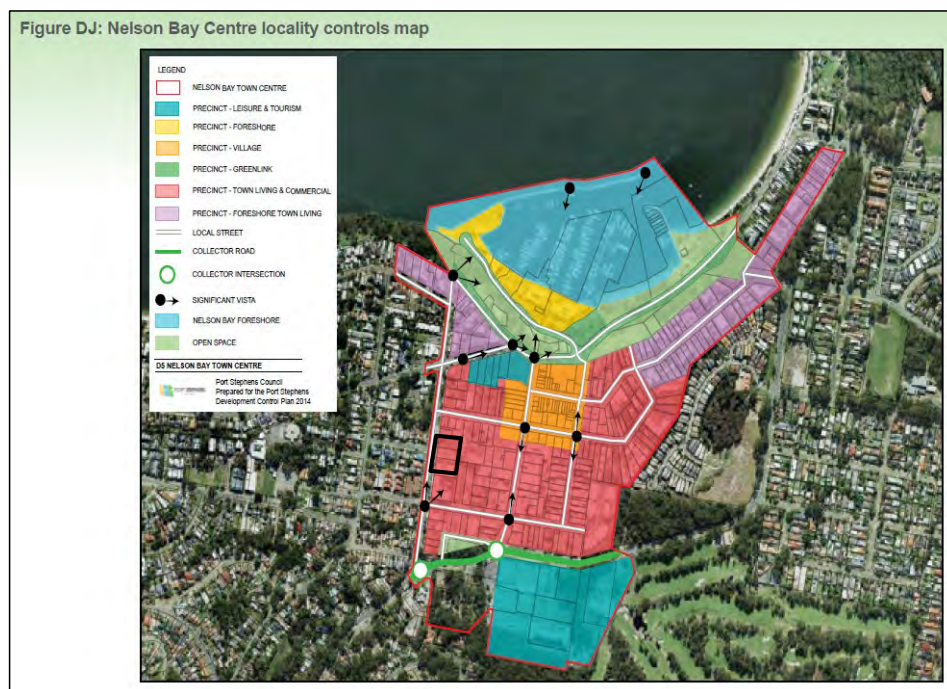


Figure 8: Site outlined in black.

Table 4: General Controls

Development Control	Requirement	Comment
D5.1 Significant vistas	Development preserves the important vistas identified by Figure DJ Note: C1.13 requires street layout to respond to the topographical features of the site	The building does not block the significant vista outlined as running northbound along Church Street, Stockton Street or Yacaaba Street.
D5.2 Street layout	The street layout is consistent with Figure DJ Note: C1.13 requires the street network to be interconnected to provide a grid-like structure	The development proposes no changes to the street network.
D5.3 Roof design	Development is to ensure that roof tops do not adversely impact on the public domain when: <ul style="list-style-type: none"> • Viewed from buildings at higher elevations • When approaching the town centre • Viewed from the street Note: C2.1 requires building height to be in accordance with the Local Environmental Plan clauses 4.3 and 5.6	The roof area is stepped back from the street wall of the building, removing any potential to dominate the skyline when approaching the town centre.
D5.4 NSW Coastal planning guidelines	Building materials are reflective of existing buildings with reference made to the Coastal Design Guidelines for NSW12 Note: C2.17 requires building facades to use materials, colours and architectural elements to reduce bulk and scale	The proposed building is a modern design, which will increase the quality and aesthetics of the streetscape. The existing surrounding built form is comprised of simple block forms with plain colours that do not add to the aesthetic quality of the street. The proposed building includes a variety of materials and variation in wall setbacks and heights to create visual interest on each elevation. The materials are considered to be compatible in the coastal context. Moreover, the UDP supported the selected materials and finishes of the building.
D5.5 Design excellence	Development is to demonstrate design excellence, including:	An assessment of the development against the

Development Control	Requirement	Comment
	<ul style="list-style-type: none"> • Consistency with the desired character statements set out in this Part; • Consideration of impacts on the public domain including views, overshadowing and the scale of the streetscape; and • Architectural merit, for example by addressing local topography, the surrounding natural environment and waterways, green spaces, or vegetated ridgelines in the design of the development. <p>Development in a prominent location and of a prominent scale, or where Council deems necessary, will be referred to the Urban Design Panel.</p> <p>Note: Applicants will be encouraged to consult with the Urban Design Panel prior to lodgement.</p>	<p>character statement is contained in Section D5.7.</p> <p>The development was reviewed by the UDP as outlined in previous sections of this report and endorsement provided for the designed.</p>

D5.C Desired character - Town Living and Commercial Precinct

The objectives of this section of the DCP are to:

- To provide character statements that were identified through the Nelson Bay Town Centre and Foreshore Strategy to guide development within the Town Living and Commercial Precinct as identified by Figure DJ
- To encourage a diversity of residential accommodation types to provide critical mass to support the role of the Village Precinct

D5.7 Desired character - Town Living and Commercial Precinct

Development within the Town Living and Commercial Precinct as identified on Figure DJ has regard for the following desired character statements:

Table 5: Town Living and Commercial Precinct Controls

Requirement	Comment
<ul style="list-style-type: none"> • A wide range of uses including residential, retail and business development will occur in the precinct. This will attract a range of housing types including residential flat buildings, multi dwelling housing and shop top housing 	<p>The proposal is a mixed-use development, which contains retail on the ground level in the form of the neighbourhood shop and ancillary café to cater to the public and buildings residents.</p> <p>The residential component is comprised of unit types varying from one bedroom to four bedrooms, catering for a range of household types and sizes.</p>

Requirement	Comment
<ul style="list-style-type: none"> The precinct is appropriate for larger scale developments, with large footprints, that may not be suitable for the Village Precinct 	<p>The proposal is over two parcels of land, which provides a better composition of land for larger scale developments, in comparison to the design outcomes related to residential flat buildings on smaller sites. The larger footprint has enabled large communal spaces to be provided to residents and the design of a large high quality landscaped forecourt fronting Church Street, which will positively add to the streetscape.</p> <p>The density on site will support the housing required in the area without impacting on the desired scale of the Village Precinct.</p>
<ul style="list-style-type: none"> The mix of uses may encourage residential living with live-work opportunities and boutique commercial office space 	<p>The size of the units, some which incorporate studies in addition to the one to four bedrooms, may encourage or cater to those wishing to have flexible work from home arrangements. This can aide in retaining residents within the Nelson Bay Centre increasing the opportunity for day to day spending at local cafes and retail premises, in comparison to existing housing options which may not grant that opportunity, requiring workers to leave the Nelson Bay area throughout the work day.</p>
<ul style="list-style-type: none"> Development will have regard for adjacent precincts that provide a change in scale 	<p>The site abuts the Nelson Bay West Foreshore Precinct, and is surrounded by the Town Living and Commercial Precinct to the north, east and south.</p> <p>The proposal will provide a transition in building scale along Church Street and in this western area of the Precinct. The building is higher than the adjacent buildings to the north and south, noting the proposal presents as a compatible built form along the streetscape and is aligned with the desired scale of buildings in this area under the 'Nelson Bay Town Centre and Foreshore Strategy'.</p> <p>The design of the frontage along Church Street, which includes a landscaped forecourt on ground level, an articulated four storey street wall with setbacks at the upper storeys, creates a compatible interface with the lower scale development to the west.</p>
<ul style="list-style-type: none"> Mature street plantings are to assist in enclosing the street for pedestrians and reducing the scale of large style buildings located in this area <p>Note: C1.5 requires that street trees be provided in accordance with the tree technical specification 1</p>	<p>The Church Street frontage is landscaped with several large street trees on the public verge and within the forecourt area. These trees along with other low shrubs and the pedestrian layout in the frontage, provide elements at a human scale which can mitigate the visual scale and bulk of the building in the immediate vicinity.</p>

Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no other regulations applicable to the development.

Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Social and Economic Impacts

The proposed development will contribute to the housing supply in Nelson Bay and is considered a positive social impact as it will provide for 81 new homes, which comprise a range of housing sizes to meet the needs of the community. The development includes communal areas on the Ground Level and Level 8, which will provide the opportunity for social interaction between residents.

During the construction phase, the development will generate more jobs in the locality and wider LGA. The neighbourhood shop and ancillary café will be staffed at an ongoing capacity, which will generate jobs, as may the strata management, waste collection and maintenance of the building.

Impacts on the Built Environment

The proposed development is considered to result in a positive impact on the developing built form in Nelson Bay with acceptable offsite impacts. Whilst the building will create additional overshadowing in some instances, the increase is primarily within mid-winter and will not significantly decrease the amenity of neighbouring properties, noting overshadowing already occurs to some capacity within these properties. There will be view loss to some properties to the south; however that has been assessed in this report as being acceptable with consideration to the relevant case law.

The applicant provided detailed architectural plans for consideration as well as a Visual Impact Assessment (VIA), 3D renderings of the building within its adjacent context, and overshadowing diagrams. Based on this information, the proposed design and built form has been assessed by both the UDP and Council staff as being supportable.

Overall, the development will provide a high quality architecturally designed building, which will have a positive impact on the streetscape and positive impact on the public domain.

Impacts on the Natural Environment

The proposed development site does not contain any Koala habitat, critical habitat, threatened species or ecological communities. The existing site is devoid of any natural habitat or native vegetation. None of these vegetation types appear present on adjoining sites, removing any potential interference with flora or fauna habitat or corridors.

There are weeds present on site, which will be removed once construction commences. On these grounds, the development will not have an adverse impact on the natural environment.

Section 4.15(1)(c) the suitability of the site for the development

The subject site is an abandoned building site currently underutilised within the Nelson Bay Centre.

The development provides for 81 new dwellings in addition to a neighbourhood shop which satisfies the objectives of the R3 Medium Density zone. The location is within an area identified for high density residential development, and will provide a development consistent the objectives of the LEP and Nelson Bay Centre as outlined in the DCP and 'Nelson Bay Town Centre and Foreshore Strategy'.

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

Section 4.15(1)(d) any submissions made in accordance with this act or the regulations

Public Submissions

The application was exhibited from 7 September 2021 to 21 September 2021, in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. There were 108 submissions received during this period.

The application was re-notified after the submission of amended plans and documentation from the applicant from 7 April 2022 to 21 April 2022. There were 28 submissions received during this period.

The matters raised during the exhibition period have been detailed in the table below.


Table 6: Summary of public submissions

No	Issue	Council Response
1	Building Height - Non-compliance with LEP height	<p>The proposed building is 4.18m over the maximum building height.</p> <p>Clause 4.6 is a mandatory development standard required in all LEPs in NSW. The existence of this clause is to ensure that flexibility can be applied to development standards where the proposed variation can provide a better outcome than remaining compliant with the development standard based on environmental planning grounds.</p> <p>The proposed design results in a better planning outcome on-site despite the variation, with increased setbacks and improved amenity and urban design impacts, thus the development is appropriate for the context and character of the area. All other design principles and FSR controls have generally been complied with. On these grounds, Council staff and the UDP have recommended approval of the development.</p> <p>A more detailed assessment with regard to building height can be found in Attachment 1 – Clause 4.6 Assessment Report.</p>
2	Overshadowing	<p>The architect was requested to provide detailed 3D modelling of the overshadowing impact in the form of a cross-analysis between the currently approved buildings on site that could be constructed under the existing consent and the proposed building under this application. The critical overshadowing considerations related to the overshadowing of the Oaks Lure site to the south, 18 Tomaree Street and 61 Donald Street to the east and the public domain (Church Street) to the west.</p> <p>Moreover, plans were also provided which showed the overshadowing of the existing approved buildings on 11-17 Church Street, to enable a comparison between the difference of impact under previously approved buildings and that proposed under this application.</p> <p>Considering the overshadowing documentation provided, the increase of overshadowing on the surrounding properties and public domain is resulting from the proposed development is considered acceptable. The documentation has demonstrated that these buildings already overshadow respective internal site areas, including communal open spaces and pools. Reducing the height of the building to the maximum LEP height of 28m would have minimal to no change on the existing state of overshadowing as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and</p>

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No	Issue	Council Response
		<p>setback controls. As the Level 8 internal space/roof is setback considerably, these elements do not cast a shadow that extends onto the Oaks Lure site.</p> <p>The proposal will however increase the overshadowing of the Oaks Lure in winter, noting however, the summer months are only impacted to a minor extent. It is unlikely the pool area would be as well utilised in the mid-winter due to seasonal conditions and existing overshadowing occurring.</p> <p>It is therefore considered that the overshadowing impact and the proposal can be supported.</p> <p>A detailed assessment of overshadowing is contained in Table 3 in this report.</p>
3	View Loss - View loss impact business and owner returns	<p>View loss from the Oaks Lure was raised as an issue and has been addressed below this table with regard to the Land and Environment Court view sharing planning principles.</p> <p>View loss was also raised by some other residents to the west of the building.</p> <p>As outlined in the view sharing assessment below, view loss will occur and impact certain dwellings more than others, however this impact is reasonable considering compliance with the setback controls and view sharing principles is achieved. The height of the building is not an issue with regard to view loss as a compliant building 28m height would still obstruct the views to the water.</p>
4	Visual impact on locality	<p>The applicant's Visual Impact Assessment (VIA) assessed the view impact of the proposal on the broader locality.</p> <p>The Urban Design Analysis that accompanied the Nelson Bay Town Centre Strategy, identified that a primary view corridor exists from the water, looking south along Stockton Street towards Kurrara Hill. The proposed development has no impact on that view corridor remaining.</p> <p>At a human scale, when pedestrians are traversing the Nelson Bay Centre, primarily the village area bound by Stockton Street, Victoria parade, Yacaaba Street and Tomaree Street, the existing buildings will block the view towards the proposed development when viewed from people on the ground. This is represented in the VIA.</p> <p>The main visibility of the building from pedestrians and in the local context is along Church Street, and the view lines between buildings on Donald Street and Government Road. The building will blend into the scale of built form in those views and not obstruct identified vistas towards Kurrara Hill.</p>

No	Issue	Council Response
		 <p>View 1: View from carpark on Government Road next to Little Nel Café towards the site. Crane indicates sites location.</p>  <p>View 2: View from Donald Street. In forefront is Seaview Apartments and to the rear is Oaks Lure. Crane indicates sites location.</p> <p>The proposed building will be visible from the water (on boats or from the marinas wharf) as the distance provides an expansive view of the headlands and the town centre. Notwithstanding, a compliant building height would still be perceptible from the water, as are other buildings that exist in the Nelson Bay Town Centre.</p>

No	Issue	Council Response
		 <p>View 3: View from marina. Red box shows the render of the building in the context.</p> <p>As can be observed from View 3, multiple existing high rise buildings are visible from the water viewpoint, and the proposal does not detract or remove the ability to view Kurrara Hill.</p> <p>Accordingly, the scale of the building does not detract from the existing visual quality or scenic amenity of Nelson Bay to a greater extent than the existing built form.</p>
5	<p>Bulk and scale</p> <ul style="list-style-type: none"> - Excessive bulk on lower levels - Overall scale and impacts creating overshadowing 	<p>Veloshin v Randwick Council [2007] NSWLEC 428 is the established planning principle in the assessment of height, bulk and scale. The principle states:</p> <p><i>“While bulk and scale tend to be used interchangeably, strictly speaking, bulk refers to the mass of a building and scale is properly used only when referring to the relative size of two or more things. When scale is used to mean apparent size, it is better to use those words. When scale is used to denote the character of an area, it is better to use that word. All the above are highly subjective terms, since a building that one person perceives as too big, another person finds appropriately sized”.</i></p> <p>There are six questions posed to guide whether the bulk and scale of a development are appropriate:</p> <ul style="list-style-type: none"> • Are the impacts consistent with impacts that may be reasonably expected under the controls? • How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls? • Does the area have a predominant existing character and are the planning controls likely to maintain it? • Does the proposal fit into the existing character of the area? • Is the proposal consistent with the bulk and character intended by the planning controls? • Does the proposal look appropriate in its context? <p>The development is largely compliant with the LEP and DCP controls applying to it. The variations proposed are the height and setbacks on the western interface at the south and northern boundaries.</p> <p>It is reasonable to expect that the building will cast a degree of overshadowing on neighbouring properties when considering the 28m</p>

No	Issue	Council Response
		<p>height limit, the 3.1:1 Floor Space Ratio (FSR) controls, and the required setbacks.</p> <p>When considering the scale or size of the building, the proposed building represents a large development and will be highly visible. In order to ensure the building does not have a negative impact, the architect has adequately articulated the building form. These include:</p> <ul style="list-style-type: none"> • Tapering the sides of the building down to be a similar height to the adjoining northern and southern neighbours to assist in providing a transition of height and scale, • Indenting the forecourt and centre of the building along Church Street, • Placing the building on an angle which reduces any box like shapes, whilst also providing better solar access, and • Setting the top level covered communal space in further from the sides so it is not visually dominate above the height limit. <p>These design elements provide a building that whilst large in scale, provides a compatible connection to the adjacent neighbours and will improve the architectural quality that exists within the locality. The objectives of the height controls are to achieve buildings with appropriate heights for the character on context whilst reflecting the hierarchy of centres and the land use structure. The objectives of the FSR control is to achieve a building compatible with the bulk and scale of the desired future character of the locality, a balance between built form and landscaping and to minimise the effects of bulk and scale.</p> <p>The design does achieve a height suitable for the area and desired hierarchy of buildings in accordance with the Nelson Bay Town Centre Strategy. It also achieves the desired built form character, as it is a modern building that will improve the aesthetic quality of the existing area. The design also provides ample landscaping and communal space to residents whilst remaining below the FSR.</p> <p>Considering the above, the bulk and scale is considered acceptable and will provide a building that achieves many of the desired outcomes intended by the applicable controls and strategies.</p>
6	Traffic Parking and	<p>The development provides parking that is compliant with the DCP rates.</p> <p>The building will be restricted to a left in and left out arrangement. This will mean that vehicles can only turn in and out of the development from the southbound lane along Church Street. This will limit cars backing up the northbound lane on Church Street to turn across the southbound lane. This arrangement has been accepted by the Councils Traffic Engineer.</p>

View Loss Assessment

When assessing the impact development will have on views, *Tenacity Consulting v Warringah* [2004] NSWLEC 140 is the established planning principle adopted by the Land and Environment Court (LEC).

The Commissioner states at [25] “The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment”.

Each of the four steps is listed below with an assessment of the developments impact.

1. [26] *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Oaks Lure

Views are held in some capacity by units facing north towards Nelson Bay, Karuah River and Tea Gardens. The units facing east hold views towards Tomaree and side views, depending on the standing positioning whilst on the balcony, towards Nelson Bay (Images 9, 10, 11 and 12).

Western properties

Some properties to the west on the upslope from the site have views towards Nelson Bay and the headlands. The views to the east towards the proposal are predominately held over side boundaries (Image 13).



Image 9: Location of Oaks Lure Unit 47.

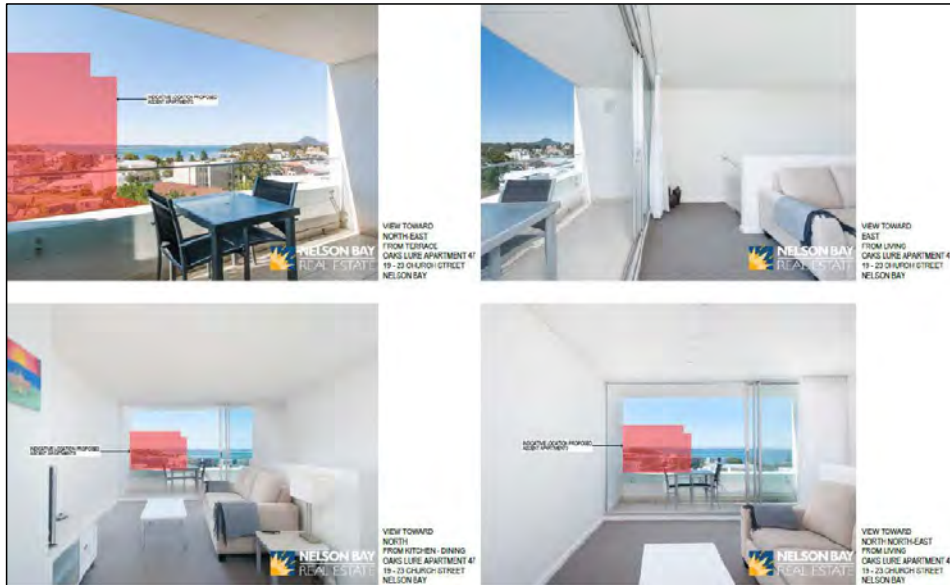


Image 10: View from Unit 47 of the Oaks Lure.



Image 11: View from Oaks Lure Unit 39.



Image 12: View from Oaks Lure east facing unit.



Image 13: View from a western property on Moorrooba Crescent.

2. [27] *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Oaks Lure Northern facing units

The northern facing units do enjoy an expansive view from sitting or standing on the top levels. On the lower levels, the view is more obstructed by the rooflines of existing buildings to the north as indicated in Image 11.

Oaks Lure Eastern facing units

The eastern facing units get a direct view over the side boundary. To have a view of the water from the images provided, occupants need to stand or sit on an angle towards the north to gain the view towards the water.

Western properties

Side boundary views are not as valuable as front and rear views. The orientation of many lots to the west are on a north-south axis, so views towards the west are not from the front or rear of the site. Considering this, it is unreasonable to reduce the bulk of the building to benefit a view that is obtained from a less valuable position.

3. [28] *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Oaks Lure Northern facing units

The building envelope does not remove the view for all the units. As demonstrated in Image 10, approximately half the view is obstructed for Unit 47. The view loss ranges from moderate to severe, as it is towards a body of water and not an icon or view, which can only be enjoyed when viewing its 'entire' form. The view loss from the most north-eastern units is likely to be minor, as the angle of the proposed development will allow them to retain the majority or entirety of their view.

Oaks Lure Eastern facing units

These views are held from an angled position from a window or balcony. It is unrealistic to maintain these views as they already require the occupant to stand in a certain direction to obtain them. These units however, may retain a partial view of the water towards Tomaree headlands.

4. [29] *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is*

no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The development is compliant with the rear setback (to the east). The building height is not complaint, but when modelled, the portion of the proposed building obstructing the views is within the complaint height limit. If the whole building was reduced to 28m in height, it would not change the view impact to the water from the Oaks Lure. The building would need to need lower than the height of the Oaks Lure for apartments to retain the same or similar views, which is unreasonable and will not consistent the objectives of the zone, height limit or the desired built form character under Nelson Bay Town Centre Strategy. It would result in an underdevelopment of the site.

Changes to the form of the building are unlikely to warrant a better outcome on views as it would result in a bulkier design spanning across the site, rather than the proposed angle, which provides better solar access for the site.

The existing topography and current subdivision pattern results in the Oaks Lure losing views in most instances, noting the Oaks is not built to its full height potential under current planning controls and has so far benefitted from being adjacent to undeveloped lots.

With consideration to the assessment above, the submitted VIA and public submissions, the proposed development is considered to be supportable in terms of its impact on view loss based on the Tenacity planning principles.

Section 4.15(1)(e) the public interest

The proposed development is considered suitable for the site and the broader locality. The proposal will have a positive impact by providing 81 additional homes in the Port Stephens area, which will likely result in an increase of spending in the local economy and stimulate job growth, particularly during the construction phase.

The design of the building has been assessed in detail and is considered to be a positive addition to the developing character of Nelson Bay by both Council staff and the UDP.

On these grounds, the proposed development is considered to be in the public's interest.

Section 7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)

Section 7.11 contributions apply to the residential portion of the development.

Under DA 16-2000-1014-1, contributions were paid on 15 February 2006 for 19 additional dwellings over two lots (21 units in total). This proposal is over two lots, and therefore, a 22 lot credit has been applied to reflect this and contributions apply for an additional 59 dwellings.


In total, the proposal will generate a monetary contribution of \$1,139,703 to be paid to Council for the provision of 59 additional dwellings.

DETERMINATION

The application is recommended to be approved by Council, subject to conditions of consent.

EMILY ALLEN

Senior Development Planner



PORT STEPHENS COUNCIL **Clause 4.6 ASSESSMENT REPORT**

Clause 4.6 – Exceptions to Development Standards

CLAUSE OBJECTIVES AND EXCLUSIONS

Clause 4.6(1) – Clause Objectives

Clause 4.6 provides a mechanism to vary the development standards, such as building height, prescribed within PSLEP 2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(2) – Exclusions to the operation of clause 4.6

The development standard Clause 4.3 Height of Building is not excluded from the operation of clause 4.6 (Refer to clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP 2013).

PROPOSED REQUEST

Clause 4.6(3) – Request to vary development standards

The development application includes a written request to vary a development standard in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

The relevant development standard and the extent of the proposed variation is:

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 Height of Building of the PSLEP 2013	4.18m	14.9%

The height of building mapped on site under the PSLEP 2013 is 28m. The proposed development is 32.18m in height.

As the proposed variation is greater than 10%, the development application will be determined by the elected Council.

Clause 4.6(3)(a) – Compliance is unreasonable or unnecessary

Clause 4.6(3)(a) requires the application to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The Clause 4.6 request makes reference to *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), to which Chief Justice Preston noted that the starting point with any request for a variation is to demonstrate that compliance with the development standard is unreasonable or unnecessary which should generally be started by showing the proposal can meet the objectives of the development standard.

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The Clause 4.6 request notes that the objectives of the standard are achieved notwithstanding non-compliance with the standard in that:

- Strict compliance with the standard is considered unnecessary in that the impact created by the proposed development will be minor and insignificant to neighbouring development and to the wider locality.
- The proposed development does not contravene the objectives of the zone and is considered a good use of the site.
- It provides contemporary designed medium density residential development, which provides for the housing needs of the community whilst also protecting the amenity of residents and recognising the desirable elements of the existing streetscape and built form.
- It would not result in a reduced visual impact, when compared to the proposed height of building.
- The height and scale of the proposal provides an appropriate response for the Nelson Bay Town Centre, although above the permissible building envelope in terms of height.

Clause 4.6(3)(b) – Sufficient environmental planning grounds

Clause 4.6(3)(b) requires an application to justify the contravention of the development standard(s) by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant outlined that there is sufficient environmental planning grounds to contravene the development standard as:

- The development provides eighty-one (81) residential units within the Nelson Bay area, which is identified for this type and scale of development to provide for the housing needs of the locality, including a range of bedrooms and layouts to cater for varying demographics.
- The development addresses Church Street and provides visual interest within three defined sections of the building, in contrast to existing buildings that have not been designed to address or activate the street frontage.
- The additional height over 28m will have negligible effect on shadows cast by the building on adjoining properties.
- The additional height will not impact on the privacy of adjoining residents.
- The additional height will not materially impact on view sharing due to the topography of the site and its location on the outer western edge of the Town Centre as further evidenced and detailed within the Visual Impact Assessment submitted with the

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application. The building above 28m is architecturally designed and appropriately articulated to provide visual interest and prominence within the Gateway of Nelson Bay, and is setback further from the boundaries to ensure it is not a visually dominating feature.

- The proposed development results in a high quality architectural design that will positively contribute to the locality.
- The proposed development will result in a large capital investment value (CIV) within the local economy, with construction providing employment opportunities in the locality and support to the local building and development industries. In addition to this, will provide direct monetary input to the local economy, the increased number of residents in the locality will provide ongoing economic input through daily living activities via shopping, working, living and recreational activities within the Town Centre and surrounds. The increase in housing within the area will directly influence and enhance business and employment opportunities within the area.

The applicant submits that the potential environmental planning benefits justify the contravention of the development standard.

ASSESSMENT

Clause 4.6(4) – Assessment of request to vary development standards

Clause 4.6(4)(a)(i) - Adequacy of the applicant's request

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied the Clause 4.6 Application has adequately addressed the matters set out in clause 4.6(3) of the PSLEP listed above.

As stated in the preceding section, in *Wehbe* the Land and Environment Court identified five ways in which a request to vary a development standard may be determined to be well founded. These reasons include:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard,
2. The underlying objective or purpose of the development standard is not relevant to the development,
3. The objective or purpose of the development standard would be defeated or thwarted if compliance was required,
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as applied to the land.

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The applicant's Clause 4.6 Variation request asserts that compliance with Clause 4.3 (height of buildings) is unreasonable or unnecessary having regard to the first test set down in *Wehbe*, being that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

Having regard to the first test set down in *Wehbe*, it is noted that the objectives of Clause 4.3 is to ensure the height of buildings is appropriate for the context and character of the area and that building heights reflect the hierarchy of centres and land use structure.

The proposed building height is considered to be appropriate for the context and character of the area. The 'Nelson Bay Town Centre Strategy and Delivery Program', within which this site is located, outline that the ridgelines that surround the Nelson Bay Town Centre create a natural amphitheatre. This amphitheatre shape allows for views from the north of the town to maintain strong landscape character and setting. The topography of Nelson Bay along with vegetation, frames the core town centre.

In order to maintain the natural setting, taller buildings were encouraged as they would reinforce the amphitheatre and the town centre, if placed towards the outside of the town centre. The view lines between Kurrara Hill and the Nelson Bay Marina form an axis for the main street of the town centre, which should be maintained. The proposed development does not obstruct these view corridors as assessed in the VIA provided.

The applicant submits that the proposed design provides a balanced composition of elements including well-defined base/podium, middle and top sections. The form is described as:

- The base/podium is envisaged as a solid form anchoring the building to the site.
- The middle or body of the building is conceived as a screened element which extends to the ground fronting Church Street to the west. The buildings two cores and lobbies to the west are expressed as vertical elements with hanging gardens between, defining the residential entry points.
- To the east the body of the building is a horizontal expression although carefully articulated with landscape planter recesses, balconies and materiality to break down the length of the building.
- The top of the building provides primary communal areas and private open space for the penthouse apartments.

The design is considered to be well designed and articulated to reduce bulk and integrate into the adjoining neighbouring buildings. The majority of the building bulk is centralised, tapering down to the sides. This majority of the building is within the 28m height limit. This is shown in **Figure 1**.

The open and covered communal and private open space on Level 8 is the area above the 28m height limit. This space benefits all residents of the building, by providing useable communal outdoor space above ground level. Also noting the building has not used the FSR to its full potential, which would allow a much larger footprint of the building to occur on site. Instead, the

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building has focussed its FSR distribution vertically, resulting in only a relatively small part of the overall form exceeding the height limit. The portion that exceeds the height limit is used primarily for communal space and private open space, not as habitable floor area for units. If the space was not enclosed and roofed in the centre, the space would not be desirable for use as it would be exposed to the elements. Providing a covered portion central to this floor, indents the built form reducing its visibility from the street and various view points.

By designing the building in this manner, the form becomes less imposing and ties into the adjacent northern and southern properties. This is demonstrated in **Figure 2**. This also meets the vision of the 'Nelson Bay Town Centre Strategy' as the exceedance does not block any important view corridors, and aides in establishing the built form hierarchy.

The modulation and floor plate composition also reduces potential overshadowing occurring from the development for the portions above 28m, as the area above 28m is setback central to the building. This results in the communal area roof shadowing its own Level 8 communal area, not the neighbouring properties. This results in the overshadowing of neighbours being caused by the portion of the building that is compliant and under the 28m height limit.

By incorporating these elements into the design, the proposal is able to fit into the existing context and reflect the building height hierarchy desired in the area without adversely impacting the amenity of adjoining neighbours. On this basis, the objectives of Clause 4.3 are achieved, notwithstanding the non-compliance with the standard, and therefore compliance with the standard is unnecessary in this instance.



Figure 1: The blue plane is 28m above ground. The area above exceeds the height limit, which consists mainly of the covered communal and private open space for residents.

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Figure 2: View of building along Church Street (western elevation). The sides of the building taper down to meet the height of the adjoining buildings, and centralise the main bulk of the building to the centre of the site.

The applicant also noted in their variation request that the second and third tests set down in *Wehbe* also apply to the proposal. This is not agreed upon for the following reasons:

- In regard to the second test, it is not considered that the compliance with the standard is unnecessary. Clause 4.6 provides a mechanism to vary development standards when assessing site specific constraints. In some instances, compliance with the height control should be upheld if the outcome is not better than what non-compliance would otherwise achieve. In this instance, the amount of the building above the 28m height limit is not considered to have an adverse impact when assessing the sites constraints, and non-compliance will result in a positive outcome that is to the benefit of all the residents, without taking away from the broader community. It is unreasonable to uphold the development standard, but not unnecessary.
- In regard to the third test, it is considered that the objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

The fourth and fifth tests set down in *Wehbe* are also not considered relevant to the current application, for the reasons set out below:

- In regard to the fourth test, it is considered that the development standard has not been abandoned or destroyed as the objectives of the standard are still relevant notwithstanding non-compliance with the numerical standard.
- In regard to the fifth test, the underlying purpose and objective of the maximum building height standard are still relevant to the development.

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- The zoning of the subject site is suitable and the proposed development is permissible in the zone.

Clause 4.6(4)(a)(ii) - Public interest – consistency with objectives of the standard and objectives of the zone

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied 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.

As outlined above, notwithstanding the non-compliance with the standard, the objectives of Clause 4.3 are achieved noting that the proposed development is considered to be suitable for the character of the area, is permissible with consent in the R3 Medium Density Residential zone, and will not result in adverse impacts to neighbouring properties.

Clause 4.6(4)(b) - Concurrence of the Secretary

In accordance with the assumed concurrence, notified in [Planning Circular PS 08-003](#), the concurrence of the Secretary has been obtained (Clause 4.6(4)(b) of PSLEP).

CONCLUSION

The proposed development is considered to be consistent with the objectives of Clause 4.6 given it will achieve better outcomes for and from the development in these particular circumstances because the objectives of the development standard are achieved notwithstanding non-compliance and the proposal is considered to be appropriate in the context of the site.

ITEM 2 - ATTACHMENT 4 LOCALITY PLAN.





PORT STEPHENS COUNCIL **CLAUSE 4.6 ASSESSMENT REPORT**

Clause 4.6 – Exceptions to Development Standards

CLAUSE OBJECTIVES AND EXCLUSIONS

Clause 4.6(1) – Clause Objectives

Clause 4.6 provides a mechanism to vary the development standards, such as building height, prescribed within PSLEP 2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(2) – Exclusions to the operation of clause 4.6

The development standard Clause 4.3 Height of Building is not excluded from the operation of clause 4.6 (Refer to clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP 2013).

PROPOSED REQUEST

Clause 4.6(3) – Request to vary development standards

The development application includes a written request to vary a development standard in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

The relevant development standard and the extent of the proposed variation is:

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 Height of Building of the PSLEP 2013	2.79m	9.9%

The height of building mapped on site under the PSLEP 2013 is 28m. The proposed development encompasses a maximum building height of 30.79m. The previous design proposed a building height of 32.18m with the proposed variation greater than 10%, accordingly the development application was reported to be determined by the elected Council. Whilst the amended design encompasses a reduced building height of 30.79m (9.9%) that is less than 10%, the application has been called to Council for determination in accordance with the 'Planning Matters to be Reported to Council Policy'.

Clause 4.6(3)(a) – Compliance is unreasonable or unnecessary

Clause 4.6(3)(a) requires the application to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The Clause 4.6 request makes reference to *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), to which Chief Justice Preston noted that the starting point with any request for a variation is to demonstrate that compliance with the development standard is unreasonable or



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unnecessary, which should generally be started by showing the proposal can meet the objectives of the development standard.

The applicant's Clause 4.6 request notes that that the objectives of the standard are achieved notwithstanding non-compliance with the standard in that:

- Strict compliance with the standard is considered unnecessary in that the impact created by the proposed development will be minor and insignificant to neighbouring development and to the wider locality.
- The proposed development does not contravene the objectives of the development standard or zone.
- Compliance with the building height standard would not result in an improved visual impact, when compared to the proposed height of building.
- The proposed development includes visually compatible elements within the streetscape and results in a positive impact to the 'gateway' location of the Town Centre. Given the number of taller buildings and density in the Town Centre, the proposed development is not out of character and does not create any perceived dominance. The building is not found to dominate the skyline and respects the scale and setting of the natural environment in which it is located. The impact of tall buildings on the edge of the Town Centre, inclusive of this site and associated proposal reinforces the amphitheatre and the Town Centre, as desired by Council's Planning Strategies for the Nelson Bay Town Centre.
- The proposed height exceedance is primarily limited to an architectural roof feature of quality design, which occupies only 644.9m² within a site of 4,628.79m², or 13.9% of the site. This element provides cover to expansive internal and external communal spaces for the occupants, as well as the private open space for the penthouse apartments, and crowns the development in a visually interesting manner.
- Whilst the proposed building will be higher than the existing buildings surrounding the site, the development is consistent with the desired future character of the Town Centre and adjoining sites being tall in nature to frame the central portion of the Town Centre. The proposed development is complementary to the preferred context of the locality. The proposed building does not detract from or impact on the existing area nor the associated view corridors associated with the topography of the land on the outer periphery of the Town Centre. The proposed development is considered appropriate for the existing and future character of the neighbourhood and consequently provides a building that is consistent with the objectives of the standard.
- The height and scale of the proposal provides an appropriate response for the Nelson Bay Town Centre, although above the permissible building envelope in terms of height.

PORT STEPHENS
COUNCILCLAUSE 4.6 ASSESSMENT
REPORT*Clause 4.6(3)(b) – Sufficient environmental planning grounds*

Clause 4.6(3)(b) requires an application to justify the contravention of the development standard(s) by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant outlined that there is sufficient environmental planning grounds to contravene the development standard as:

- The development provides eighty-one (81) residential units within the Nelson Bay area, which is identified for this type and scale of development to provide for the housing needs of the locality, including a range of bedrooms and layouts to cater for varying demographics.
- The development addresses Church Street and provides visual interest within three defined sections of the building, in contrast to existing buildings that have not been designed to address or activate the street frontage.
- The additional height over 28m will have negligible effect on shadows cast by the building on adjoining properties.
- The additional height will not impact on the privacy of adjoining residents.
- The additional height will not materially impact on view sharing due to the topography of the site and its location on the outer western edge of the Town Centre as further evidenced and detailed within the Visual Impact Assessment and Town Centre Model submitted with the application. The building elements above 28m have been architecturally designed and appropriately articulated to provide visual interest and prominence within the Gateway of Nelson Bay, and is setback further from the boundaries to ensure it is not a visually dominating feature.
- The proposed development results in a high quality architectural design that will positively contribute to the locality.
- The proposed development will result in a significant capital investment value (CIV) within the local economy, with construction providing employment opportunities in the locality and support to the local building and development industries. In addition to this, will provide direct monetary input to the local economy, the increased number of residents in the locality will provide ongoing economic input through daily living activities via shopping, working, living and recreational activities within the Town Centre and surrounds. The increase in housing within the area will directly influence and enhance business and employment opportunities within the area.

 **PORT STEPHENS COUNCIL** **CLAUSE 4.6 ASSESSMENT REPORT**

The applicant submits that the potential environmental planning benefits justify the contravention of the development standard.

ASSESSMENT

Clause 4.6(4) – Assessment of request to vary development standards

Clause 4.6(4)(a)(i) - Adequacy of the applicant's request

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied the Clause 4.6 Application has adequately addressed the matters set out in clause 4.6(3) of the PSLEP listed above.

As stated in the preceding section, in *Wehbe* the Land and Environment Court identified five ways in which a request to vary a development standard may be determined to be well founded. These reasons include:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard,
2. The underlying objective or purpose of the development standard is not relevant to the development,
3. The objective or purpose of the development standard would be defeated or thwarted if compliance was required,
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as applied to the land.

The applicant's Clause 4.6 Variation request asserts that compliance with Clause 4.3 (height of buildings) is unreasonable or unnecessary having regard to the first test set down in *Wehbe*, being that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

Having regard to the first test set down in *Wehbe*, it is noted that the objectives of Clause 4.3 is to ensure the height of buildings is appropriate for the context and character of the area and that building heights reflect the hierarchy of centres and land use structure.

The proposed building height is considered to be appropriate for the context and character of the area. The 'Nelson Bay Town Centre Strategy and Delivery Program' (The Strategy) outlines that the ridgelines that surround the Nelson Bay Town Centre create a natural amphitheatre. This amphitheatre shape allows for views from the north of the town to maintain strong landscape character and setting. The topography of Nelson Bay along with vegetation, frames the core Town Centre.

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In order to maintain the natural setting, the strategy encourages taller buildings on the subject site and adjoining properties as they would reinforce the amphitheatre of the Town Centre. The view lines between Kurrara Hill and the Nelson Bay Marina form an axis for the main street of the Town Centre, which should be maintained. The proposed development does not obstruct these sensitive view corridors as considered in the Visual Impact Assessment and Town Centre Model submitted with the revised development plans.

The applicant submits that the proposed design provides a balanced composition of elements including well-defined base/podium, middle and top sections. The form is described as:

- The base/podium is envisaged as a solid form anchoring the building to the site.
- The middle or body of the building is conceived as a screened element, which extends to the ground fronting Church Street to the west. The buildings two cores and lobbies to the west are expressed as vertical elements with hanging gardens between, defining the residential entry points.
- To the east, the body of the building is a horizontal expression although carefully articulated with landscape planter recesses, balconies and materiality to break down the length of the building.
- The top of the building provides primary communal areas and private open space for the penthouse apartments.

The design is considered to be well designed and articulated to reduce bulk and integrate into the adjoining neighbouring buildings. The majority of the building bulk is centralised, tapering down to the sides. This majority of the building is within the 28m height limit. This is shown in **Figure 1**.

The open and covered communal and private open space on Level 8 forms the building components above the 28m height limit. This feature benefits all residents of the building, by providing useable communal outdoor space above ground level. Rather than utilising the permitted FSR to full capacity, which would create a much larger footprint of the building to occur on site, the design has instead focussed massing distribution vertically, which has still resulted in only a relatively small part of the overall building exceeding the height limit. The portion that exceeds the height limit is primarily for communal and private open space, not for the purpose of habitable floor area. If the rooftop space was not enclosed and roofed in the centre, the space would not be desirable or functional for use, given there would be no protection from the elements. Providing a covered useable open space area in a centralised location on the roof level indents the built form, consequently reducing visibility from the street at a human scale and various view points.

By designing the building in this manner, the form becomes less imposing and integrates with the adjoining built form, as demonstrated in **Figure 2**. The proposed building form is consistent with the vision of the 'Nelson Bay Town Centre Strategy' as the exceedance is not obstructing

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any important view corridors, remains compatible with the coastal landscape and contributes to establishing the built form hierarchy.

The design adopts a significant urban gesture mid-block to Church Street in the form of a large activated landscaped forecourt (set up to 22.184m in from the street boundary). This approach combined with the constraints imposed by the 5-6 storey Cote Dazur Apartments being built less than 1.5m from the east boundary, have resulted in the built form exceeding the prescribed height limit centrally within the site, in the aim of providing quality communal spaces at Ground, Level 1 and rooftop. This exceedance of built form is limited primarily to a roof feature of quality design, which occupies only 625m² of area situated centrally within a site of 4,628.79m², or 13.5% of the site area. This element provides cover to expansive internal and external communal spaces for the occupants, as well as the private open space for the four penthouse apartments, and crowns the development in a visually interesting and well considered form.

Moreover, the applicant's submission notes that the roof feature/communal space is on average 6.35% above 28.0m height limit or 1.778m. The main body of the building containing apartment floor area is marginally 1.9% (0.53m) above the PSLEP height at the northern extent, although well below the PSLEP height limit by 12.86% (3.6m below) at the southern extent. On average, the main building form containing Level 7 apartment floor area is on average below the PSLEP height limit by 7.38%.

The modulation and floor plate composition also reduces potential overshadowing occurring from the proposed development for the portions above 28m, as the area above 28m is well setback and centralised within the building. This results in the rooftop area overshadowing its own Level 8 communal area, not the neighbouring properties. The design results in the overshadowing of neighbours by the portion of the building that is compliant and under the 28m height limit, not the components above the height limit.

By incorporating these elements into the design, the proposed building integrates with the existing context and reflects the building height hierarchy desired in the area without adversely impacting the amenity of adjoining neighbours. On this basis, the objectives of Clause 4.3 are achieved, notwithstanding the non-compliance with the standard, and therefore compliance with the standard is unreasonable in this instance.

 **PORT STEPHENS COUNCIL** **CLAUSE 4.6 ASSESSMENT REPORT**



Figure 1: The blue plane represents the 28m LEP height standard. The area above exceeds the height limit, which consists mainly of the covered communal and private open space for residents, primarily at the northern portion due to the cross fall of the site.



Figure 2: View of building along Church Street (western elevation). The sides of the building taper down to integrate with the height of the adjoining buildings, and centralise the main bulk of the building to the centre of the site.



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The applicant also noted in their variation request that the second and third tests set down in *Wehbe* also apply to the proposal. This is not agreed upon for the following reasons:

- In regard to the second test, it is not considered that compliance with the standard is unnecessary. Clause 4.6 provides a mechanism to vary development standards when assessing site specific considerations. In some circumstances, compliance with the height control should be upheld if the outcome is not an improvement from what non-compliance would otherwise achieve. In this instance, the portion of the building above the 28m height limit is not considered to have an adverse effect when considering environmental planning grounds, compatibility with the coastal landscape and desired future character. The proposed height non-compliance has merits and exhibits public benefit, without detracting from the built form. It is unreasonable to uphold the development standard in this instance, but not unnecessary given the underlying objective are still relevant to the development.
- In regard to the third test, it is considered that the objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

The fourth and fifth tests set down in *Wehbe* are also not considered relevant to the current application, for the reasons set out below:

- In regard to the fourth test, it is considered that the development standard has not been abandoned as the objectives of the standard are still relevant notwithstanding non-compliance with the numerical standard.
- In regard to the fifth test, the underlying purpose and objective of the maximum building height standard are still relevant to the development.
- The zoning of the subject site is suitable and the proposed development is permissible in the zone.

Clause 4.6(4)(a)(ii) - Public interest – consistency with objectives of the standard and objectives of the zone

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied the proposed development will be in the public interest as 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.

As outlined above, despite the non-compliance with the standard, the objectives of Clause 4.3 are still achieved noting that the proposed development is considered to be suitable for the character of the area, is permissible with consent in the R3 Medium Density Residential zone, and will not result in adverse impacts to neighbouring properties, the coastal landscape or Town Centre.

Clause 4.6(4)(b) - Concurrence of the Secretary

In accordance with the assumed concurrence, notified in [Planning Circular PS 08-003](#), the concurrence of the Secretary has been obtained (Clause 4.6(4)(b) of PSLEP).



CONCLUSION

Council staff are satisfied with the proposed height variation on the following grounds:

- (a) the proposal is consistent and compatible with the desired future character of the area consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- (b) the proposal minimises its visual intrusion consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- (c) the visual intrusion of the proposal is compatible with the amenity of the surrounding residential area and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii));
- (d) the proposal is of a height and scale the achieves the desired future character of the neighbourhood and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii)).

The proposed development is considered to be consistent with the objectives of Clause 4.6, as the design will achieve better outcomes for and from the development in these particular circumstances, noting the objectives of the development standard are achieved notwithstanding the non-compliance. The proposed building is considered to be appropriate in the context of the site.



PORT STEPHENS
COUNCIL

ADDENDUM TO PLANNERS ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2021-703-1
Development Description	Residential flat building comprising 81 units, neighbourhood shop (including ancillary café), basement parking and strata subdivision
Applicant	PERCEPTION PLANNING PTY LTD
Land owner	KINALA PTY LTD
Date of Lodgement	25/08/2021
Value of Works	\$29,706,291.00
Submissions	155 for amended application (Total 291) 129 submissions of support and 26 in objection

PROPERTY DETAILS

Property Address	11-13 Church Street NELSON BAY, 15 Church Street NELSON BAY,
Lot and DP	LOT: 156 DP: 1094233, LOT: 178 DP: 1235236
88B Restrictions on Title	Nil
Current Use	Partially constructed basement
Zoning	R3 MEDIUM DENSITY RESIDENTIAL
Site Constraints	Acid Sulfate Soils – Class 5 Koala Habitat Planning Map – Clear SEPP (Coastal Management) Combined Footprint Stormwater drainage requirements area – 100year ARI infiltration required
State Environmental Planning Policies	State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Planning Systems) 2021
 State Environmental Planning Policy (Resilience and Hazards) 2021
 State Environmental Planning Policy (Transport and Infrastructure) 2021
 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

EXECUTIVE SUMMARY

This Addendum Planners Report modifies and supplements the original Planners Assessment Report of 13 September 2022 that was submitted to the Council in support of Development Application (DA) 16-2021-703-1 for a Residential Flat Building (RFB), neighbourhood shop with ancillary café and strata subdivision at 11-15 Church Street, Nelson Bay.

The purpose of this Addendum Report is to address the design amendments and additional information submitted by the applicant following the deferral of DA 16-2021-703-1 at the Council Meeting on 13 September 2022. At the 13 September 2022 Meeting, Council resolved to:

“defer DA No. 16-2021-703-1 to allow for conversations between Council staff and the proponent, with the aim of reducing the building height by one floor so the infraction against the building height limit is negligible.”

In response, the applicant submitted revised architectural plans with a number of design amendments seeking to address the 13 September 2022 Council resolution. As a result of the design amendments, the maximum height of the building has been reduced by 1.39m from 32.18m to 30.79m. A summary of the design amendments and applicant response are provided below.

- Reduced floor to floor heights by 1 brick course for Levels 1 - 7 and 2 brick courses for Ground to Level 1.
- Reduced floor to floor heights has resulted in the roof feature and rooftop floor space being 2.8% (0.79m) above the height limit at the southern extent of the building and 9.9% (2.79m) at northern extent, representing the tallest point of the building.
- Rooftop space is on average 6.35% above 28.0m height limit or 1.778m.
- Rooftop floor space is 625m² in area or 13.5% of site area and is located centrally within the building floor plate. The roof feature is setback 23.4m from the northern boundary, 18.0m from the southern boundary, between 14.5-23.4m from the western boundary and between 10.5m to 29.4m from the eastern boundary.
- The composition of the rooftop floor space is 64.05% public space and 35.95% private space in the form of private external terraces.
- The central built form containing apartment floor area on level 7 is 1.9% (0.53m) above the 28m PSLEP2013 height limit at the northern portion and below the height limit by 12.86% (3.6m below) at the southern portion.

- The central built form containing apartment floor area on Level 7 is on average below the 28m PSLEP2013 height limit by 7.38%.
- The proposed Floor Space Ratio (FSR) is 2.56:1, which equates to 2,031.47m² of gross floor area. The proposed FSR and permitted gross floor area is well below the PSLEP2013 maximum FSR of 3:1.
- The amended development is below the existing approved Residential Flat Building (incorporating 8-storey apartment complex with underground car parking) that exists on the site (DA 16-2016-631-1). This DA included 56 residential apartments with a building height of 32m above ground level.

There are no amendments to apartment yield, basement areas, carparking, façade treatment, landscaping or building elements other than those identified above. The design amendments have been submitted to address Council concerns relating to the height exceedance above the 28m PSLEP2013 maximum building height.

The applicant also submitted additional massing models and renders of prospective development surrounding the subject site to better inform the impact of the development on the existing and future character, in addition to views from the foreshore.

The additional information has been assessed, with regard to the matters raised by Council in the record of deferral and under Section 4.15 of the EP&A Act. Accordingly, based on the submitted amendments it is recommended that the application be approved subject to conditions of consent.

PROPOSAL

The proposed development is for a Residential Flat Building (RFB), neighbourhood shop with ancillary café and strata subdivision. The development specifically includes:

- An eleven (11) storey building containing 81 residential dwellings;
- 159 car parking spaces;
- 8 motorcycle parking spaces;
- A neighbourhood shop on the ground floor with ancillary café;
- Gym for residents use; and
- Strata subdivision of the units and common property.

The apartment configuration is as below:

Table 1: Apartment configuration

Bedrooms	Quantity
One bedroom units	5
Two bedrooms units	46
Three bedroom units	25
Four bedroom units	5
Total	81

The main entry to the building is from the forecourt created along Church Street, which leads to two lobby areas that provide lift and stair access to the levels within the building.

A neighbourhood shop is proposed on the Ground Floor Level accessed from the forecourt on Church Street. The neighbourhood shop is 99.7m² in size and includes an ancillary café. The applicant has indicated the café will only operate as part of the neighbourhood shop and not be an

independent use. There is a communal gym located on the Ground Floor Level, which will only be for residents use, not for public use.

The Ground Floor Level is the main entry to the building from Church Street and includes a landscaped forecourt with trees and low shrubs as well as street trees along the verge. The First Floor Level of the development includes communal open space with landscaping treatments, a mini golf area and various pieces of outdoor gym equipment. Outdoor planting has been included at the upper levels in the form of planter boxes along the balconies mainly facing Church Street.

Figures 1 and 2 below show the revised architectural renders of the proposed development.



Figure 1: View of building along Church Street.



Figure 2: South-eastern view of the proposed building.

SITE DESCRIPTION

The subject site comprises two lots being Lot 178 DP 1235236 and Lot 156 DP 1094233, known as 11-15 Church Street, Nelson Bay (the 'site'). Generally rectangular in shape, the site has a downslope from the west to north-east and is 4628.79m² in size.

The site has undergone significant earthworks that were approved under previous DAs, including partially constructed basement foundations from a previously approved development, which has ceased construction. There is also a crane present on site.

To the south of the site is the Oaks Nelson Bay Lure Suites. To the north of the site are the Seaview at the Bay holiday units and Donald Street beyond the units, which contains a variety of retail and business uses. To the east of the site is the Cote D'Azur serviced apartments and a block of townhouses. To the west are residential dwellings primarily single and two storey in height.

The site is located approximately 400m from D'Albora Marina to the north, 500m to Nelson Bay Golf Course to the south-east and 1.3km from Gan Gan Lookout to the south-west.



Figure 3: Aerial view of the site (outlined in white).



Figure 4: Surrounding context (site outlined in red).

SITE HISTORY

The site has been subject to multiple development application (DAs), which are outlined below.

11-13 Church Street, Nelson Bay

On 9 May 2017, a DA 16-2016-631-1 for a Residential Flat Building (incorporating 8 storey apartment complex with underground car parking) was approved on the site. The DA included 56 residential apartments and had a height of 32m above ground level.

Prior to this, DA 16-2008-236-1 was approved on site for a five storey residential apartment complex comprising 33 units over two buildings. A modification to the consent was approved to increase the number of units to 36 and the building height to 16.8m.

15 Church Street, Nelson Bay

On 16 May 2002, DA 16-2000-1014-1 was approved on site for an Urban Housing Development containing 21 residential units. This application was subsequently modified to increase the floor to ceiling heights from 2.5m to 2.8m, and was approximately 15.5m in height.

PLANNING ASSESSMENT

This revised assessment considers only those matters relevant to the amended proposal. The remaining planning assessment considerations remain unchanged from the Planners Assessment Report of 13 September 2022.

Environmental Planning and Assessment Act 1979**Section 4.46 - Integrated development**

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is not integrated development for the purposes of this section of the Act.

Section 4.15 - Matters for consideration

The amended proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Section 4.15(a)(i) - any environmental planning instrument

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

State Environmental Planning Policy (Planning Systems) 2021**Chapter 2 – State and regional development**

In accordance with Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, general development with a CIV above \$30 million is Regionally Significant Development that requires referral to the Regional Planning Panel for determination. The proposed development has a nominated CIV of \$29,706,291.

The application included a detailed quantity surveyors report that was prepared in accordance with 'NSW Planning Circular: PS 10-008 the Capital Investment Value' and Section 25J of the EP&A Regulations (the applicable provisions at the time of lodgement). The registered quantity surveyor who prepared the report has AIQS Membership and appropriate qualifications.

Moreover, clarification was sought from the Secretariat of the Regional Planning Panel on the calculation of CIV with regard to potential increases in building costs or design amendments post lodgement of a DA. The Secretariat advised the CIV at the time of lodgement of the DA is the relevant consideration for determining the consent authority and any fluctuations in the CIV during the assessment process will not change the planning pathway or relevant consent authority. Similarly, should there be a reduction in CIV in the circumstance of a Regional Planning Panel DA and fell below \$30 million, it would remain as Regionally Significant Development. On this basis, Council is the relevant consent authority for the subject DA as advised by the NSW Department of Planning and Environment.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

State Environmental Planning Policy State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development (SEPP 65) aims to improve the quality of residential apartment development and provides an assessment framework in the Apartment Design Guide (ADG) to facilitate the assessment of 'good design'. This policy applies, as the development is for a residential flat building that is more than three storeys in height and contains at least four dwellings.

The previous iterations of the design were referred to Councils Urban Design Panel (UDP) for assessment against the ADG and the principles of Schedule 1 of this policy at multiple meetings. Through various design amendments, the UDP was supportive of the previous design reported to Council, including height variation previously reported to Council.

The UDP raised no concern with the amended design considered as part of this report, although noted the applicant will need to ensure there is sufficient space for services within subfloors to accommodate fire sprinklers, acoustic floors and other services and still comply with ADG floor to ceiling heights. The UDP were specifically asked to provide advice on the removal of the rooftop structure to comply with the LEP height control. The UDP advised they would not support a rooftop terrace with no roof structure. The UDP noted the amenity of the area would be inadequate and removal of the roof structure would result in a sub-standard design outcome in terms of resident amenity. It was also noted the rooftop structure is an important part of the buildings form.

Accordingly, the amended design remains consistent with the SEPP 65 Schedule 1 Design Quality Principles and jurisdictional prerequisites as outlined in the original Planners Assessment Report of 13 September 2022. The design amendments primarily relate to the reduction in height, as opposed to significant architectural design changes that warrant further consideration against the Schedule 1 Design Quality Principles. On these grounds, the amended design is considered to remain consistent with the aims, objectives and requirements of SEPP 65 as outlined in the original Planners Assessment Report.

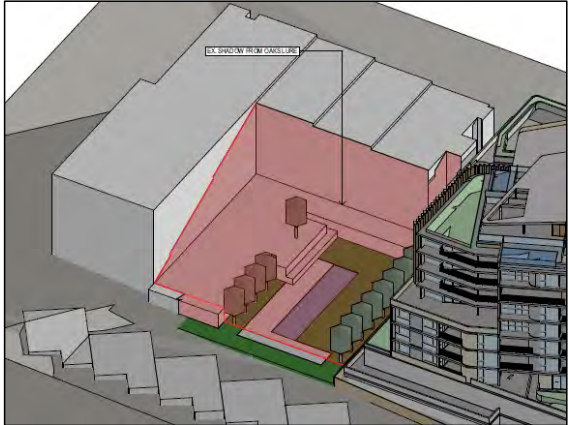
Apartment Design Guide (ADG) Assessment

The ADG provides planning and design standards for residential apartments across the State.

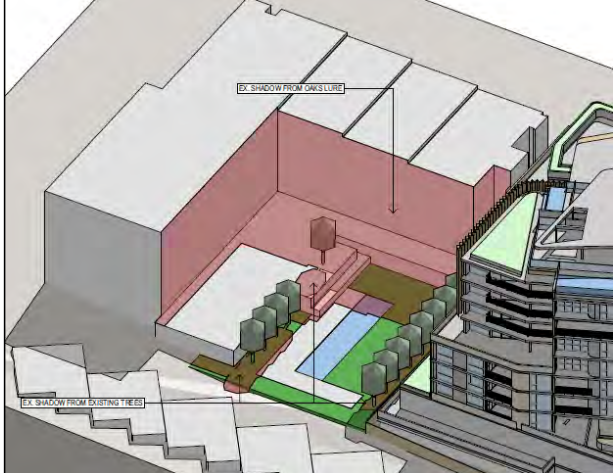
The ADG provides design criteria and general guidance about how development proposals can achieve the nine design quality principles identified in SEPP 65. Table 2 below contains an assessment of the amended proposal against the relevant controls.

Table 2: Apartment Design Guide Assessment

Control / Requirement	Compliance/Comment
<p><i>3A-1 – Site analysis</i></p> <p>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.</p>	<p>A site analysis plan was provided outlining the existing site conditions and constraints.</p>
<p><i>3B-1 Orientation</i></p> <p>Building types and layouts respond to the streetscape and site while optimising solar access within the development.</p>	<p>The development site runs lengthwise on a north-south axis. The building is orientated on an angle to maximise eastern and northern exposure and views towards Nelson Bay.</p>
<p><i>3B-2 Orientation</i></p> <p>Overshadowing of neighbouring properties is minimised during mid-winter.</p>	<p><u>Winter Solstice (21 June)</u> The Winter Solstice is the 'worst case scenario' for solar access throughout a calendar year.</p> <p><i>Amended Design Comment</i> The amended design results in a negligible reduction in overshadowing to neighbouring properties. The terrace</p>

Control / Requirement	Compliance/Comment
	<p>rooftop feature is setback considerably from the boundaries, accordingly this building element does not cast a shadow that extends onto the Oaks Lure site to the south. The amended overshadowing diagrams indicate the solar impact is not improved by the reduction in maximum building height to 30.79m from 32.18m. Notwithstanding, it is reasonable to expect that the building will cast a degree of overshadowing on neighbouring properties when considering the 28m height limit and the 3.1:1 Floor Space Ratio (FSR) controls. Moreover, reducing the height of the building to the maximum PSLEP2013 height of 28m would have minimal to no change on the extent of overshadowing caused by the applicant previous design as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and setback controls. The portions of the building height encroachment do not contribute to the overshadowing of adjoining properties given the roof feature and terrace area represents only 13.5% of the building floor plate and is centrally located, comprising setbacks of 23.4m from the northern boundary, 18.0m from the southern boundary, between 14.5-23.4m from the western boundary and between 10.5m- 29.4m from the eastern boundary.</p> <p><i>Assessment</i> <u>Mid-winter (21 June)</u> The Oaks Lure apartments overshadow its own communal space gradually from its inner western elevation from 12pm until 3pm, see Diagram 1. After 3pm, the whole communal space is overshadowed. Prior to 3pm, some overshadowing occurs from the existing tall trees planted around the pool area.</p>  <p>Diagram 1: Oaks Lure overshadowing 3pm mid-winter.</p>

Control / Requirement	Compliance/Comment
	<p>The proposed building will overshadow the Oaks Lure inner western elevation and approximately one third of the communal space at 9am. The overshadowing of the western elevation reduces as the day progresses. The overshadowing of the communal area is increased by the proposal (in addition to the Oaks own overshadowing) from 10am. This mainly impacts the pool area on the northern boundary and approximately half the outdoor area.</p> <p>18 Tomaree Street, which is to the south east of the site, is overshadowed partially from 1pm, which increases into the afternoon. To the north east, 61 Donald Street becomes partly overshadowed from 2pm onwards.</p> <p>The public domain along Church Street is overshadowed by the proposal from 9am to 11 am. Noting however, this area is already overshadowed by the existing Oaks Lure and Seaview Apartments.</p> <p><u>Summer Solstice (22 December)</u> The Summer Solstice is the time at which the maximum possible solar access is available in a calendar year.</p> <p>The Oaks Lure apartments overshadow its own communal space gradually from its inner western elevation from 1pm until 5pm. After 5pm, the whole communal space is overshadowed.</p> <p>The proposed building has minimal overshadowing of the Oaks Lure during the summer solstice due to the higher angle of the sun. The Oaks Lure building contributes to the overshadowing of its own pool area. The setbacks at upper levels of the proposed building allow for the sun to penetrate the ground plane for the Oaks Lure.</p>

Control / Requirement	Compliance/Comment
	 <p>Diagram 2: Oaks Lure overshadowing 3pm summer.</p> <p>18 Tomaree Street is negligibly overshadowed at 2pm, with two units being overshadowed at 3pm. The front of the Oaks Lure currently overshadows the front of 18 Tomaree Street from 3pm.</p> <p>61 Donald Street becomes overshadowed from 4pm onwards for a small southern portion of the building, which increases until sunset. The public domain along Church Street is overshadowed by the proposed building between 9am to 10am and then ceases.</p> <p>The ADG design guidance outlines a proposed building should not decrease surrounding buildings solar access by more than 20%. As discussed above, Oaks Lure is the main building impacted.</p> <p>The additional overshadowing from the proposed building occurs in the morning between 9am to 12pm and affects a portion of the eastern facing units. Many of the eastern units are also dual aspect, having a frontage to the west/Church Street. Eleven of the 58 units will be impacted by additional overshadowing, though not at the same time, and this occurs on the eastern elevation. This would not result in a 20% decrease of solar access from the proposed building.</p> <p>The proposal will increase the overshadowing of the Oaks Lure in winter, however the summer months are only impacted to a minor scale. Considering the Oaks Lure is tourist and residential accommodation, solar access is more vital in the summer months with higher tourist rates.</p>

Control / Requirement	Compliance/Comment
	<p>It is unlikely the pool area would be utilised to the same extent in mid-winter due to the weather and existing overshadowing occurring.</p> <p>Considering the overshadowing documentation provided with the application, as amended, the increase of overshadowing on the surrounding properties and public domain from the proposed building is not considered to adversely impact the amenity of adjacent buildings to an unacceptable level. The documentation has demonstrated that these buildings already overshadow the internal communal areas currently based on the existing built form.</p>
<p><i>3C-1 Public Domain Interface</i></p> <p>Transition between private and public domain is achieved without compromising safety and security.</p>	<p>The vehicular and pedestrian entries to the building are clearly defined along the Church Street frontage. The landscaping structures and planting direct people throughout the spaces, and have been designed to avoid areas of concealment.</p> <p>Fencing is provided for the properties on the ground level facing Church Street and are also elevated to provide a good buffer and delineation between public and private space.</p>
<p><i>3C-2 Public Domain Interface</i></p> <p>Amenity of the public domain is retained and enhanced.</p>	<p>The proposed landscaping enhances the natural environment and streetscape. There are multiple trees proposed in the public verge as well as throughout the forecourt that will increase the amenity of the street. There are two main vehicle entries to the site along Church Street, which are clearly defined but conceal the park from visually impacting the streetscape.</p>
<p><i>3D-1 Communal and Public Open Space</i></p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Communal open space has a minimum area equal to 25% of the site area. • Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter). 	<p>The communal open space is provided on Ground Level, Level 1 and Level 8.</p> <p>Ground Level provides 469.1m², Level 1 provides 697.8m² and Level 8 provides 267.7m² exterior and 136.3m² interior.</p> <p>This provides a total of 1,631.1m² (interior and exterior) or 31% communal space, compliant with the 25% minimum requirement.</p> <p>The communal open space located to the north-east, will receive at least 3 hours sunlight to more than 50% of the area during mid-winter satisfying the requirements of the ADG.</p>

Control / Requirement	Compliance/Comment
<p><i>3D-2 Communal and Public Open Space</i></p> <p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</p>	<p>The design incorporates a mini golf course, outdoor yoga area, walking track and outdoor gym equipment in the ground level communal space to attract residents and provide opportunities for social interaction.</p>
<p><i>3D-3 Communal and Public Open Space</i></p> <p>Communal open space is designed to maximise safety.</p>	<p>The communal open space on the Ground Level will be overlooked by the eastern facing units.</p> <p>The western facing units will overlook the forecourt. The top level communal area, which includes a pool, is not overlooked due to buffers being provided between the space and the adjacent residential units to reduce noise and overlooking into private areas. It is considered the top level communal space can still remain safe as it is an open design with little opportunity for concealment.</p>
<p><i>3D-4 Communal and Public Open Space</i></p> <p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.</p>	<p>Public open space is provided in the western frontage along Church Street as a gesture to the street. There is currently no public open space or existing pattern along Church Street that is similar to the proposed, however, the forecourt area is a positive change in this streetscape.</p>
<p><i>3E-1 Deep Soil Zones</i></p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Site area greater than 1,500 m² – minimum dimension 6m and 7% of site area. <p>However, the design criteria may not be possible on some sites including:</p> <ul style="list-style-type: none"> • Central business district. • Constrained sites. • High density areas. • Commercial centres. • Where there is 100% site coverage or non-residential uses at ground floor. 	<p>The site provides 12.16% of the landscaped area as a deep soil zone, more than the 7% minimum requirement.</p>

Control / Requirement	Compliance/Comment			
<p><i>3F-1 Visual Privacy</i></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Building height up to 12m (4 storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 6m. • Non habitable rooms – 3m. • Building height up to 25 metres (5-8 storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 9m. • Non-habitable rooms – 4.5m. • Building height over 25m (9+ storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 12m. • Non-habitable rooms – 6m. • No separation is required between blank walls. • An additional 3 m separation is required when adjacent to a different zone, which permits lower density residential development to provide a transition in scale and increased landscaping. 	<table border="1"> <thead> <tr> <th data-bbox="692 331 995 360">ADG Requirement</th> <th data-bbox="995 331 1332 360">Proposed</th> </tr> </thead> </table>		ADG Requirement	Proposed
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<p>The building provides a minimum 6m side setback to the eastern portion of the southern boundary for the first three levels and a 9m setback for Levels 4 to 8.</p>				
<p>There is a zero lot setback on the south west and north west corner elements of the building fronting Church Street for Levels 1 to 3, and a 4.5m to 8.7m setback for the remaining upper levels on the respective boundaries.</p>				
<p>The adjacent rooms are habitable (with no windows, doors or balconies) though are blank facades which can be considered to not require separation. The zero lot setback is adjacent to the service stairs and blank façade of the Oaks Lure (south of site) and Seaview Apartments (north of site), therefore results in no amenity impact in terms of visual privacy.</p>				

Control / Requirement	Compliance/Comment
	<p>The eastern (rear of building) aspect of the building is setback from 5.6m to 35.4m from the boundary due to the angle of the building. These setbacks provide adequate separation to the eastern neighbours.</p> <p>Council's UDP supported the building separation and concluded the visual privacy was acceptable with regard to the ADG.</p>
<p><i>3F-2 Visual Privacy</i></p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	<p>There are three ground floor units along Church Street, which have been raised to have adequate separation and privacy from the street. The private open space and windows are adequately separated from the communal areas and common circulation areas with retaining, fencing and landscaping.</p>
<p><i>3G-1 Pedestrian Access and Entries</i></p> <p>Building entries and pedestrian access connects to and addresses the public domain.</p>	<p>Two vehicle entries and two pedestrian entries are located along the western frontage to Church Street, which connects from the public domain.</p>
<p><i>3G-2 Pedestrian Access and Entries</i></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	<p>The Landscape Plan includes paving and defined plantings to indicate the main entrance to the building. This makes the entrance easy to identify.</p>
<p><i>3G-3 Pedestrian Access and Entries</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations.</p>	<p>Pedestrian links are clearly provided from the entries to the public domain and existing pathways along Church Street.</p>
<p><i>3H-1 Vehicle Access</i></p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	<p>Two vehicle entries are proposed off the western frontage to Church Street. These are located on the opposite ends of the building and separated from the main pedestrian entry, which is centrally located along the frontage. This configuration allows the pedestrian entry and forecourt area to be centralised and provide an attractive connection to the streetscape avoiding the fragmentation multiple vehicle entries can create.</p>
<p><i>3J-1 Bicycle and Car Parking</i></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p>	<p>The off-street parking provided is compliant with the requirements of the DCP.</p>

Control / Requirement	Compliance/Comment
<p>Numerical design criteria:</p> <ul style="list-style-type: none"> on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.</p> <p>The car parking need for a development must be provided off-street.</p>	
<p><i>3J-2 Bicycle and Car Parking</i></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>There are eight motorcycle spaces provided on the lower ground floor.</p> <p>No bicycle parking is provided. A bicycle rack will be conditioned to be included on the ground floor level.</p>
<p><i>3J-3 Bicycle and Car Parking</i></p> <p>Car park design and access is safe and secure</p>	<p>There is a waste and recycling storage area provided adjacent to the lift on the ground level.</p> <p>The main waste sorting and collection area is on the lower ground level, which can be accessed from the lifts or stair wells and does not require travel over car spaces or across ramps.</p>
<p><i>3J-4 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of underground car parking are minimised.</p>	<p>The basement car park provides a logical grid design. The car park is located to the east of the building, with only the vehicle access visible along Church Street.</p>
<p><i>3J-5 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of on-grade car parking are minimised.</p>	<p>Car parking is provided in the basement, not on-grade.</p>
<p><i>3J-6 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of above ground enclosed car parking area minimised.</p>	<p>No above ground car parking is proposed.</p>

Control / Requirement	Compliance/Comment
<p><i>4A-1 Solar and Daylight Access</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • In all other areas (i.e. areas outside Sydney metropolitan area, Newcastle and Wollongong local government areas), living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>Most units in the building are dual aspect.</p> <p>The apartment central to the building utilise the north-eastern orientation and include the main living area, a bedroom and a balcony on the north-east to optimise solar access. This provides solar exposure typically from 9am to 1pm.</p> <p>The apartments on the northern corner all have optimal orientation, most with exposure north, east and west. This provides solar exposure to parts of the unit throughout the whole day.</p> <p>The units on the southern corner have either a western or an eastern orientation as well to optimise either morning or afternoon solar access into the unit. The western units gain solar access 1pm onwards and the eastern from 9am to 1pm.</p> <p>The solar access to the building has been maximised through the design and achieves a good outcome.</p>
<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>Sunlight access is abundant to the units due to their orientation. Daylight will also be available due to the height of surrounding developments, which do not create areas that will block or obstruct daylight.</p>
<p><i>4A-3 Solar and Daylight Access</i></p> <p>Design incorporates shading and glare control, particularly for warmer months.</p>	<p>The windows are generally setback from the balconies, which provides some shading from the roof, and also assists in glare control to reduce direct exposure, mainly on the east, north and west aspects. Louvres have been included on the western façade to manage evening glare.</p>
<p><i>4B-1 Natural Ventilation</i></p> <p>All habitable rooms are naturally ventilated.</p>	<p>All habitable rooms have openable windows providing natural ventilation. There are 'studies' included in some units which are not considered a room as they do not meet the BCA habitable room definition.</p>
<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>Most units are dual aspect to allow cross ventilation. There are some units on the western façade orientated north with one aspect. For these single aspect units, the width of the unit has been maximised to allow large balconies and multiple rooms with openable windows and doors to achieve adequate ventilation.</p>

Control / Requirement	Compliance/Comment
<p><i>4B-3 Natural Ventilation</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for Residents.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. • Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. 	<p>More than 60% of the units have cross ventilation with dual or multiple aspects. The use of openable windows and sliding doors optimises natural ventilation.</p>
<p><i>4C-1 Ceiling Heights</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access.</p> <p>Numerical design criteria: Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> • Habitable rooms – 2.7m. • Non-habitable rooms – 2.4m, • Two storey apartments – 2.7m for main living area floor and 2.4 m for second floor where it does not exceed 50% of the apartment area. • Attic spaces – 1.8m at the edge of the room with a 30 degree minimum ceiling slope. • If located in mixed use areas – 3.3m for ground floor and first floor to promote future flexibility of use. 	<p>Each apartment is provided a minimum of 2.7m ceilings throughout to the habitable and non-habitable rooms. The previous design included additional space between the finished ceiling level and the under floor level of the slab above for services. The amended design has reduced the floor to floor heights by 1 brick course for levels 1 - 7 and 2 brick courses for Ground to Level 1. The removal of a brick course reduces the under floor services level and not the floor to ceiling heights for apartments.</p> <p>The entry level, including the gym and neighbourhood shop have a floor to ceiling height of approximately 3.2m. Despite the minor numerical non-compliance, the ground level ceiling height is considered acceptable as the building is within an R3 zone and the bottom floor cannot be used for commercial premises, only resident related uses or the neighbourhood shop.</p>
<p><i>4C-2 Ceiling Heights</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>The 2.7m ceiling heights provide a sense of space throughout the apartments and provide well-proportioned rooms.</p>
<p><i>4C-3 Ceiling Heights</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>Greater ceiling heights are not required on the ground floor. The site is located in a R3 zoned area with no commercial ground floor uses permissible as addressed above.</p>

Control / Requirement	Compliance/Comment
<p><i>4D-1 Apartment Size and Layout</i></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p> <p>Numerical design criteria: Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> • Studio – 35 m² • One bedroom – 50 m² • Two bedroom – 70m² • Three bedroom – 90m² • An additional 5m² is required for apartments with more than one bathroom. • An additional 12m² is required for a fourth, and further additional bedrooms. • Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. 	<p>The units achieve the minimum internal size required by the ADG as outlined below (excludes balconies):</p> <p>One bedroom – 59m² Two bedroom – 92.9m² Three bedroom – 135m² Four bedroom – 180m²</p> <p>These are all compliant with the required minimums. Each habitable room has a window included to comply with the BCA.</p>
<p><i>4D-2 Apartment Size and Layout</i></p> <p>Environmental performance of the apartment is maximised.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Habitable room depths are limited to a maximum of 2.5 x the ceiling height. • In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. 	<p>Due to the open plan layout and multiple aspects of units, every habitable room complies with the habitable room depths and spacing from windows.</p>
<p><i>4D-3 Apartment Size and Layout</i></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). 	<p>The master bedrooms are typically 12.9m².</p> <p>Each bedroom has a minimum dimension of 3m excluding the built in robes or walk in robes.</p> <p>The open plan living and dining areas have a minimum width of 4m, compliant with the requirement.</p> <p>No units are less than 4m wide.</p>

Control / Requirement	Compliance/Comment
<ul style="list-style-type: none"> • Bedrooms have a minimum dimension of 3m (excluding wardrobe space). • Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> - One bedroom apartments - 3.6m. - Two or three bedroom apartments – 4m. • The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts. 	
<p><i>4E-1 Private Open Space and Balconies</i></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Numerical design criteria – all apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> • Studio apartments – 4m². • One bedroom apartments – 8m² with a depth of 2m. • Two bedroom apartments – 10m² with a depth of 2m. • Three + bedroom apartments – 12m² with a depth of 2.4m. • For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m 	<p>The units provide the following primary balcony sizes at a minimum:</p> <p>One bedroom – 8.4m² Two bedroom – 10.5m² Three bedroom – 9.5m² (second balcony 6.8m²) Four bedroom – 21.5m²</p> <p>Three of the 3 bedroom units do not comply with the 12m² on one balcony, however each has a second balcony, which is considered a suitable alternative.</p> <p>None of the balconies are less than 2m deep. The three Ground Level units have private paved terraces and turfed courtyards that are a minimum combined area of 48.4m².</p> <p>The private open space and balconies provided generally comply with the ADG requirements.</p>
<p><i>4E-2 Private Open Space and Balconies</i></p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p>	<p>All balconies are accessed from the main living area, and several are provided access from a bedroom as well, achieving good useability and functionality of private open space areas.</p>

ITEM 2 - ATTACHMENT 6 ADDENDUM PLANNERS ASSESSMENT REPORT.

Control / Requirement	Compliance/Comment
<p><i>4E-3 Private Open Space and Balconies</i></p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p>	<p>The balconies have either a soft bronze matte metal balustrade or blonde brick balustrade. This allows view corridors through the balcony but retains a sense of separation and privacy that glass balustrades do not provide.</p> <p>The two balustrade types are an attractive addition to the elevations and sympathetic to the overall architectural design.</p>
<p><i>4E-4 Private Open Space and Balconies</i></p> <p>Private open space and balcony design maximises safety.</p>	<p>The design does not incorporate features that would encourage climbing of balconies.</p>
<p><i>4F-1 Common Circulation and Spaces</i></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • For buildings less than ten storeys in height the maximum number of apartments off a circulation core on a single level is eight. 	<p>There are two separate lift cores, one servicing the south half of the building and the other the north half.</p> <p>The maximum amount of units serviced by one lift on each floor is 8.</p>
<p><i>4F-2 Common Circulation and Spaces</i></p> <p>Common circulation spaces promote safety and provide for social interaction between residents.</p>	<p>There are two main entrances into the building. Each has a lobby area, which has the lifts in easy view.</p> <p>When exiting the lift there is a short sight line before the corner to the main corridor. Doors are easily visible and no areas of concealment are throughout.</p>
<p><i>4G-1 Common Circulation and Spaces</i></p> <p>Adequate, well designed storage is provided in each apartment.</p> <p>Numerical design criteria –in addition to storage in kitchens, bathrooms and bedrooms the following storage is provided:</p> <ul style="list-style-type: none"> • Studio apartments – 4m². • One bedroom apartments – 6m². • Two bedroom apartments – 8m². 	<p>Each apartment includes built in or walk-in robes in each bedroom. There is storage within the kitchen, with some kitchens having additional pantry storage. Many units have studies or walk in storage rooms.</p> <p>The proposed internal storage is adequate for the size of each apartment.</p>

ITEM 2 - ATTACHMENT 6 ADDENDUM PLANNERS ASSESSMENT REPORT.

Control / Requirement	Compliance/Comment
<ul style="list-style-type: none"> • Three + bedroom apartments – 10m². • At least 50% of the required storage is to be located within the apartment. 	
<p><i>4G-2 Common Circulation and Spaces</i></p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>There is some storage proposed within the private car garages in the basements levels.</p> <p>There is communal storage provided on each level, ranging from 8.96m² to 30.10m².</p>
<p><i>4H-1 Acoustic Privacy</i></p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>The building is adequately separated from the adjoining neighbours, reducing the transmission of noise emission between units.</p> <p>The car park is located in the basement, which may reduce the sound transmission compared to open air car parking. There are bedrooms located above the north western car park entrance, notwithstanding however, the design and materials used should mitigate nuisance noise from cars entering and exiting via that access.</p>
<p><i>4H-2 Acoustic Privacy</i></p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>Each unit concentrates the living and main trafficable areas together and the bedrooms and less trafficked areas together. This provides separation between the noisier and quitter areas of the home.</p>
<p><i>4J-1 Noise and Pollution</i></p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.</p>	<p>The locality is primarily residential and commercial, and experiences higher traffic through the seasonal peaks due to its location near Nelson Bay Town Centre. However, the area is not considered a noisy or hostile environment and no additional treatment is considered necessary to mitigate against external noise impacts outside of the proposed building setbacks.</p>
<p><i>4J-2 Noise and Pollution</i></p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>The development is not located in an environment that causes adverse noise impacts, which need to be mitigated through further attenuation.</p>

Control / Requirement	Compliance/Comment												
<p><i>4K-1 Apartment Mix</i></p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p>	<p>The building proposes the following unit mix to cater for a range of household sizes:</p> <table border="1" data-bbox="715 371 1318 546"> <thead> <tr> <th data-bbox="715 371 1034 398">Bedrooms</th> <th data-bbox="1034 371 1318 398">Quantity</th> </tr> </thead> <tbody> <tr> <td data-bbox="715 398 1034 425">One bedroom units</td> <td data-bbox="1034 398 1318 425">5</td> </tr> <tr> <td data-bbox="715 425 1034 452">Two bedrooms units</td> <td data-bbox="1034 425 1318 452">46</td> </tr> <tr> <td data-bbox="715 452 1034 479">Three bedroom units</td> <td data-bbox="1034 452 1318 479">25</td> </tr> <tr> <td data-bbox="715 479 1034 506">Four bedroom units</td> <td data-bbox="1034 479 1318 506">5</td> </tr> <tr> <td data-bbox="715 506 1034 546">Total</td> <td data-bbox="1034 506 1318 546">81</td> </tr> </tbody> </table>	Bedrooms	Quantity	One bedroom units	5	Two bedrooms units	46	Three bedroom units	25	Four bedroom units	5	Total	81
Bedrooms	Quantity												
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Total	81												
<p><i>4K-2 Apartment Mix</i></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The larger apartments are concentrated towards the top of the building, with the one, two and three bedroom units primarily on the lower floors.</p>												
<p><i>4L-1 Ground Floor Apartments</i></p> <p>Street frontage is maximised where ground floor apartments are located.</p>	<p>The ground floor apartments are raised to provide additional privacy.</p>												
<p><i>4L-2 Ground Floor Apartments</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>The ground floor apartments are raised to provide privacy to the residents, but still provides ample opportunity for passive surveillance.</p>												
<p><i>4M-1 Facades</i></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>The building has been thoughtfully designed to include visual interest on all elevations. The western façade to Church Street has been designed to provide an inviting entrance with an indented forecourt, range of landscaping and mixture of materials.</p> <p>The other elevations all use a combination of materials and stepping in of building.</p> <p>Councils UDP were supportive of the aesthetic design of the facades.</p>												
<p><i>4M-2 Facades</i></p> <p>Building functions are expressed by the façade.</p>	<p>The pedestrian entry and vehicle entry are both clearly defined along the frontage of Church Street.</p>												
<p><i>4N-1 Roof Design</i></p> <p>Roof treatments are integrated into the building designed and positive respond to the streets.</p>	<p>The roof structure is a flat form with overhang elements. It allows the roof to be centralised within the floor plate, setback from the building elevations reducing height and bulk at both the human scale and from the foreshore.</p>												

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Control / Requirement	Compliance/Comment
<p><i>4N-2 Roof Design</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>Ample undercover and open communal space is provided on the roof.</p>
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	<p>The roof design does not hinder the solar access to the units.</p>
<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	<p>A Landscape Plan has been provided, which incorporates an environmentally sustainable and maintainable design.</p>
<p><i>4O-2 Landscape Design</i></p> <p>Landscape design contributes to the streetscape and amenity.</p>	<p>The landscaping will contribute to the natural environment along Church Street. The planting will be a positive addition to the streetscape, which is currently underutilised.</p>
<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	<p>The planting proposed was assessed as adequate by the UDP.</p>
<p><i>4P-2 Planting on Structures</i></p> <p>Plant growth is optimized with appropriate selection and maintenance.</p>	<p>The planting proposed was assessed as adequate by the UDP.</p>
<p><i>4P-3 Planting on Structures</i></p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces.</p>	<p>The planting proposed will create a quality environment for the public and private spaces.</p>
<p><i>4Q-1 Universal Design</i></p> <p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • A benchmark of 20% of the total apartments incorporate the Liveable Housing Guidelines silver level universal design features. 	<p>Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.</p>

Control / Requirement	Compliance/Comment
<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable designed are provided.</p>	Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.
<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.
<p><i>4R-1 Adaptive Reuse</i></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	Not applicable.
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	Not applicable.
<p><i>4S-1 Mixed Use</i></p> <p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.</p>	The forecourt design clearly defines the location of the neighbourhood shop and public space and where the private space begins at the residential entries.
<p><i>4S-2 Mixed Use</i></p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.</p>	The ground level is designed to clearly define the area of the neighbourhood shop from the resident entries.
<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	No awnings are proposed.
<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	No signage is proposed.

Control / Requirement	Compliance/Comment
<p><i>4U-1 Energy Efficiency</i></p> <p>Development incorporates passive environmental design.</p>	Adequate natural light and ventilation is provided to each unit.
<p><i>4U-2 Energy Efficiency</i></p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p>	The development will comply with the BASIX requirements as required.
<p><i>4U-3 Energy Efficiency</i></p> <p>Adequate natural ventilation minimises the need for mechanical ventilation.</p>	Natural ventilation is ample throughout all units due to the openable windows, door location and aspect orientation of units.
<p><i>4V-1 Water Management and Conservation</i></p> <p>Potable water use is minimised.</p>	Water fixtures complying with BASIX requirements will be installed.
<p><i>4V-2 Water Management and Conservation</i></p> <p>Urban stormwater is treated on site before being discharged to receiving waters.</p>	A stormwater drainage plan has been provided which provides for water re-use.
<p><i>4V-3 Water Management and Conservation</i></p> <p>Flood management systems are integrated into the site design.</p>	The site is not flood affected.
<p><i>4W-1 Waste Management</i></p> <p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p>	A bin storage area is located in the basement and out of view of the street. A private contractor will collect waste from within the car park and lot along the street.
<p><i>4W-2 Waste Management</i></p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	Each kitchen has a waste storage area to be used prior to placing in the council bins in the basement carpark.

Control / Requirement	Compliance/Comment
<p><i>4X-1 Building Maintenance</i></p> <p>Building design detail provides protection from weathering.</p>	<p>The designer has used materials that are durable and easily maintained or can be replaced if required.</p>
<p><i>4X-2 Building Maintenance</i></p> <p>Systems and access enable ease of maintenance.</p>	<p>Windows and glass doors can be cleaned from the balconies or internally where required.</p> <p>External scaffolding should not be required to carry out general upkeep of the building.</p>
<p><i>4X-3 Building Maintenance</i></p> <p>Material selection reduces ongoing maintenance costs.</p>	<p>The building uses render and cladding as the primary external materials. These can be easily maintained and should stand the general wear and tear the building will receive.</p>

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 4.3 – Height of Buildings

The site has maximum permitted building height of 28m. The proposed development, as amended, proposes a maximum building height of 30.79m. This represents a variation of 2.79m or 9.9% above the maximum LEP building height. The previous building design reported to Council encompassed a maximum building height of 32.18m.

The applicant submitted an amended Clause 4.6 exception to development standard request in support of the variation of the amended plans. A detailed assessment is contained within the Clause 4.6 Assessment Report contained at Attachment 5.

Clause 4.6 – Exceptions to development standards

The applicant submitted an amended Clause 4.6 exception to development standard request, to support the proposed variation to the building height. The highest point of the proposed development (rooftop space and roof feature), as amended, measures 30.79m above the natural ground level (north-eastern corner), representing a 2.79m or 9.9% variation, above the maximum PSLEP 28m height limit. There is a significant cross fall across the site, contributing to the varying height non-compliance for the proposed building.

An assessment of the applicant's amended Clause 4.6 request was conducted and is included as an attachment to this report. The applicant's written request outlines a number of environmental planning grounds, which adequately justify the contravention. It is concluded that the applicant's Clause 4.6 variation request has satisfied the relevant criteria under this clause. Accordingly, there is merit in applying flexibility to this development standard in this instance and the proposed height variation is supported.

Council staff are satisfied with the height variation on the following grounds:

- (a) the proposal is consistent and compatible with the desired future character of the area consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- (b) the proposal minimises its visual intrusion consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));

(c) the visual intrusion of the proposal is compatible with the amenity of the surrounding residential area and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii));

(d) the proposal is of a height and scale that achieves the desired future character of the neighbourhood and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii)).

Consequently, compliance with the development standard is considered unreasonable in these circumstances. There are sufficient environmental planning grounds to justify the contravention; and the proposed development will be in the public interest given the proposal is consistent with the objectives of the zone and the objectives of Clause 4.3, the building height development standard.

If made to strictly comply with Clause 4.3, there would be no additional benefit to the streetscape, public domain, coastal landscape or design. The strict compliance with Clause 4.3 is therefore considered unreasonable in the circumstances of the development. Whilst some elements of the development, namely the roof feature for the rooftop open space does not strictly adhere to the building height standards established in PSLEP2013 for the site, the proposed development consists of a high quality, architecturally designed building that makes a positive contribution to the locality. A more detailed assessment with regard to building height can be found in Attachment 5 – Clause 4.6 Assessment Report.

Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition

There are no draft EPI's relevant to the proposed development.

Section 4.15(a)(iii) – any development control plan

Port Stephens Development Control Plan 2014

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development. The amended design proposes no amendments to relevant DCP requirements, including carparking, landscaping, stormwater management, tree removal, landscaping or environmental management. The amended design, which only relates to a reduction in building height, remains consistent with the applicable provisions of the DCP, including Section B1-B5, B8 and site specific controls outlined under D5.

Accordingly, there are no amendments to the DCP assessment as contained within the original Planners Assessment Report of 13 September 2022.

Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no other regulations applicable to the development.

Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

No changes to the environmental, social or economic impacts as those identified within the Planners Report of 13 September 2022. Impacts to the built environment associated with the reduction in building height under the amended design have been addressed below.

Impacts on the Built Environment

The proposed development is considered to result in a positive impact on the developing built form in Nelson Bay with acceptable offsite impacts. Whilst the building will create additional overshadowing in some instances, the increase is primarily within mid-winter and will not

significantly decrease the amenity of neighbouring properties, noting overshadowing already occurs to some capacity within these adjoining properties.

View Loss

A detailed view loss assessment was provided in the original Planners Assessment Report of 13 September 2022. The reduction in building height from 32.18m to 30.79m under the amended design has no material impact on view loss in comparison to the original view loss assessment contained in the original Planners Assessment Report.

Despite the building height non-compliance, the portion of the proposed building obstructing views is within the compliant height limit envelope. Should the building be reduced to 28m in height, there would be no difference to the view impact from the adjoining southern property, being the Oaks Lure Apartments. The proposed building would need to be lower than the height of the Oaks Lure for neighbouring apartments to retain the same or similar views, which is unreasonable and not consistent with the objectives of the zone, height limit or the desired built form character envisaged under Nelson Bay Town Centre Strategy. Designing a building with the intent to retain views for the neighbouring Oaks Lure apartments, would consequently result in an underdevelopment of the subject site.

The existing topography, current subdivision pattern and proximity to the foreshore results in the Oaks Lure losing views under a fully compliant building envelope design, noting the Oaks Lure is not built to the maximum permitted PSLEP height limit under current planning controls. The Oaks Lure has largely obtained views and benefitted from being adjacent to undeveloped lots. Accordingly, the findings of the detailed view loss assessment provided in the original Planners Assessment Report of 13 September 2022 remains applicable to the amended design.

View Impact to Foreshore

The site is located approximately 400m from the foreshore, with building height limits of 28m applicable to the land situated between the foreshore and site. As future development occurs to the north of the site, the view and visual prominence of the proposed building will become less discernible from the foreshore as demonstrated in the block and massing models submitted by the applicant.

Additionally, a 28m building height also applies to the properties located to the south of the site along Tomaree Street and at 27-31 Church Street. These properties are located higher on the ridgeline, with an AHD of 36m compared to 26m at the site, accordingly development to the south built to the 28m height limit would perceptibly extend beyond the proposal when viewed from the foreshore.

The applicant submitted additional massing models and renders of prospective development surrounding the subject site to better inform the impact of the development on the existing and future character, in addition to views from the foreshore. The massing models were submitted to supplement the Visual Impact Assessment (VIA) and overshadowing diagrams. The massing models demonstrate the scale of the building is compatible with the surrounding coastal landforms and desired built form under the Nelson Bay Town Centre Strategy, noting the building mass is situated below the ridgeline and lower than the maximum permitted building envelope for properties to the south of the site. Furthermore, the Nelson Bay Bowling Club site supports a 42m building height. Accordingly, future development on this site would be more visually prominent than the proposal from the foreshore. The Bowling Club is located 250m to the southwest of the site.

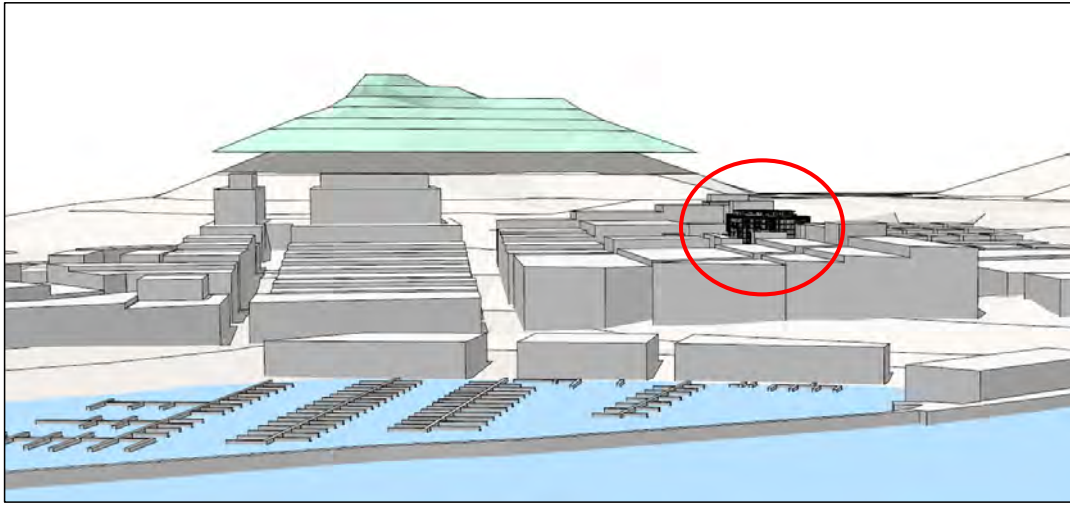


Figure 5 – Elevated foreshore view extracted from Town Centre Model (proposed building in red)

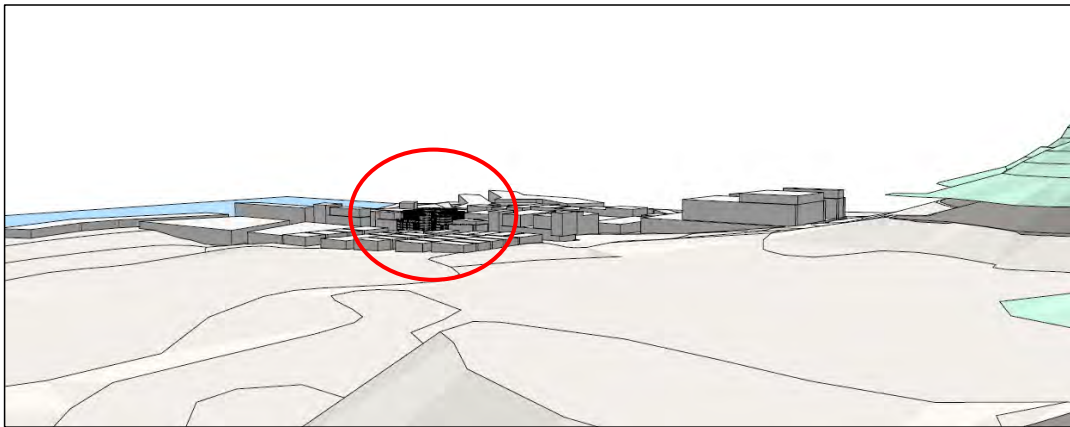


Figure 6 – North-east building view extracted from Town Centre Model (proposed building in red)

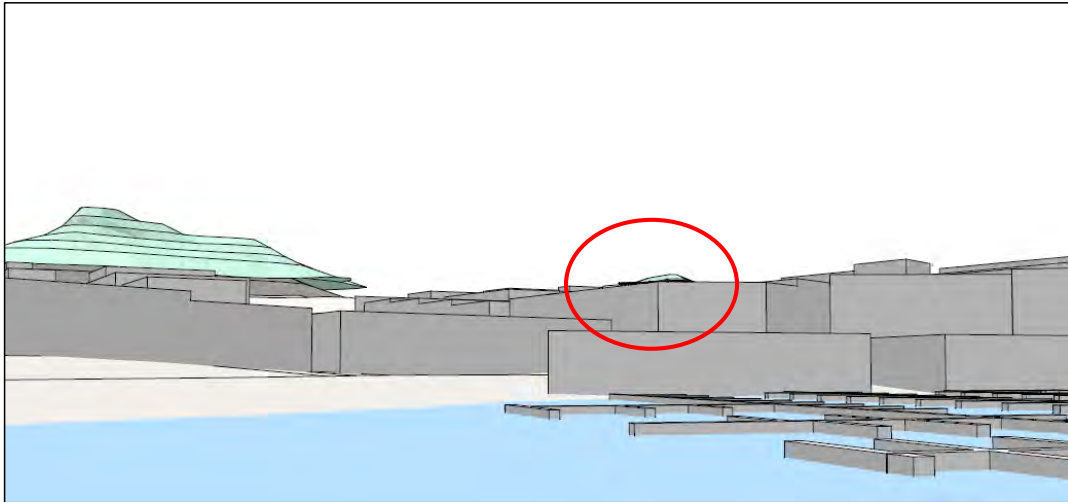


Figure 7 – Building view from marina extracted from Town Centre Model (proposed building in red)

As noted in the Urban Design Analysis which supported the 'Nelson Bay Town Centre Strategy and Delivery Program', the view looking south from the Western Groyne shows the amphitheatre created by the ridgelines that surround Nelson Bay Town Centre. This amphitheatre shape allows for views from the north of the town to maintain strong landscape character and setting. The topography of Nelson Bay along with vegetation, frames the core town centre. To maintain the natural setting, implementation of large bulky forms is discouraged. However, the impact of tall buildings would reinforce the amphitheatre if placed towards the outside of the Town Centre. The view lines between Kurrara Hill and the marina form an axis for the main street of the Town Centre, which should be maintained.

When considering the visual analysis of the site under the Town Centre Model and Nelson Bay Strategy, the proposed development and future built form, it is evident that taller developments are intended to be generally located on the outer periphery of the 'amphitheatre' consistent with the conclusions made within the Nelson Bay Strategy and associated visual analysis. Whilst the proposed building will be higher than the existing buildings surrounding the site, despite the variation, the height is consistent with desired character of the site which is intended to be tall in nature to frame the Town Centre.

Overall, the proposed design and built form is considered appropriate within the surrounding coastal landscape and desired future character of the Nelson Bay Town Centre. The reduction in height is a marginal improvement from the previous design in terms of views from the foreshore. Overall, the development will provide a high quality architecturally designed building, which will have a positive impact on the streetscape and positive impact on the public domain.

Section 4.15(1)(c) the suitability of the site for the development

The site is suitable for the amended development for the reasons identified within the original Planners Assessment Report of 13 September 2022.

Section 4.15(1)(d) any submissions made in accordance with this act or the regulations

Public Submissions

The application was exhibited from 7 September 2021 to 21 September 2021, in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. There were 108 submissions received during this period.

The application was re-notified after the submission of amended plans and documentation from the applicant from 7 April 2022 to 21 April 2022. There were 28 submissions received during this period.

On receipt of amended architectural plans, the application was again re-notified from 14 October to 28 October. There were 155 submissions received during this period. A total of 26 submissions objected to the development and 129 submissions supported the development.

This addendum report has only addressed the matters raised during the recent October exhibition period in the table below. The submissions received during the previous exhibition periods have been addressed within the Planers Assessment Report of 13 September 2022.

Table 3: Summary of public submissions for October exhibition

No	Issue	Council Response
1	Building Height Non-compliance with LEP height	<p>The site has maximum permitted building height of 28m. The proposed development, as amended, proposes a maximum building height of 30.79m. This represents a variation of 2.79m or 9.9% above the maximum LEP building height. The previous building design reported to Council encompassed a maximum building height of 32.18m.</p> <p>Compliance with the height development standard is considered unreasonable in these circumstances. There are sufficient environmental planning grounds to justify the contravention; and the proposed development will be in the public interest given the proposal is consistent with the objectives of the zone and the objectives of Clause 4.3, the building height development standard.</p> <p>If made to strictly comply with Clause 4.3, there would be no material benefit to the streetscape, public domain or design. The strict compliance with Clause 4.3 is therefore considered unreasonable in the circumstances of the development. Whilst some elements of the development, namely the roof feature for the rooftop terrace area does not strictly adhere to the building height standards established in PSLEP2013 for the site, the proposed development consists of a high quality, architecturally designed building that makes a positive contribution to the locality.</p> <p>The proposed design results in a better planning outcome on-site despite the variation with minimal offsite impacts. All other design requirements and FSR controls have generally been complied with. On these grounds, Council staff have recommended approval of the proposed development.</p> <p>A more detailed assessment with regard to building height can be found in Attachment 5 – Clause 4.6 Assessment Report.</p>
2	Overshadowing	<p>The amended design results in a negligible reduction in overshadowing to neighbouring properties. The terrace rooftop feature is setback considerably from the boundaries, accordingly this building element</p>

No	Issue	Council Response
		<p>does not cast a shadow that extends onto the Oaks Lure site to the south. The amended overshadowing diagrams indicate the solar impact is not improved by the reduction in maximum building height to 30.79m from 32.18m.</p> <p>Notwithstanding, it is reasonable to expect that the building will cast a degree of overshadowing on neighbouring properties when considering the 28m height limit and the 3:1 Floor Space Ratio (FSR) controls. Moreover, reducing the height of the building to the maximum PSLEP2013 height of 28m would have minimal to no change on the extent of overshadowing caused by the applicant previous design as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and setback controls. The portions of the building height encroachment do not contribute to the overshadowing of adjoining properties given the roof feature and terrace area represents only 13.5% of the building floor plate and is centrally located, comprising setbacks of 23.4m from the northern boundary, 18.0m from the southern boundary, between 14.5-23.4m from the western boundary and between 10.5m- 29.4m from the eastern boundary. A detailed assessment of overshadowing is contained in Table 2 in this report.</p>
3	View Loss	<p>A detailed view loss assessment was provided in the original Planners Assessment Report of 13 September 2022. The reduction in building height from 32.18m to 30.79m under the amended design has no material impact on view loss in comparison to the original view loss assessment contained in the original Planners Assessment Report.</p> <p>Despite the building height non-compliance, the portion of the proposed building obstructing views is within the compliant height limit envelope. Should the building be reduced to 28m in height, there would be no difference to the view impact from the adjoining southern property, being the Oaks Lure Apartments. The proposed building would need to be lower than the height of the Oaks Lure for neighbouring apartments to retain the same or similar views, which is unreasonable and not consistent with the objectives of the zone, height limit or the desired built form character envisaged under Nelson Bay Town Centre Strategy. Designing a building with the intent to retain views for the neighbouring Oaks Lure apartments, would consequently result in an underdevelopment of the subject site.</p> <p>The existing topography, current subdivision pattern and proximity to the foreshore results in the Oaks Lure losing views under a fully compliant building envelope design, noting the Oaks Lure is not built to the maximum permitted PSLEP height limit under current planning controls. The Oaks Lure has largely obtained views and benefitted from being adjacent to undeveloped lots. Accordingly, the findings of the detailed view loss assessment provided in the original Planners Assessment Report of 13 September 2022 remains applicable to the amended design.</p>

No	Issue	Council Response
4	Visual Impact	<p>Overall, the proposed design and built form is considered appropriate within the existing and desired future character of the Nelson Bay Town Centre. The reduction in height is a marginal improvement from the previous design in terms of views from the foreshore. Overall, the development will provide a high quality architecturally designed building, which will have a positive impact on the streetscape and positive impact on the public domain.</p>
5	Bulk and Scale	<p>The proposed building represents a large development and will be highly visible. In order to ensure the building does not have a negative impact, the architect has adequately articulated the building form. These include:</p> <ul style="list-style-type: none"> • Tapering the sides of the building down to be a similar height to the adjoining northern and southern neighbours to assist in providing a transition of height and scale, • Indenting the forecourt and centre of the building along Church Street, • Placing the building on an angle which reduces any box like shapes, whilst also providing better solar access, and • Setting the top level covered communal space in further from the sides so it is not visually dominate above the height limit. <p>These design elements provide a building that whilst large in scale, provides a compatible connection to the adjacent neighbours and will improve the architectural quality that exists within the locality. The objectives of the height controls are to achieve buildings with appropriate heights for the character on context whilst reflecting the hierarchy of centres and the land use structure. The objectives of the FSR control is to achieve a building compatible with the bulk and scale of the desired future character of the locality, a balance between built form and landscaping and to minimise the effects of bulk and scale.</p> <p>The design does achieve a bulk and scale appropriate for the area and desired hierarchy of buildings in accordance with the Nelson Bay Town Centre Strategy. It also achieves the desired built form character, as it is a modern building that will improve the aesthetic quality of the existing area. The design also provides ample landscaping and communal space to residents whilst remaining below the FSR.</p> <p>Considering the above, the bulk and scale is considered acceptable and will provide a building that achieves many of the desired outcomes intended by the applicable controls and strategies. On these grounds, the development is consistent with <i>Veloshin v Randwick Council [2007] NSWLEC 428</i>, the established planning principle in the assessment of height, bulk and scale.</p>
6	Dilapidation	<p>A condition has been recommended that a dilapidation report including a photographic survey of the following adjoining properties be prepared. The dilapidation report must detail the physical condition of adjoining properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items. Any cost to remediate</p>

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No	Issue	Council Response
		<p>damage to adjoining properties during construction will be at developer cost.</p>
7	<p>Topography and impact to coastal landscape</p>	<p>The site is located approximately 400m from the foreshore, with building height limits of 28m applicable to the land situated between the foreshore and site. As future development occurs to the north of the site, the view and visual prominence of the proposed building will become less discernible from the foreshore as demonstrated in the block and massing models submitted by the applicant.</p> <p>Additionally, a 28m building height also applies to the properties located to the south of the site along Tomaree Street and at 27-31 Church Street. These properties are located higher on the ridgeline, with an AHD of 36m compared to 26m at the site, accordingly development to the south built to the 28m height limit would perceptibly extend beyond the proposed building when viewed from the foreshore.</p> <p>The applicant submitted additional massing models and renders of prospective development surrounding the subject site to better inform the impact of the development on the existing and future character, in addition to views from the foreshore. The massing models were submitted to supplement the Visual Impact Assessment (VIA) and overshadowing diagrams. The massing models demonstrate the scale of the building is compatible with the surrounding coastal landforms and desired built form under the Nelson Bay Town Centre Strategy, noting the building mass is situated below the ridgeline and lower than the maximum permitted building envelope for properties to the south of the site. Furthermore, the Nelson Bay Bowling Club site supports a 42m building height. Accordingly, future development on this site would be more visually prominent than the proposal from the foreshore. The Bowling Club is located 250m to the southwest of the site.</p>
8	<p>Services</p>	<p>The proposed development is located within the Nelson Bay Town Centre, which provides for a range of services to support additional residents. Nelson Bay has been identified for future population growth in accordance with Councils Local Housing Strategy.</p>
9	<p>Adequacy of Clause 4.6 submission</p>	<p>Three submissions raised concern with regard to the adequacy of the Clause 4.6 submission and justification on why compliance with the height limit is 'unreasonable or unnecessary', which is a required test under Clause 4.6 of the PSLEP.</p> <p>Recent Land and Environment Court decisions on Clause 4.6 variation requests have provided some context to assist in considering the 'unreasonable or unnecessary' test, including <i>SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112</i>. In this case, the Court accepted that the Clause 4.6 variations were well-justified, and ultimately better than a compliant (smaller) scheme on the subject site. An important factor contributing to this finding was the design excellence of the proposed building, which the Court referred to as "an excellent response to its context" and a "high quality architectural</p>

No	Issue	Council Response
		<p>design". The consequence was the approval of a building having six storeys rather than the four storeys that a strict application of the LEP controls would have allowed.</p> <p>The Court drew from the decisions in <i>Initial Action</i> and <i>RebelMH</i> in the <i>SJD DB2</i> judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is 'unreasonable or unnecessary', it may be sufficient to establish only one way. The <i>SJD DB2</i> findings are contrary to the view of one objector who suggests the Clause 4.6 does not specifically demonstrate the height standard variation as being 'unreasonable or unnecessary'. The five ways to demonstrate compliance as being 'unreasonable/unnecessary' are not exhaustive, and it may be sufficient to establish only one way (<i>Initial Action</i> at [22]).</p> <p>Clause 4.6(4) specifies two jurisdictional prerequisites that must be satisfied before a consent authority can grant development consent to a development application which contravenes a development standard, one being that the consent authority must be satisfied of those matters specified in clause 4.6(4)(a)(i) and (ii). A request under Clause 4.6 will only adequately address Clause 4.6(3) if the consent authority is satisfied that the matters have in fact been demonstrated.</p> <p>Based on the applicant's Clause 4.6 submission in the context of the development application, Council is satisfied there are sufficient environmental planning grounds to justify the contravention and compliance with the development standard is 'unreasonable or unnecessary'. Importantly, compliance with the height standard would require the removal of the rooftop terrace structure. If the rooftop space was not enclosed and roofed in the centre, the space would not be desirable for use as it would be exposed to the elements, resulting in a sub-standard design outcome and poor amenity. Councils UDP supported this view.</p> <p>The proposed height non-compliance has merits and exhibits public benefit, without detracting from the surrounding character or built form. It is unreasonable to uphold the development standard in this instance. Moreover, drawing from the <i>Initial Action</i> and <i>SJD DB2</i> judgments, Council views the proposed building as demonstrating a high quality architectural design and satisfying the objectives of Clause 4.3.</p>
10	Conditional support of UDP	<p>One submission questioned the conditional support of the UDP. The UDP reviewed the design on several occasions, during both formal meetings with the applicant and providing advice directly to Council staff. The amended design was again referred to the UDP for comment in November 2022.</p> <p>The UDP raised no concern with the amended design, although noted the applicant will need to ensure there is sufficient space for services within subfloors to accommodate fire sprinklers, acoustic floors and other services and still comply with ADG floor to ceiling heights.</p>

No	Issue	Council Response
		<p>In previous advice (May 2021 and April 2022), the UDP considered the degree of exceedance of the height control as being potentially acceptable, if the area of the development that sits above the height control plane were solely utilised as common space. The UDP reviewed the roof structure covering both private and communal spaces, specifically 64.05% of floor area communal/public space and 35.95% private space in the form of private external terraces as part of the amended design. The UDP advised it would have preferred 100% communal space, although noted the proposed arrangement is considered acceptable in terms of ADG objectives and noted the proposed communal/private space composition ratio will not have any impacts external to the site.</p> <p>The UDP were specifically asked to provide advice on the removal of the rooftop structure to comply with the LEP height control. The UDP advised they would not support a rooftop terrace with no roof structure. The UDP noted the amenity of the area would be poor and removal of the roof structure would result in a sub-standard design outcome in terms of resident amenity. It was also noted the rooftop structure is an important part of the buildings form.</p> <p>Additionally, it should be acknowledged the UDP is not a statutory or concurrence body. The UDP was established to provide expert design advice to Council staff with no consent authority function. Accordingly, unconditional support or otherwise from the UDP is not a jurisdictional prerequisite for development consent.</p>
11	Support	129 submissions of support were received during the October notification period. These submissions provided support for the development on the grounds of design merit, housing supply, city centre activation and economic development.

Section 4.15(1)(e) the public interest

The amended proposal is considered to be in the public interest for the reasons identified within the original Planners Assessment Report of 13 September 2022.

Section 7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)

No changes to the applicable Section 7.11 contributions that apply to the residential portion of the development as outlined in the original Planners Assessment Report of 13 September 2022.

In total, the proposal will generate a monetary contribution of \$1,180,000 to be paid to Council for the provision of 59 additional dwellings.

DETERMINATION

The application is recommended to be approved by Council, subject to conditions of consent.

RYAN FALKENMIRE

Development Planning Coordinator