

Central Coast

Local Planning Panel

Central Coast
Local Planning Panel Meeting
Business Paper
22 August 2024



Meeting Notice

**The Local Planning Panel Meeting
of Central Coast
will be held remotely - online,
Thursday 22 August 2024 at 2.00 pm,
for the transaction of the business listed below:**

1 Planning Reports

- 1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd
Warnervale - Proposed Residential Subdivision (216) Lots..... 3
- 1.2 DA/42661/2012/E - 69-71 Avoca Drive, Avoca Beach - Alterations & Additions
to existing Theatre91

2 Planning Reports- Outside of Public Meeting

- 2.1 DA/2048/2023 - 22 Clairvoux Road Wamberal - Alterations and Additions
(Existing Dwelling).....477
- 2.2 Supplementary Report - DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean
Parade, The Entrance - Residential Flat Building and Demolition of Existing
Structures (Amended Application) 559

Jason Perica
Chairperson

Item No: 1.1
Title: DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots
Department: Environment and Planning

Central Coast
Local Planning Panel

22 August 2024 Local Planning Panel Meeting

Reference: DA/1892/2021 - D16158076
Author: Salli Pendergast, Principal Development Planner. Employment and Urban Release
Manager: Emily Goodworth, Section Manager Employment and Urban Release
Unit Manager: Andrew Roach, Unit Manager. Development Assessment

SUMMARY

A development application has been received for a residential subdivision including 216 lots and associated works including earthworks, servicing, and roads infrastructure in stages, at 15-35 Warnervale Road & 95-105 Virginia Road, Warnervale. The application has been assessed having regard to the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements.

The application includes works (being two stormwater quality basins being constructed) on Council owned land which necessitates the application to be forwarded to the Local Planning Panel (LPP) for determination under Schedule 2 of the Ministers Directions (dated 6 March 2024). Although the proposal has resulted in no submissions being received from notification of the DA, the development taking place on Council owned land has a capital value above \$1 million.

The application is recommended for approval.

Applicant	Bitova Pty Ltd
Owner	Bitova Pty Ltd & Rathdrum Properties P/L Central Coast Council
Application No	DA/1892/2021
Portal No.	PAN-173646 (CNR-32723)
Portal No.	PAN-173646
Description of Land	15-35 Warnervale Road & 95-105 Virginia Road, 107-171 Virginia Road, Warnervale, (the works taking place on a more specifically and narrowly identified area being 50 Federation Bvd Lot 2079 DP.1273682), which originally included Lot 1 DP.385242, Lots 73-76 DP.7091, Lots 1 & 2 DP 1101086, (basin infrastructure on Lot 704 DP127094 and servicing works in road reserve).
Proposed Development	Residential subdivision (216 Lots) and associated infrastructure and works in stages (Stages 3-5)
Site Area	35.57ha (Lot 2079 DP.1273682) 17.9Ha (residue lot 2193 including 9ha of C2 & C3)

1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)

Zoning	R1 General Residential; R2 Low Density Residential; C3 (formerly E2) Environmental Management; C2 (formerly E3) Environmental Conservation; RE1 Public Recreation under Wyong LEP 2013
Existing Use	Former vacant grazing land now subdivision under construction
Value of Works	\$19,120,000

Recommendation

- 1 *The Panel grant consent to DA/1892/2021 at 15-35 Warnervale Road & 95-105 Virginia Road, 107-171 Virginia Road, Warnervale for a residential subdivision including 216 lots and associated works including earthworks, servicing and roads infrastructure in stages, subject to the conditions provided in the Attachment.***

Key Issues

- The application seeks consent for residential subdivision including 216 lots and associated works including earthworks servicing and roads infrastructure in 5 stages.
- The proposal is the next stage in part of the progressive and ongoing subdivision and development of the site for residential purposes by AV Jennings Properties Limited.
- The progressive residential subdivision of the site has been the subject of a rezoning of a broader site known as Precinct 7A and the site is identified for residential development under the adopted North Wyong Structure Plan and is within an emerging growth area centre under the Central Coast Regional Plan 2041.
- The site is the subject of a Deed of Agreement which was established between Wyong Shire Council and the landowner (at the time) to change the zoning of various portions of the landowner's land within the Precinct 7A study area, and to provide for certain land (referred to as the 'Transfer Land') to be transferred to Council for regional stormwater and conservation purposes. The transfer of most (but not all) of this land has only more recently occurred. The proposed water quality basins are to be located on recently transferred lands.
- The application is for integrated development requiring approval under for Section 100B of the *Rural Fires Act 1997* for Bush Fire Safety Authority (BFSA) (related to a Special Fire Protection Purpose).
- The application is for integrated development requiring approval under S90 of the *National Parks and Wildlife Act 1974* for an Aboriginal Heritage Impact Permit (AHIP) to harm Aboriginal objects.

1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)

Precis:

Proposed Development	Residential subdivision including 216 lots and associated works including earthworks servicing and roads infrastructure in stages
Permissibility and Zoning	R1 General Residential; R2 Low Density Residential; C3 Environmental Management; C2 Environmental Conservation; RE1 Public Recreation under Wyong LEP 2013
Relevant Legislation	<i>Environmental Planning and Assessment Act 1979</i> <i>Environmental Planning and Assessment Regulations 2000</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <i>State Environmental Planning Policy (Planning Systems) 2021</i> <i>State Environmental Planning Policy (Koala Habitat Protection) 2021</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>Wyong Local Environmental Plan 2013</i>
Current Use	Recently re-zoned land for residential development
Integrated Development	Section 100B of the <i>Rural Fires Act 1997</i> (Special Fire Protection Purpose) for Bush Fire Safety Authority (BFSa). Section 90 of the <i>National Parks and Wildlife Act 1974</i> for an Aboriginal Heritage Impact Permit (AHIP) to harm Aboriginal objects.
Submissions	No submissions

Variations to Policies

Clause	4.1c – Lot size
Standard	Min 15m lot width at building line
DCP	Part 4 Subdivision
Departure basis	Lot width 10m – 49.55m (R2 zone) 24 lots out of 80 lots have a variation of up to 33% to the 15m min width requirement. Lot width 7.5m-30.2m (R1 zone) 126 lots out of 159 lots have a variation of up to 50% to the min 15m width requirement.

1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)

Clause	4.1.2 Corner Lots
Standard	Min area 700m ²
DCP	Part 4 Subdivision
Departure basis	534m ² - 768m ² (R2 land) 11 of the 12 corner lots don't comply with the minimum 700m ² with the greatest variation to the minimum corner lot size being 166m ² (24% variation). 311m ² -992m ² (R1 land) 18 of 23 corner lots don't comply with the minimum 700m ² with the greatest variation to the minimum corner lot size being 389m ² (55.6% variation).

Clause	3.3c- Cut, Fill Earthworks
Standard	Boundary retaining walls max height 900mm and not extend for more than 2 lots
DCP	Part 4 Subdivision
Departure basis	Retaining walls between 0.5-2.5m but majority under 1m in height

Clause	4.1b Lot Size - other residential zones
Standard	Minimum lot size within other residential zones is generally 450m ²
DCP	Part 4 Subdivision
Departure basis	R1 lots sized between 239.9m ² to 1,499m ² Up to a 47% variation to the lot size in R1 zone

Clause	3.4o – Street layout and Design
Standard	Residential street blocks no more than 80 metres deep & 160 metres long
DCP	Part 4 Subdivision
Departure basis	2 residential street blocks 205m & 265m length but under 80m depth. Non-traditional configuration (up to 66% variation)

Clause	2.4 - Road layout and hierarchy
Standard	Road layout reflective of concept layout
DCP	Chapter 6.5 – Warnervale South
Departure basis	Non-numerical- minor change to road alignment and layout shown in DCP with deletion of laneways and road width details for collector roads (Warnervale Road)

The proposed variations are discussed in further detail in the body of the report.

INTRODUCTION

The Site

The site is located on the southern side of Warnervale Road, approximately 150m east of Warnervale railway station. The subdivision is proposed over residue Lots 2206-2208 approved under DA/129/2019 in Lot 1 DP385242, Lots 1-2 DP1101086 and Lots 73-76 DP7091 at 15-35 Warnervale Road and 95 – 171 Virginia Road, Warnervale. Access to the proposed lots will be provided from local roads approved under both DA/561/2017 and DA/129/2019. The earlier approved residential subdivision is currently under construction on the site.

The site is identified as bushfire prone land, is partly flood affected, and a watercourse extends to the west of the new lots. Located to the west and south-west of the site is an identified coastal wetland and the site contains coastal wetlands buffer areas. The site is also identified as Acid Sulphate Soils Class 3 & 5. The area for the proposed is predominantly cleared of any significant vegetation other than scattered trees.

The site is located within Precinct 7A and the Warnervale South Urban Release Area. The site is contained by floodplain lands to the east, south and west, and construction (of earlier approved residential subdivisions) to the north. Additionally, the site includes recently acquired Council owned land zoned C3 under an earlier deed of agreement and Land Transfer Agreement. The works also involve a small part of Virginia Road and servicing works along Warnervale Road and Nikko Road.





Above: Aerial view of Lot 2079 DP.1273682 containing the new subdivision lots

The site is within close proximity to primary and high schools, a railway station, Warnervale Airport, and the M1 Motorway is just over 3 km to the west. The railway line between Sydney and Newcastle extends along the western boundary of the site and the current Warnervale Station is located in the vicinity of the north-western corner of the site. A coastal wetland is located to the west and south-west of the site and a floodplain is located to the south, west and east. The site is located within the Warnervale South Urban Release Area.

The Proposed Development

The application seeks approval for a residential subdivision of the site into 216 residential lots in 5 stages and associated infrastructure and other works on the site. The proposal is the next stage in part of the progressive and ongoing subdivision and development of the site for residential purposes by AV Jennings Properties Limited.

The proposed works involves the creation of 216 residential lots and one future park lot.

Consent is also sought for bulk earthworks, benching and retaining, roads, connection to services, landscaping, sediment basins, and vegetation removal. The subdivision will be carried out in five stages (Stages 3A, 3B, 4A, 4B and 5) and will follow on following on from the five lots approved in Stage 1 under DA/561/2017; the 158 lots approved in Stages 2A and 2B approved under DA/129/2019; and the 37 lots also proposed in Stages 2C and 2D concurrently lodged under DA/1347/2021.

1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)

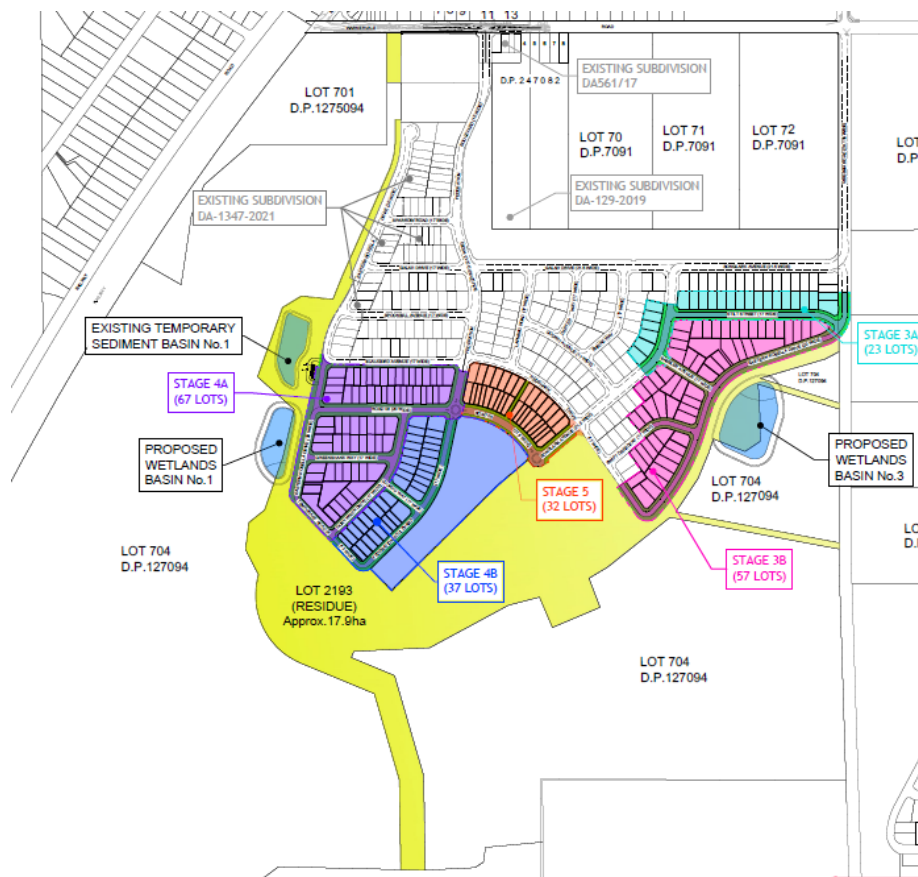
The works under the application include:

- Stage 3A - 23 lots (R1 zone)
- Stage 3B - 57 lots (R1 zone)
- Stage 4A - 67 lots (R2 zone) and part residue lot
- Stage 4B - 37 lots (R2 zone) and open space lot and part residue lot
- Stage 5 - 32 lots (R1 zone)
- Construction of associated road infrastructure and servicing for each stage.
- Construction of 1.5m wide footpaths along all roads.
- Construction of 2.5m shared paths along the bus route, perimeter road, park edge road park and those connecting roads.
- Bulk earthworks including stockpiles and retaining walls, benching and/or retaining.
- Provision of underground water, sewer, stormwater, electrical and communication servicing throughout.
- Removal of vegetation and provision of street tree planting.
- Proposed stormwater and water quality basins (within the C3 zone).
- Creation of various residue lots and part of the future park lot.
- Creation of any necessary easements.
- Intersection treatment for Warnervale Road.
- Water main connection along Warnervale Road and Nikko Road.
- Construction of a small section of existing unmade Virginia Road (C2 zone) to tie in with the road works approved to Virginia Road under the earlier stage.

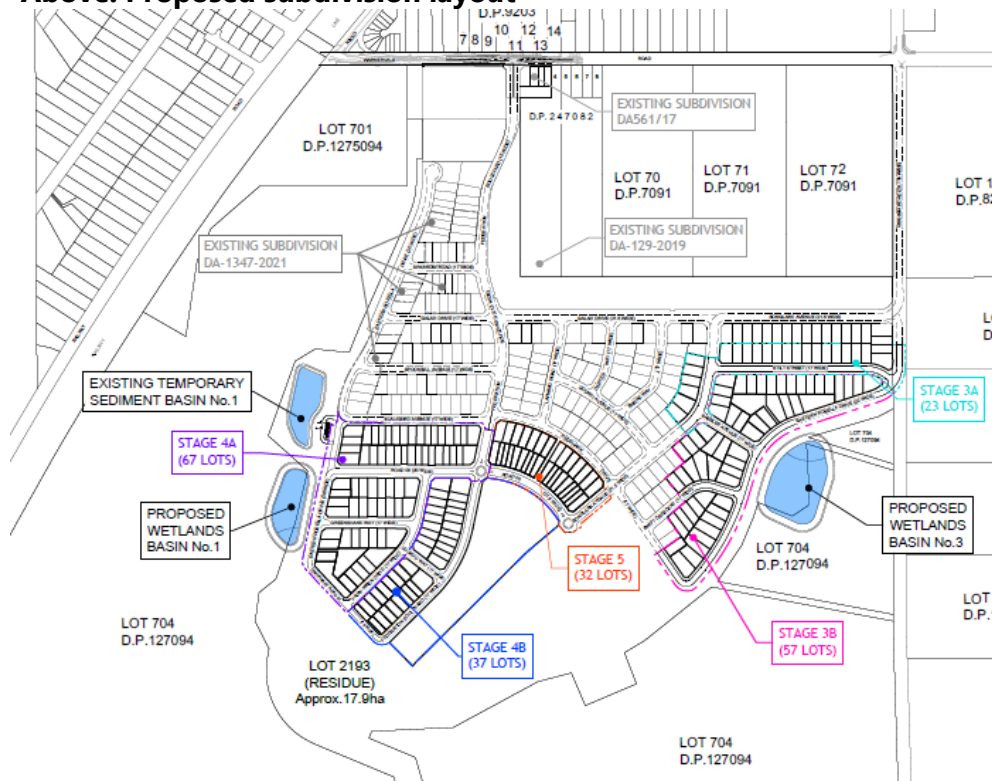
The proposed new 159 lots within the R1 zone, range in size between 239.9m² to 1,499m². The proposed new 80 lots within the R2 zone range in size from 450m² to 1,402.86m². The lots are generally regularly shaped and where they are irregular in shape, such lots have been suitably increased in size to accommodate a future dwelling. Under the subdivision there are two battle axe lots proposed, with one lot in the R1 zone (Lot 3061 with an area of 1499m²) and the other in the R2 zone (Lot 4038 with an area of 1402.86m²). All other lots have a variable street frontage of between 7.5m – 49.55m.

The subdivision also includes the creation of an RE1 zoned lot comprising (most, but not all) the future public park (2.26ha in area, which at completion will result in an area of approximately 2.939 hectares for the park). The subdivision also includes a residue C3 zoned lot and two proposed new wetland basins on Council land which will function as water quality basins for the upstream catchment.

DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)



Above: Proposed subdivision layout

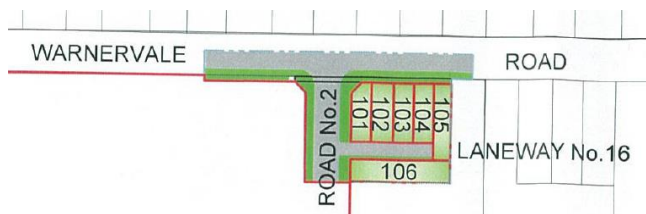


Above: Subdivision staging layout

History

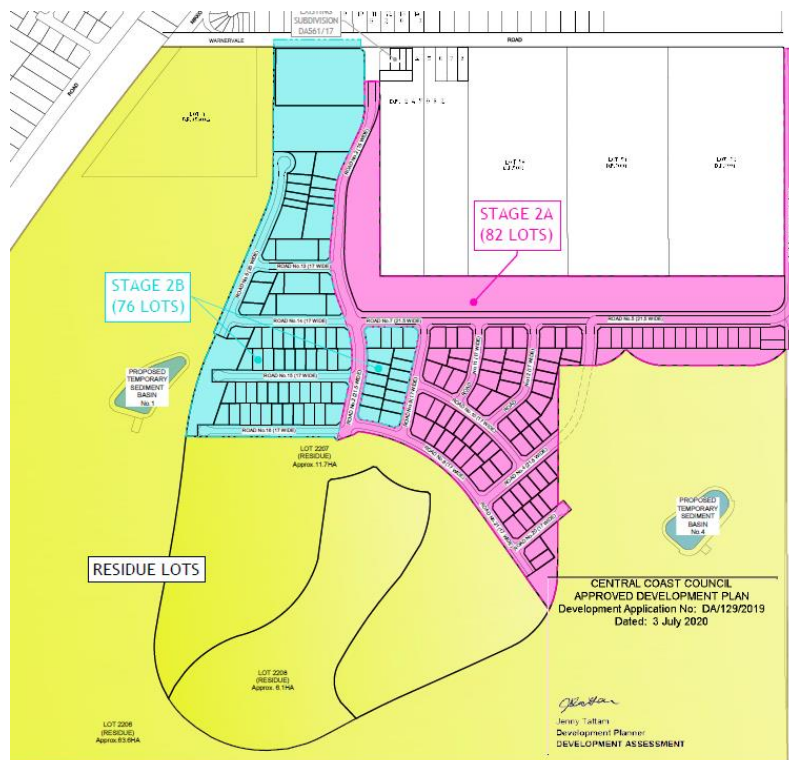
The subject development was originally lodged as part of DA/561/2017 and DA/1002/2017 and proposed 216 lots in total (108 lots each). However, due to potential impacts on the squirrel glider, the applicant was advised that a Species Impact Statement was required. In September 2018 the applicant chose to amend DA/561/2017 proposing only six residential lots adjacent to Warnervale Road, in an area that would not impact the squirrel glider. DA/1002/2017 was withdrawn. Recently DA/561/2017 has been further amended, and the number of approved lots was reduced from six to five. The development approved under this DA represents Stage 1.

- Development Consent No. DA/561/2017 was granted on 18 January 2019 for Subdivision Comprising 6 Residential Lots & 1 Residue Lot, Associated Roads & Earthworks at Lot 1 DP 385242, Lot 2 DP 247082, Lot 3 DP 247082, Lot 1 DP 385242 & Lots 1 to 3 DP 247082, 15-41 Warnervale Road Warnervale.



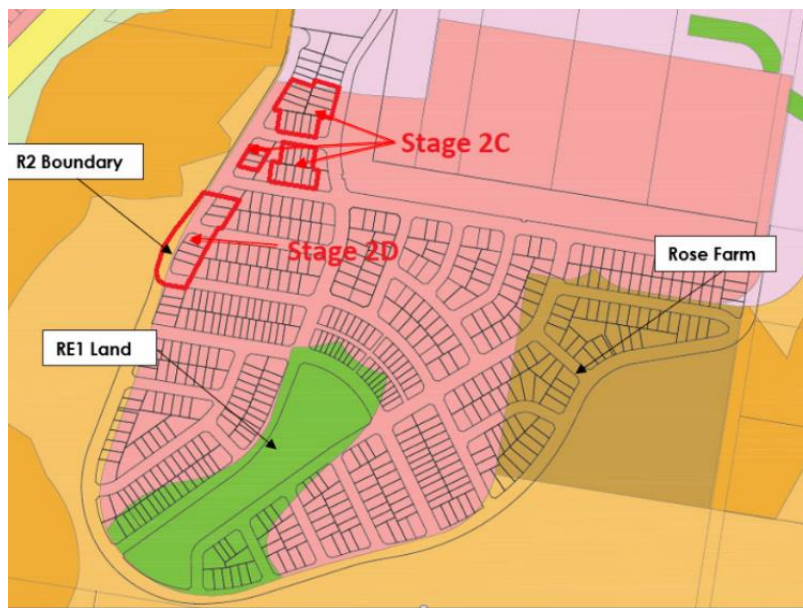
Above: Approved plan

- Development Consent No. DA/129/2019 was granted on 3 July 2020 for Subdivision (158 Residential Lots, 1 Commercial Lot, 14 Residue Lots & Wildlife Corridor) at 1 - 13 & 15-35 Warnervale Road & 95 - 105 & 107-171 Virginia Road, Warnervale. This consent included residue lots (2206-2208) that are to be further subdivided under the current DA.



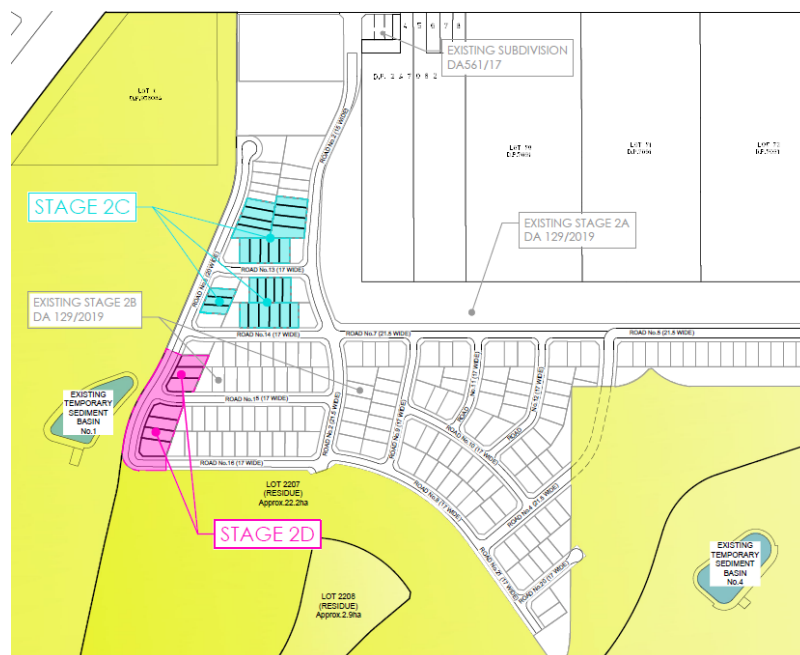
Above: Stamped approved subdivision layout plan for DA/129/2019

- Rezoning of the site under RZ/6/2016 Wyong LEP 2013 (Map Amendment No.1) was gazetted 17 September 2021 and included amendment to the 'Land Zoning Map' and 'Lot Size Map' that apply to the site with the following changes.
 - Rezoning portions of the RE1 Public Recreation zoned land (referred to as the "RE1 land") to residential (primarily R1);
 - Rezoning portions of the RU6 Transition zoned land (referred to as the "Rose Farm") to residential (R2);
 - Allowing sub 450m² lots; small scale multi-dwelling and residential flat buildings around the park and in the north by including additional R1 zoned land in these areas;
 - Extending the current residential zone boundary which was determined based on high level flood modelling undertaken over 15 years ago which was refined through the findings of more site-specific flood modelling.



Above: Masterplan overlaid on previous zoning map.

- Development Consent No. DA/1347/2021 was determined on 30 June 2021 for Residential subdivision (34 lots) in two stages (Stage 2C & 2D) and associated works at 15-35 Warnervale Road, and 107-171 Virginia Road Warnervale.



Above: Approved plan for DA/1347/2021

The current application represents the next stages (Stages 3 – 5) to the subdivision applications approved and under construction known as DA/561/2017 and DA/129/2019 (Stages 1 and 2). The lots involved in the subject DA have been approved under DA/129/2019 as residue lots.

1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)

Deed of Agreement/Land Transfer Agreement

In 2007 a Deed of Agreement was established between Wyong Shire Council and the landowner. This agreement established a process to amend *Wyong Local Environmental Plan 1991* to change the zoning of various portions of the landowner's land within the Precinct 7A study area, and to provide for certain land (referred to as the 'Transfer Land') to be transferred to Council for regional stormwater and conservation purposes.

Under the Deed, the transfer of the Transfer Land was supposed to occur once the rezoning had been finalized, however this was not carried out within the specified time frames. As such, a more recent Land Transfer Agreement was entered into and executed on 11 August 2022 to secure the transfer lands.

The Stage 1 transfer land has occurred, and the Stage 2 Transfer land is yet to be transferred.

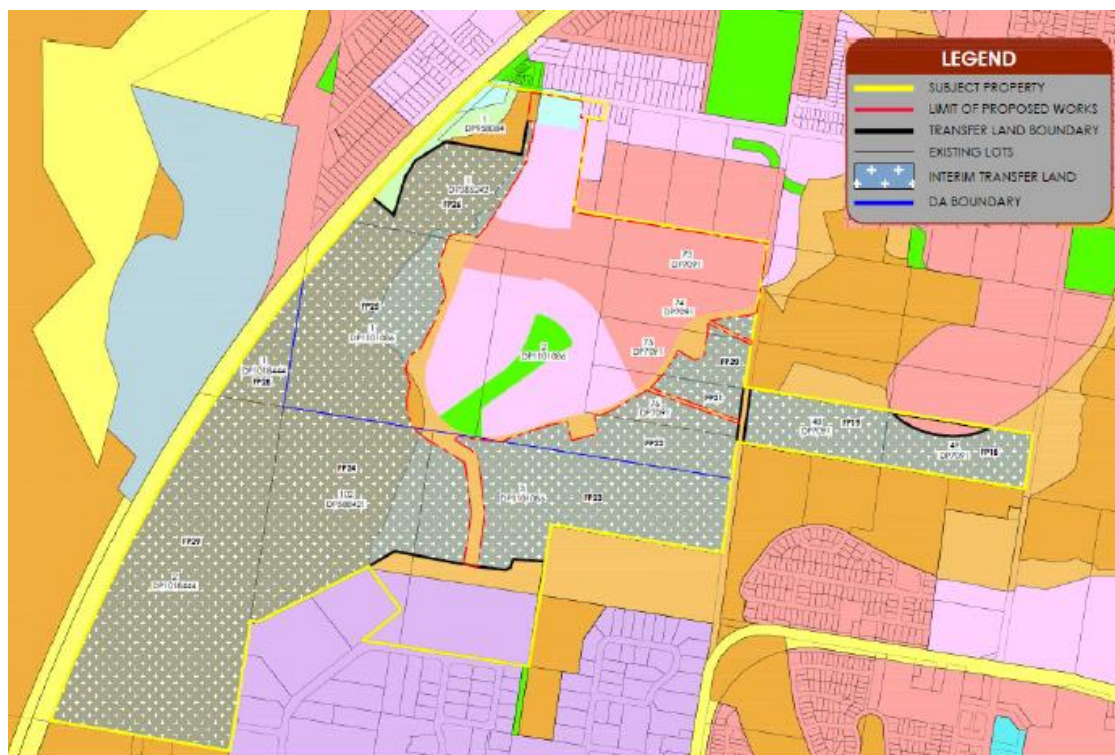


Figure 9: Interim Transfer Land



Above: Stage 2 transfer lands to occur

Land under the interim (Stage 1) and ultimate transfer lands (Stage 2) contains proposed basins as part of the public stormwater drainage system for the development of the site. The current proposal seeks to create these basins to cater for future water quality purposes. This is to ensure that stormwater discharged from the future residential development on the site (and any upstream development) will not adversely impact on the ecological integrity of the existing downstream wetland.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements, Council's policies and Section 10.7 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

Provisions of Relevant Instruments/Plans/Policies:

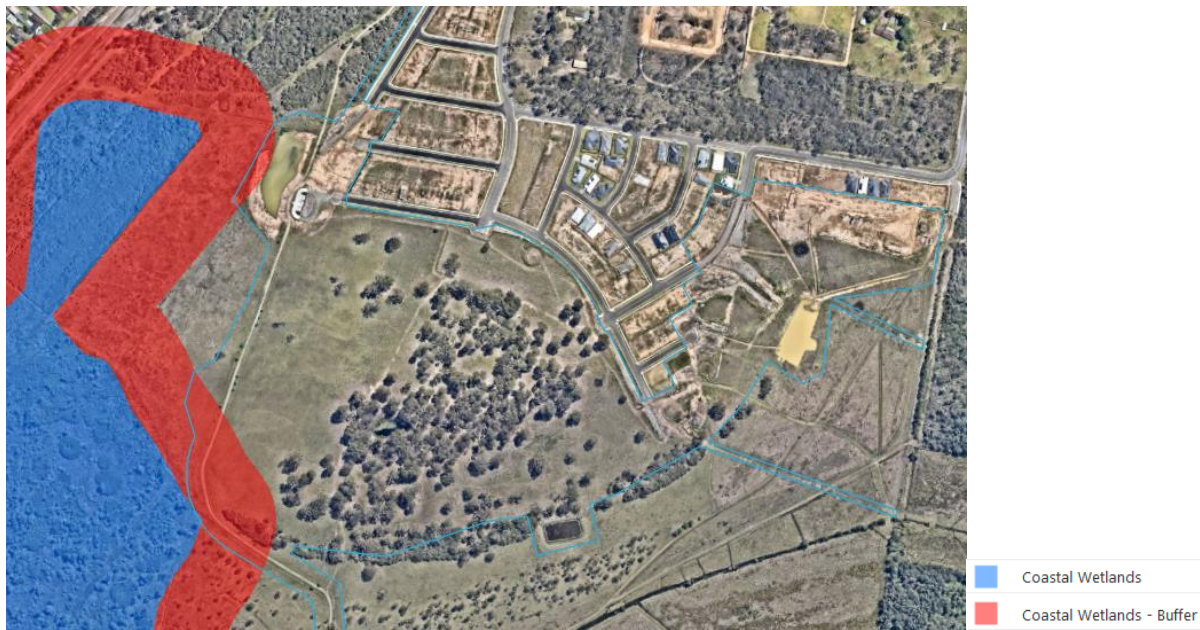
State Environmental Planning Policy (Resilience and Hazards) 2021

- *Coastal Management*

The provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('SEPP RH') Chapter 2 (Coastal Management) have been considered in the assessment of the development application. The site is not located within the 'coastal use area' or within the 'coastal environment area' under the SEPP.

The broader site contains a mapped Coastal wetland and the 'wetland buffer areas' extend onto the specific site area (as shown below). However, there are no works proposed within the coastal wetland area and as such Section 2.7 (Development on certain land within coastal wetlands and littoral rainforest area) does not apply, and the proposed development is not designated development having regard for the provisions of s.2.7(2).

The proposal has been revised such that no development works or subdivision lots are occurring within the coastal wetlands buffer area and as such Section 2.8 (Development on land in proximity to coastal wetlands or littoral rainforest) does not apply. The Panel, as the consent authority, can be satisfied the provisions of Chapter 2 have been adequately considered.



Above: Site and coastal wetlands mapping and buffer

- *Remediation of Land*

The provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('SEPP RH') Chapter 4 (Remediation of Land) have been considered in the assessment of the development application. Chapter 4 of the SEPP applies to the site and requires that contamination and remediation be considered in determining a development application.

Section 4.6 of SEPP RH requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The applicant has satisfied the requirements under Section 4.6 of the SEPP and the Managing Land Contamination guidelines, by following the set criteria for undertaking a "Preliminary Site Investigation" (PSI). The PSI accompanying this proposal was originally undertaken to support the rezoning of the land for the Precinct 7A Warnervale project, which is now identified in Councils DCP for Warnervale South.

The site is not identified under DCP Chapter 6.5 (Appendix B- Potential Site Contamination – Areas of concern). Potential contamination was assessed under the rezoning of the site and earlier application (DA/129/2019) for creation of the residue lots now to be subdivided and including associated bulk earthworks. The PSI identified that the lots associated with this proposal were not identified as containing any "Areas of Environmental Concern" (AEC) nor historic land use activities that would trigger a detailed contamination assessment. Accordingly, the Panel can be

satisfied the provisions of Section 4.6 have been considered and the land is suitable for the proposed residential subdivision.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.97 – Development involving access via a level crossings.

Section 2.97 applies to development that involves a likely significant increase in the total number of vehicles or the number of trucks using a level crossing because of the development. There is an existing level crossing located approximately 130 metres west from the site along Warnervale Road and a propose 216 new residential lots on the site. There is, however, alternative construction access available along Warnervale Road to the east of the site which would avoid the use of the level crossing.

Under subsection (2), before determining a development application for development to which this section applies, the consent authority must give written notice of the application to the rail authority (which is Sydney Trains) for the rail corridor and take into consideration any response. In this instance, the DA has been referred to Sydney trains (under CNR 32723) for their concurrence. Sydney Trains (Transport for NSW) granted their concurrence to DA/1892/2021 subject to the imposition of three operational conditions. The Panel can be satisfied the provisions of s.2.97 have been met and concurrence has been obtained from Sydney Trains as per the requirements of s.2.97(3).

Section 2.100 – Impact of rail noise or vibration on non-rail development

Section 2.100(1) applies to development for 'residential accommodation' proposed on land in or adjacent to a rail corridor, and that the consent authority considers is likely to be adversely affected by rail noise or vibration. The broader original site adjoins the rail corridor; however, the works are more specifically located on a recently registered lot known as 50 Federation Boulevard (Lot 2079 DP.1273682).

Sub sections (2) & (3) state:

- (2) Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.*
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The land (comprising the originally nominated site) is located adjacent to the rail corridor and consideration of potential noise and vibration has been considered. However, there is considerable distance between the new residential lots and the railway line of at least 350m, and these new lots are created on an existing residue lot that no longer has an adjoining boundary or interface with the rail corridor. Under the section, the consent authority must take into consideration any guidelines and must not grant consent unless it is satisfied that appropriate measures will be taken to ensure that certain decibel levels are not exceeded.

In accordance with subsection (2), the document titled '*Development near rail corridors and busy roads – interim guidelines*' has been taken into consideration. A Noise and Vibration Impact Assessment report was prepared for the original rezoning of the site for residential purposes. Council's relevant officer reviewed sampling data, methodology and findings of this acoustic assessment.

The predicted noise contour maps illustrate that this development proposal will not be adversely impacted by road and/or rail. The construction material used to build individual dwellings will also contribute to attenuating any excessive acoustic impacts.

- *Section 2.122 – Traffic-generating development*

The proposed development is identified as a 'traffic generating development' under Section 2.122 and Schedule 3 (column 1 & 2) of the SEPP as follows:

Subdivision of land 200 or more allotments where the subdivision includes the opening of the site has access to a road)

In accordance with this section, the application was referred to Transport for NSW for comment and the comments received have been taken into consideration along with:

- (ii) the accessibility of the site concerned, including—*
 - (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
- (iii) any potential traffic safety, road congestion or parking implications of the development.*

TfNSW has reviewed the information provided and raises no objection or requirements for the proposed development. The development fronts Warnervale Road which is a local road and Council is the roads authority for this road and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*.

A traffic report was prepared which identified the traffic generation and impacts of the proposal. Sidra modelling was carried out for the two closest intersections for the AM and PM peak periods which indicated that the intersections assessed currently operate at a satisfactory level of service of LOS A or better, with minimal delays and queueing in both the AM and PM peak periods. This indicates that these intersections have considerable spare capacity in each of the AM and PM peak periods. The report concluded *that the traffic generation from the proposed development can be accommodated within the existing external road network. In order to fully comply with design and safety standards, intersection treatments have been presented to ensure safe access and egress from the development site.*

The Panel can be satisfied TfNSW has been consulted and their comments considered in accordance with the provisions of s.2.122(4)(b)(i), and the accessibility of the site has been considered in accordance with s.2.122(4)(b)(ii).

Section 2.120 is not relevant to the proposal as although the development sensitive to road noise or vibration, the site does not have a frontage to a classified road. Traffic generation from the development of the site has been considered in the supporting traffic studies and traffic modelling for the planning of Precinct 7A. Therefore, Council has considered the cumulative effects of this and other proposed developments in the greater Warnervale area.

- *Section 2.126 – Sewerage Systems and Section 2.161 – Water Supply Systems*

The proposal includes works for water and sewer servicing and under the SEPP 'sewage reticulation systems' and 'water reticulation systems' are both permissible development with consent on any land under the following:

Section 2.126 (7) of the SEPP which states:

(7) In any other circumstances, development for the purpose of sewage reticulation systems may be carried out with consent on any land.

The proposed servicing of the site for sewer has been included in the application.

Section 2.161(1) of the SEPP states:

(1) Development for the purpose of water reticulation systems may be carried out by any person with consent on any land.

The proposed servicing of the site for water supply has been included in the application.

Section 2.138 – Stormwater Management Systems

The proposal includes stormwater works including the construction of water quality basins within land zoned now C3 Environmental Management. Section 2.138 of the SEPP states:

Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.

The definition of stormwater management systems under the SEP is as follows:

stormwater management system means—

- (a) works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and*
- (b) stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and*
- (c) stormwater reuse schemes.*

The development has been designed in line with Council's strategy for the Porters Creek wetland which involves a regional approach to stormwater treatment (quantity and quality) and which relies on the transfer of land under the Land Transfer Agreement.

State Environmental Planning Policy (Planning Systems) 2021

Under Schedule 6 of SEPP (Planning Systems) 2021, the trigger for regionally significant development includes the residential subdivision of land into more than 100 lots if the land is wholly or partly in a sensitive coastal location (i.e. being within 100m of land to which (former) SEPP 14 – Coastal Wetlands applies). The amended plans do not include the subdivision of any land within a sensitive coastal location. Additionally, the development works on Council land are not more than \$5 million in capital investment value.

State Environmental Planning Policy (Koala Habitat Protection) 2021

SEPP (Koala Habitat Protection) 2021 applies to Central Coast LGA (under schedule 1) and the site contains koala use trees species listed in Schedule 2. A Koala Habitat Assessment Report has been included within the Biodiversity Development Assessment Report (BDAR) which identifies that the Study Area is greater than 1 ha and does not have an approved Koala Plan of Management. Potential Koala habitat within the site is fragmented and contains habitat constraints such as roads and local developments.

While offering some potentially suitable habitat, the site is within an unfavourable habitat matrix for Koalas with its proximity to highways and urban areas. The proposed development cannot avoid potential Koala habitat within the subject site, however, vegetation within the subject site is not

functionally significant given its existing fragmentation and isolation from other areas of habitat. Notwithstanding, a corridor to the north of the site is being retained for connectivity from east to the west.

Pre-clearing and clearing protocols will be implemented as part of the development, to manage any potential impacts to fauna during works. Security fencing will be installed around active work areas during construction to prevent ingress of larger fauna. Compensation in the form of an ecosystem credit liability under the Biodiversity Offsets Scheme is proposed. The development is considered to have taken adequate steps to mitigate, avoid and compensate the impacts to Koala and Koala habitat.

The Panel can be satisfied that an assessment of whether the development is likely to have any impact on koalas and koala habitat has been carried out in accordance with s.11(2), and that the proposed development will have no impact on koalas or koala habitat (s.11(3)).

Central Coast Local Environmental Plan 2022

Central Coast Local Environmental Plan 2022 (CCLEP) was published 24 June 2022 and commenced on 1 August 2022 and has been considered in the assessment of the application. However, in accordance with the savings provisions, this application has been lodged (8 Dec 2021) prior to the commencement of the new Plan and as such the provisions of *Wyong Local Environmental Plan 2013* (WLEP) continue to apply.

There is no change to the zoning of the site or significant change to other relevant statutory matters as they apply to the proposal under the CCLEP, that require specific discussion in relation to the proposal.

Wyong Local Environmental Plan 2013

Zoning and permissibility

The subject site at the time of lodgement of the DA (8 Dec 2021) was zoned R1 General Residential; R2 Low Density Residential; B1 Neighborhood Centre (now referred to as E1 Local Centre); RU6 Transition; RE1 Public Recreation; E3 (now referred to as C3) Environmental Management and E2 (now referred to as C2) Environmental Conservation under Wyong Local Environmental Plan 2013 (WLEP 2013).

The changes to the zone references to E1, C2 and C3 were a result of an amending order that did not change the zone substance but only the zone references (under Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2022). These zones will be referred to in the report as changed under the Amending order.

The specific parts of the site that are the subject of the residential subdivision lot creation (and associated roads and servicing infrastructure) are zoned R2 and R1. The land zoned C2 and C3

contains the temporary sediment basin, roads and servicing infrastructure being constructed on the site. The future public park is zoned RE1 and although no works are proposed in this area under this application, part of the lot comprising the future park is being created consistent with the RE1 zoning boundaries for the northern portion of the site.

The works for the creation of the residential lots take place within land zoned R2 Low Density Residential and R1 General Residential wherein subdivision for residential purposes, associated earthworks, retaining walls, services and roads are all permissible development with consent as part of the residential subdivision works.

Within the C3 zoned part, no subdivision lots are being created, however, two separate water quality basins are proposed to be constructed on the Council owned land (land subject to the Land Transfer Agreement). These works are permissible within the C3 zone as 'environmental protection works'.

Apart from the construction of roads within the residentially zoned land, there are road works and essential services proposed within the Virginia Road (unmade road) road reserve zoned C2. Within the C2 zone 'roads' are permissible under WLEP 2013.

There is an existing temporary sediment basin (approved under an earlier consent) and sewer pump station plant located within the C3 zone and within this zone, 'stormwater management systems', 'sewage reticulation systems' and 'water reticulation systems' are permissible development pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* (refer to that section in the report for relevant definitions).

The following definition under Section 6.2 of the *Environmental Planning and Assessment Act 1979* is relevant to the proposal and reads:

Subdivision of land means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.

Subdivision is permissible development in the relevant zones.

The following definitions under WLEP are relevant to the proposal and read:

road means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.

earthworks means excavation or filling.

urban release area means the area of land identified as "Urban Release Area" on the Urban Release Area Map.

water reticulation system means a building or place used for the transport of water, including pipes, tunnels, canals, pumping stations, related electricity infrastructure and dosing facilities.
Note— Water reticulation systems are a type of water supply system—see the definition of that term in this Dictionary.

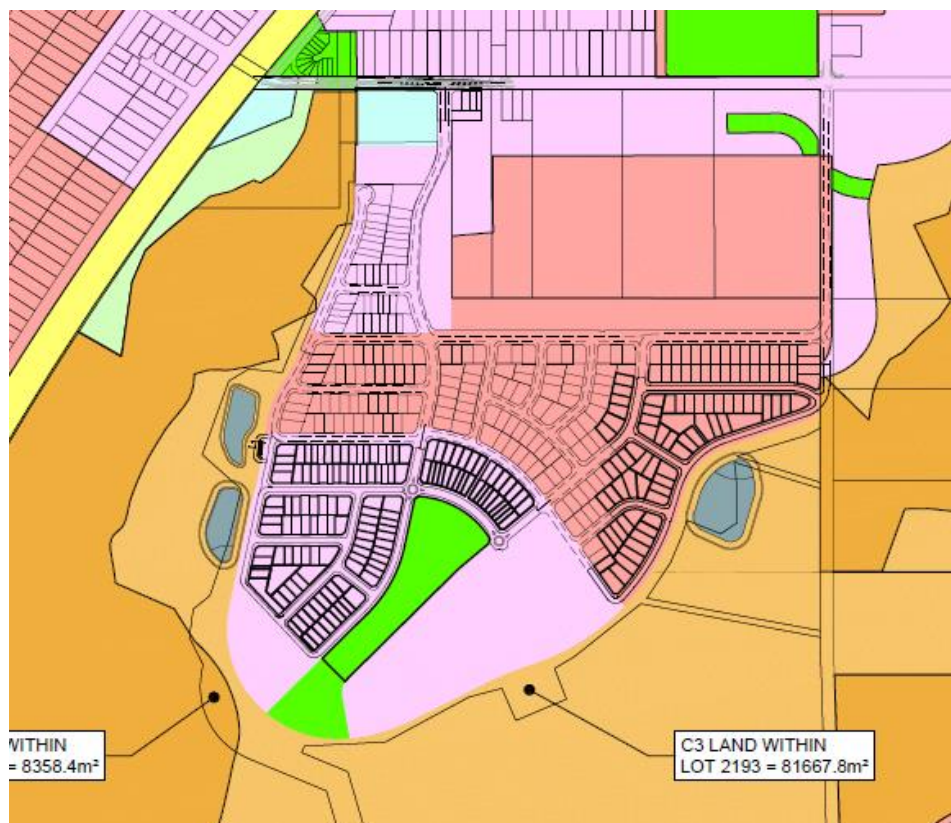
sewage reticulation system means a building or place used for the collection and transfer of sewage to a sewage treatment plant or water recycling facility for treatment, or transfer of the treated waste for use or disposal, including associated—

- (a) pipelines and tunnels, and*
- (b) pumping stations, and*
- (c) dosing facilities, and*
- (d) odour control works, and*
- (e) sewage overflow structures, and*
- (f) vent stacks.*

Note—

Sewage reticulation systems are a type of sewerage system—see the definition of that term in this Dictionary.

environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.



Above: WLEP 2013 zoning of the site and stages

In accordance with Clause 2.3 of WLEP, the proposal is consistent with the R1 and R2 zone objectives which read as follows:

R2 Low Density Residential zone objectives

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To maintain and enhance the residential amenity and character of the surrounding area.*
- *To provide a residential character commensurate with a low-density residential environment.*

R1 General Density Residential zone objectives

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To promote "walkable" neighbourhoods.*
- *To ensure that development is compatible with the scale and character of the local area and complements the existing streetscape.*

The proposal is compatible with the objectives of the above zones as the proposed residential subdivision provides a variety of lot sizes suitable for a variety of housing types for the community. The proposal will facilitate the creation of a walkable neighbourhood, will provide a suitable residential streetscape of a scale and character compatible with the respective R1 or R2 areas and the local area.

In accordance with Clause 2.3 of WLEP, the proposal is consistent with the C2 and C3 zone objectives which read as follows:

C2 Environmental Conservation zone objectives:

- *To protect, manage and restore areas of high ecological, scientific, cultural, or aesthetic values.*
- *To prevent development that could destroy, damage, or otherwise have an adverse effect on those values.*
- *To protect endangered ecological communities, coastal wetlands, and littoral rainforests.*
- *To enable development of public works and environmental facilities if such development would not have a detrimental impact on ecological, scientific, cultural, or aesthetic values.*

C3 Environmental Management zone objectives:

- *To protect, manage and restore areas with special ecological, scientific, cultural, or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

The proposal is compatible with the objectives of the C2 and C3 zones as the works within these areas are confined to infrastructure and services and tree removal and impacts to vegetation within these zones is kept to a minimum to retain the natural, ecological, and aesthetic values of these areas.

In accordance with Clause 2.3 of WLEP, the proposal is consistent with the RE1 zone objectives which read as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To provide linked open space for ecosystem continuity, public access, local community recreation and waterway protection.*
- *To provide space for integrated stormwater treatment devices for flow and water quality management.*
- *To enable ancillary development that complements land zoned for recreational purposes.*

There are no works proposed under the DA for the area zoned RE1 but the lot (in part) for the future public park is to be created under this stage of the development and is generally consistent the RE1 zone boundaries.

Clause 2.6 Subdivision

The proposed subdivision of land within each zone is permissible with consent under Clause 2.6 of WLEP 2013.

Clause 4.1 Minimum subdivision lot size

Clause 4.1 of WLEP 2013 restricts the subdivision of land within certain zones to a minimum lot size as shown on the Lot Size Map. The minimum allotment size for the R2 zoned site under this clause is 450m². All proposed residential allotments that are located within the R2 meet the minimum site area of 450m². Under WLEP, there is no mapped minimum allotment size applying to the R1 zoned land or the RE1 zoned land.

In relation to the C2 and C3 zoned land, the minimum lot size which applies is 40 hectares. These C2 and C3 areas are the subject of the earlier deed of agreement and more recent Land Transfer Agreement 2022, and the final parcel created under the agreement will result in a lot size which

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exceeds with the minimum 40ha site area required under this clause for any new lot zoned C2 and C3.

Clause 5.1 - Relevant acquisition authority

Clause 5.1 identifies the relevant authority to acquire land reserved for certain public purposes. The broader site contains land which is to be acquired by Council for environmental conservation, stormwater management and local open space. The specific area where the new lots are being created is not within any area required for acquisition. However, the majority of the C2 and C3 zoned land is generally identified as being acquired by Council for environmental conservation and stormwater purposes. This land is subject to a Land Transfer Agreement between Council and the landowner which sets out the terms of its transfer.



Above: LEP Land Reservation Acquisition Map

Clause 5.10 Heritage conservation

Clause 5.10(4) requires the consent authority to consider the effects of a proposed development on the heritage significance of an item or area.

The site is not located within a heritage conservation area and does not contain any items of State Heritage. However, located in the vicinity of the site is Heritage Item No. I108 - Warnies Railway Café and General Store. The effect of the proposal on the significance of the heritage

item has been considered in accordance with subclause (4) and it is concluded that the proposal will not result in any adverse effects or impacts to this heritage item.

Subclause (2)(f) requires consent be obtained for *subdividing land- on which an Aboriginal object is located*. The site is not an archaeological site or an Aboriginal place of heritage significance under subclause (7) or (8).

An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been carried out over the site, which identified that Aboriginal objects/sites will be impacted by the development (consisting of isolated finds and artefact scatters). The ACHAR concludes that an Aboriginal Heritage Impact Permit (AHIP) will be required prior to construction commencing. An Aboriginal Cultural Heritage Management Plan (ACHMP) has been prepared which identifies how the site will be managed in terms of its impacts.

The application was referred to Heritage NSW as integrated development and to the Local Aboriginal Land Council's (LALC's) for comment as further discussed below.

Having regard for the above, the Panel can be satisfied that heritage has been adequately considered in accordance with the requirements of clause 5.10 of WLEP 2013.

Clause 5.21- Flood Planning

The broader site is partially flood affected mainly in the area west of the development site within the E2 zone area. The proposed lot and perimeter roads are outside of the 1% AEP flood extents. The land for these stages has been filled to ensure lots are above the flood planning level (1%AEP + 0.5m) to be flood free.

The development is deemed satisfactory with regard to the following considerations under Clause 5.21:

- *the impact of the development on projected changes to flood behaviour as a result of climate change,*
- *the intended design and scale of buildings resulting from the development,*
- *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

The two entry roads into the development will be above the flood planning level (1% AEP + 500mm) providing a flood free access in the event of a flood. All allotments will be built above the FPL. Small portions of the site would be impacted by low hazard flood under a Probable Maximum Flood (PMF) scenario.

The development has been designed to ensure no risk to life will occur in the event of a flood, and that safe, flood free safe evacuation routes are provided if required. The rezoning preceding this DA investigated the flood impacts of the future development at length to arrive at an agreed footprint which was supported by DPIE, the Biodiversity Conservation Division and Council. The proposal will have minimal impact on the floodplain and will not present any unmanageable risk to life. Accordingly, the Panel can be satisfied the provisions of clause 5.21 have been adequately met.

Clause 6.1 Arrangements for designated State public infrastructure

Clause 6.1 requires that the consent authority must not grant development consent for the subdivision of land in an urban release area unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land to be subdivided. The site is mapped under WLEP 2013 as Warnervale South Urban Release Area.

The NSW Department of Planning and Environment has issued a Secretary's Certificate (SVPA2017/8485 dated 17.12.21) confirming that satisfactory arrangements have been made to contribute to the provision of designated state public infrastructure. The Department considers that satisfactory arrangements are in place to contribute to the provision of designated state public infrastructure, as there is an executed planning agreement over the land. As such, the Panel can be satisfied the provisions of clause 6.1 have been met.

Clause 6.2 Public utility infrastructure

Clause 6.2 states that consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangement have been made to make the infrastructure available when it is required. Plans have been assessed in relation to the future servicing of the new lots to be created and the proposal is considered satisfactory subject to fulfillment of recommended conditions.

The proposed development relies on the extension of all services under the earlier consents granted on the site, including water supply, electricity, telecommunications, and sewerage in accordance with the adopted servicing strategies. The Panel can be satisfied that adequate arrangements can be made to service the development and will be conditioned accordingly.

Clause 7.1 - Acid Sulfate Soils

Clause 7.1 requires consideration to be given to certain development on land being subject to actual or potential acid sulphate soils. The site is identified on the Acid Sulphate Soils (ASS) Planning Map as both Class 3 and 5, however the area for the development works is identified as Class 5 with no works occurring within the Class 3 area which is a residue lot. Within Class 5 land, *works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height*

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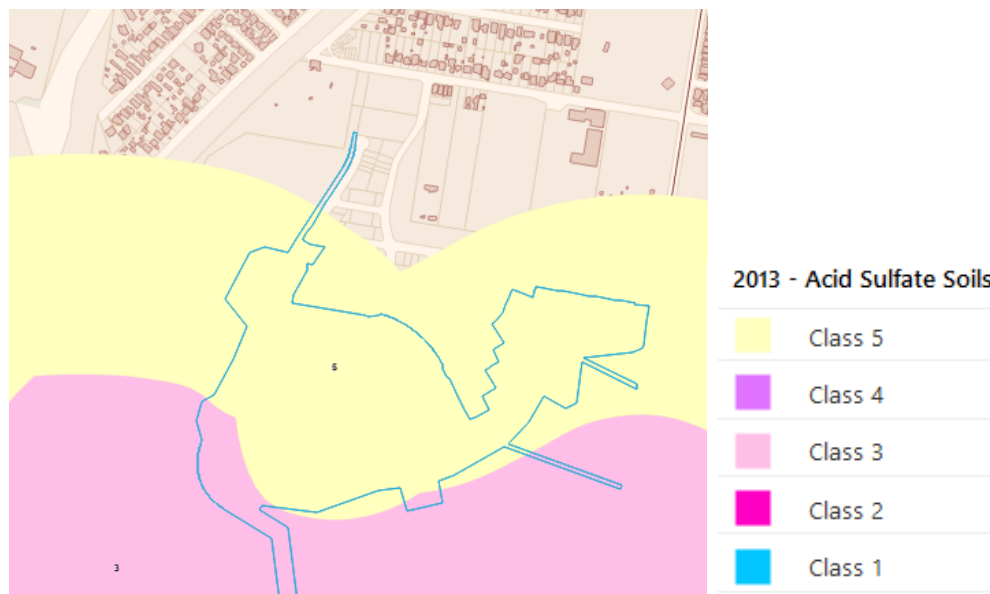
Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land, requires the submission of an acid sulfate soils management plan.

A preliminary Acid Sulphate Soils Assessment (prepared by Douglas Partners) was provided as part of the Precinct 7A rezoning which concluded:

In summary, it is considered that acid sulphate soils are not generally present within site and thus the soil could be excavated without the need to operate under an acid sulphate soil management plan. Notwithstanding this, if soils different to those described in our test bore logs are encountered during excavation, then these soils should be segregated, and advice sought from DP.

The report did recommend as a precaution during construction *in areas where excavation depths are expected to exceed approximately 2 m or where excavation is proposed within or immediately adjacent to watercourses (intermittent or permanent) that further assessment is recommended.*

In accordance with Clause 7.1(4)(a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the work. Accordingly, the Panel can be satisfied consent can be granted having regard for the findings of the preliminary ASS assessment.



Above: Acid Sulphate Soils Map

Clause 7.7 - Aircraft Operations

The proposal is consistent with Clause 7.7 - Airspace Operations. The site is identified on the Obstacle Limitation Surface map with a limitation or operation surface level across the site which range from 52.6m AHD to 107m AHD. However, finished site contours range from 8m AHD to 20m AHD which is well below the permitted range and future residential development will not penetrate

the Obstacle Limitations Surface. The proposal is a suitable height so as not to affect airspace operations or penetrate the limitation or operation surface.

Clause 7.8 - Development in areas subject to aircraft noise

The subject site is not located within an ANEF contour of 20 or greater. Accordingly, this clause does not apply.

Clause 7.9 Essential Services

Clause 7.9 states that development consent must not be granted to a development application unless the consent authority is satisfied that the services that are essential for the development are available or that adequate arrangements have been made to make them available.

- *Water and Sewer*

The proposed development will be required to extend the Council water and sewer main from the previous stages. The proposed development will be required to upgrade the existing 100mm AC water main to the west of Warnervale Road and Nikko Road with 200mm PVC pipe. This will improve the water supply into the area. The proposed development will be required to adjust the sewer rising main to the high point and connect back into the new gravity sewer network. The 'temporary' section of rising main shall be made redundant. Water and sewer contributions will be applicable to the development.

The applicant will need to apply under section 305 of the *Water Management Act 2000* for a section 306 letter of requirements regarding water and sewer specific connection requirements for the development. The 306 Notice of Requirements outlines the relevant contributions, required civil works and relevant connection requirements.

Water and Sewer Developer contributions will be required based on the number of new lots and will be outlined in the section 306 letter of requirements. Water and sewer credits may be available for construction of water or sewer mains required under the capital works program in association with the development.

- *Other services*

Arrangements can be made for the servicing of the new lots for electricity, the provision of vehicular access, waste management and collection and satisfactory storm water management subject to recommended conditions.

In accordance with Clause 7.9, the Panel can be satisfied the services essential for the development are available or that adequate arrangements can be made to make them available.

Central Coast Development Control Plan 2022 (CCDCP 2022)

The *Central Coast Development Control Plan 2022* (CCDCP 2022) commenced on 1 August 2022. In accordance with the savings provisions under clause 1.1.4 of Chapter 1.1, this application has been lodged prior to the commencement of the new Plan and as such the provisions of the WDCP 2013 continue to apply.

Wyong Development Control Plan 2013 (DCP)

DCP Chapter 6.5 Warnervale South

DCP Chapter 6.5 applies to the site which is to be developed for the purposes of future residential subdivision.



- Open Space

Clause 2.3 requires open space to be provided as per Figure 3 in Chapter 6.5 as shown below.



The DCP requires that residents of new subdivisions have access to (at a minimum) a formalised small neighbourhood park within 400m of their homes (Clause 2.3c). The broader proposed development includes a provision of a formalised public park and adjoining parkland. Delivery of the park will be undertaken at a later stage once council embellishment requirements are confirmed. All lots will be within 400m of either the current Nikko Road Park or the future neighbourhood park to be developed on the site. There is also floodplain, wetlands and restoration areas surrounding the residential lots.

- Road Layout and Hierarchy

Clause 2.4 and Figure 4 of the Chapter 'Indicative Road Layout and Hierarchy', shows the subject site with a perimeter road, local roads, park edge roads and bus route roads. The current proposal does not include all the future roads, however the roads that are included under this stage are generally consistent with the indicative road design and hierarchy included under the DCP.



Above: Road layout as depicted in Chapter 6.5.

The proposed road widths generally comply with the DCP requirements (and are included in the table of compliance) except for the requirement for a collector road width for Warnervale Road. The proposal includes a new intersection to Warnervale Road with Federation Boulevard and this intersection will be subject to a road safety audit and detailed design. A pavement width of 12m has been agreed upon for Warnervale Road and specific conditions have been recommended in this regard.

Additionally, there is a very minor variation related to the non-inclusion of laneways in the design that are shown on the indicative layout. The current layout also includes temporary roads until the next stages of the development occur to create the perimeter road. The indicative road layout for the internal roads is not practicably able to be achieved in its entirety on the site at this stage (as it is reliant upon future stages), but upon completion of the remaining stages, will generally achieve compliance.

The objectives for the road layout and hierarchy requirements under Clause 2.4 are as follows:

- To establish a hierarchy of streets which maximises convenience, amenity and safety for vehicles, pedestrians and cyclists.
- To provide a legible, connected and permeable grid of local streets that are sympathetic to the topography terminating with view to open space.
- To protect conservation areas through the appropriate location of roads, paths and developable area.

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Despite the incomplete road layout included at this stage, the proposed subdivision including the minor variation, is considered consistent with the above objectives that apply to the road layout and hierarchy requirements under Clause 2.4.

- Pedestrian and cycleway routes

Because of the road layout proposed to date, parts of the shared pathway routes under Clause 2.5 of the DCP (shown below) will also need to be completed under subsequent future stages to achieve full compliance. In the interim, cycleways and shared paths have been provided throughout the development in accordance with the DCP requirements for the road layouts included under this stage. All park edge streets have the cycleway/footpath located on the park side of the road.



Above: Shared pathway routes as depicted in Chapter 6.5.

- Public Transport

Clause 2.6 requires that bus stops are to be provided along approved bus routes, no greater than 400 metres apart. Federation Boulevard; Road 3 adjoining the future park; and Songlark Avenue have been designed as a "bus route road". The road design for the bus route includes compliant road widths of 21.5m (with 11.5m pavement, and compliant verge widths including a cycleway) The proposed bus route servicing the road network is consistent with the DCP requirements.

- Residential Subdivision

Clause 2.7b refers to density targets for residential subdivision (population targets). The clause has a dwelling density target 18 dwellings per hectare for R1 zoned land and a density target of 15 dwellings per hectare for land zoned R2 Low Density Residential. The proposal complies as it offers a mix of lot sizes and achieves a density of 15 dwellings per hectare for the R2 zoned land and density of 18 dwellings per hectare for the R1 zoned land.

- Noise Assessment and Mitigation

Clause 2.9 provides objectives relating to the minimisation of noise impacts on residential and other noise sensitive land uses. The site is 350m from the railway corridor and 550m south of Warnervale Road. In this regard, the site for development of residential lots does not directly adjoin Warnervale Road, Sparks Road, the Link Road, or the Railway.

A Noise and Vibration Assessment was prepared for the original rezoning of Precinct 7A but was deemed not necessary for the current stage of the development given the physical distance to the railway corridor and Warnervale Road potential noise sources. The development does not require any acoustic buffers or treatments as the site is not located adjacent to Sparks Road or the rail line.

- Water Cycle Management Requirements

Clause 2.10 aims to minimize the impacts of development on the Porters Creek Wetland and provide water quality and quantity control measures. Stormwater Management Plans accompanied the subdivision application and are generally consistent with the Integrated Water Cycle Management Strategy for Warnervale South. The centralized storage referred to in the DCP are not in place. A combination of rainwater tanks, GPTs and basins are proposed to protect this system from receiving waters.

Concerns were raised regarding the potential for degradation of the ecological values of the ecosystem downstream including the Porters Creek wetland. The floodplain and the nearby Porters Creek Wetland are key components of the local and regional water management system. If the development is not required to adequately control the quantity and quality of stormwater leaving the site prior to operation of a future water quality solution (funded by contributions), degradation of downstream ecosystems is likely to occur in the interim because of the development.

The proposal was amended to include constructed wetlands in two locations on Council land for water quality purposes to achieve the objectives Clause 2.10 which include:

- *To minimise the impacts of development on the Porters Creek Wetland and hydrologically sensitive ecosystems*
- *To provide water quality and quantity control measures that are cost effective and affordable, with consideration given to ongoing maintenance costs*
- *To be compatible with the broader Porters Creek IWCM scheme*
- *To safeguard the environment by improving the quality of stormwater run-off to achieve best practice standards*
- *To facilitate the inclusion of WSUD elements into development as an at source treatment of stormwater where possible whilst balancing with end of line water quality treatment devices in order to meet the required targets and satisfy the Regional Stormwater Harvesting Scheme*
- *To preserve the nature of overland flow into the adjacent habitat and Flood Plain*

- *To control the impacts of urban development on channel bed and bank erosion by controlling the magnitude and duration of sediment-transporting flows*
- *To limit changes in flow rate, flow duration and overland flow path areas within the floodplain as a result of development*
- *To limit erosion of watercourses, slopes and banks due to runoff from impervious areas within the development*
- *To maintain and improve water quality in receiving waters and groundwater systems*
- *To reduce flood risk in urban areas and downstream water bodies by adopting requirements for minor and major system flow in accordance with Australian Rainfall & Runoff*
- *To protect and restore aquatic and riparian ecosystems and habitats*
- *To protect the scenic, landscape and recreational values of streams and water bodies*

The applicant has provided an amended Stormwater Management Report and MUSIC-link modelling report to support the application. Performance treatment targets of 85% (TSS), 65% (TP) and 45% (TN) specified in WDCP 2022 – Chapter 6.5 Warnervale South, have been satisfied through the water quality modelling. Satisfactory water quality and quantity measures will be adopted under the development during construction and for the ongoing residential occupation of the land.

- Floodplain Management

Clause 2.11 aims to ensure orderly development of the area regarding flood mitigation measures. The proposed subdivision design is considered consistent with the DCP and Council's guidelines for flood prone land. The proposal has included design measure to address the potentially flood prone areas of the site. Filling within the floodplain for a small amount of land has been accepted through the Precinct 7A rezoning and associated flood modelling completed for this. The development has been designed with a perimeter road which separates the development from the floodplain and Porters Creek wetland. A Flood Impact Assessment has been provided in accordance with Chapter 3.3.

- Potential Site Contamination

Clause 2.12 requires that all development applications consider the potential for any existing site contamination impacting on future land uses. The Preliminary Contaminated Lands Assessment provided as part of the rezoning process for the Warnervale South area has identified sites where historic land uses have increased the potential for site contamination to be present and are likely to require management prior to changes in land use. The subject site is not indicated as an "Area of Concern" in Appendix B and further assessment of contamination is not required.

- Indigenous Heritage

Clause 2.13 requires a review of AHIMS to identify any known aboriginal sites that may be impacted by the development proposal. The DCP also requires that no development be undertaken or

approved in the vicinity of identified sites before a Cultural Heritage Management Plan has been prepared by a suitably qualified person.

The proposal will require an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the *National Parks and Wildlife Act 1974* due to the disturbance of known sites. The application was accompanied by an Aboriginal Cultural Heritage Management Plan; however, Heritage NSW have advised under their GTA's that this plan will need revision as part of the AHIP assessment process.

- Ecological Issues

Clause 2.14 requires that all development satisfy any requirements that are identified in any ecological management plan or offset strategy applicable to the precinct. A BDAR was submitted for the proposal, and this is discussed further below.

DCP Part 4 – Subdivision

A table of compliance with the specific DCP requirements has been attached to the report. The proposal is considered generally consistent with the objectives and requirements of Part 4 of WDCP as outlined below, including the variations being sought as specifically discussed.

Clause 3 – General Design Principles

The proposed subdivision has been designed in accordance with the General Design Principles under Clause 3 of DCP Part 4 as follows.

- Satisfactory stormwater management arrangements are included as part of the proposal consistent with Clause 3.1.1 and potential flooding impacts have been suitably addressed.
- All services are proposed in accordance with the requirements of Clause 3.2. All services will be conditioned to be provided underground.
- The proposed subdivision is generally consistent with the street layout and design requirements identified under Clause 3.4. The street network provides interconnection and legibility. There are only 2 battle axe allotments proposed and no cul-de-sacs are proposed, and a new intersection is proposed to Warnervale Road.
- All lots will have legal and physical access to a street frontage. A range of lot sizes has been proposed consistent with the DCP.
- Footpaths and cycleways are provided throughout the development in accordance with Clause 3.5.
- Street trees are to be provided at a rate of one semi-advanced tree per 15m of frontage as shown on the landscape plans (consistent with Clauses 3.6a and b).
- Open Space is included as part of the development consistent with the applicable Contributions plan. The proposal includes part of the proposed Open Space along the ridgeline servicing the development. Each dwelling will be within 400m walking distance of public open space. No lots directly abut any public open space. The design includes the provision of cycleways around the perimeter of the open space area.

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- Under Clause 3.8 there are aboriginal sites identified under the rezoning documentation and separate approval will be required under the NPW Act to disturb these scatter finds. This is discussed elsewhere in the report.
- Vegetation Management, Threatened Species and Urban interface Areas (UIA) under Clause 3.9 have been considered in the development design. A BDAR has been provided for the development and land surrounding the site is the subject of the Land Transfer Agreement, which transfers it into Council ownership. There are no proposed residential lots that directly contain or adjoin bushland or significant vegetation to be retained such that individual UIAs are applicable. However, the development has been designed with a perimeter road which separates the development from the floodplain and Porters Creek wetland. This road will accommodate APZs, a cycleway and native street trees in accordance with the UIA requirements.
- Community safety and security has been considered in the design, with preservation of sightlines and street design to limit speed, adequate lighting and lot frontage and footpath design to maximise safety and surveillance.

However, the proposal does include the following variations which are being sought to the controls under Clause 3 of Part 4 WDCP:

Residential Design Block length

The proposal includes two residential street blocks 205m and 265m in length which exceeds the requirement under Clause 3.4. Both blocks comply with the maximum depth with both being under 80m. The variation to length results in a 66% variation to the DCP control. In this regard, it is noted that more specific controls apply to the development under DCP Chapter 6.5. Despite the variation, the proposal remains consistent with the objectives outlined under Clause 3.4 as follows:

- *To provide a legible hierarchy of streets according to the specific purpose and function of the streets*
- *To ensure street connectivity and legibility for pedestrians, cyclists and drivers*
- *To provide and promote an attractive and safe streetscape*
- *To control street design speed by geometry, traffic calming treatments, length, width and streetscape treatments*
- *To provide safe and effective access opportunities for pedestrians, cyclists and drivers*
- *To provide appropriate access for larger and special purpose vehicles including garbage trucks, emergency service vehicles, delivery vehicles and buses where appropriate*
- *To minimise through design the negative impact of high traffic volumes and vehicle speed throughout the subdivision*
- *To accommodate sufficient on street parking*
- *To avoid cul-de-sacs where possible, and*
- *To encourage the use of a grid pattern layout where possible*

Notwithstanding the numerical non-compliance, the design of the development, including the variation being sought, is considered consistent with the objectives for the control and therefore

satisfactory with regard to site topography, street legibility and hierarchy, subdivision street pattern, safety and access.

Retaining walls and earthworks

The subdivision includes earthworks and retaining walls to provide suitable development lots for future slab construction dwelling houses. The development includes individual lot benching. All retaining is proposed to be constructed of either sandstone logs or concrete and steel.

Clause 3.3a states:

Boundary retaining walls for cut or fill shall not exceed 900mm in height for residential zones and shall not extend for more than 2 lots.

The site is sloping and the inclusion of retaining walls throughout the development on most lots is necessary because of the type of future house construction and compliance with the DCP road layout and hierarchy. Bulk earthworks across the site will ensure that all lots have a slope of 10% or less. The retaining walls extend along the shared boundaries of most lots and whilst the majority of wall heights range around 1m or less, the proposed walls range from 0.5m to 2.5m.

The retaining walls are considered suitable for the site to facilitate the future residential development given the topography. All retaining walls within view of the street are to be designed and constructed using a high-quality decorative masonry product as required under subclause h.

The DCP objectives for the control under Clause 3.3 are as follows:

- *To minimise earthworks in order to preserve, where practicable, the existing topography, drainage and catchment areas, trees, and amenity of the site*
- *To use construction methods which minimise site disturbance*
- *To protect the stability and amenity of adjoining lots*
- *To minimise cutting and filling on sites while recognising the need in some cases for the creation of large level areas*
- *To minimise cut and fill in order to encourage harmonious construction techniques for potential future development*
- *To ensure cut and fill requirements do not compromise development of a high standard*

Despite the noncompliance, the proposed retaining walls are considered consistent with the objectives and satisfactory within the site context and with the likely future neighbourhood character.

Clause 4 – Residential Subdivision

Clause 4 of Part 4 of the WDCP provides requirements in relation to residential subdivision as follows:

- Lot size

The proposal includes lots ranging from 450m² to 1402m² within the R2 zone and lots ranging from 239.9m² to 1499m² within the R1 zone. There are also 2 battle axe lots as follows:

Lot 3061 - 1,499m² (incl handle) & 1373.6m² (excl handle)

Lot 4038- 1,402.86m² (incl handle) & 1270.14m² (excl handle)

In accordance with Clause 4.1a, all lots within the R2 zone comply with the minimum lot size of 450m² required under the DCP. The battle axe lots comply with the required minimum lot size of 750m² (excluding access handle) under Clause 4.1.4b.

However, a variation is sought to 136 lots (84%) within the R1 zone which are below 450m² in area. In this regard, Clause 4.1b states:

b The appropriate minimum lot size within other residential zones is generally considered to be 450m², however, will range according to the site characteristics, such as location, slope, drainage, vegetation, required setbacks, and the form of development proposed.

The proposal therefore seeks variation of up to 46.6% to the R1 DCP minimum lot size. It is noted that the DCP states that the minimum lot size is only 'generally' considered to be 450m² but dependent on site circumstances. In this regard, each undersized lot within the R1 zone is regularly shaped with a direct street frontage and with site attributes which suit a smaller sized lot layout. In this instance, the proposed lots within the R1 zone are appropriately sized given their location and the characteristics of the area for a more compact density of urban development.

- Lot width

The proposal seeks also variation to the minimum lot width under Clause 4.1c which reads:

c The minimum width of a lot is 15 metres, measured at the building line.

In relation to the R2 zone 24 (out of 80) lots within do not comply with the required minimum width of 15 metres measured at the building line. The lot widths are proposed between 10m-49.55m for the R2 zoned lots (up to a 33% variation to the DCP).

In relation to the R1 zone 33 out of 159 lots comply with required minimum width of 15 metres measured at the building line. The lot widths are proposed between 7.5m-30.2m within the R1 zone (up to a 50% variation to the DCP).

The variation to minimum lot widths is considered reasonable in this instance.

- Corner lots minimum area

The proposal seeks variation to Clause 4.1.2a which reads:

- a Corner lots should have a minimum area of 700m² for the purpose of providing adequate area for addressing dual streetscape impacts, privacy issues, setback implications and intersection sight lines. The larger area will also provide opportunities for subdividable corner lot Dual Occupancies.*

There are 12 proposed corner lots within the R2 zoned land under the proposed subdivision each with an area of between 534m² to 768m² and 11 of the 12 corner lots do not comply with the minimum area of 700m². This is a variation of up to 24% for the R2 zoned corner lots.

Within the R1 zoned land 18 of 23 corner lots do not comply with the minimum area of 700m². The sizes of the corner lots within the R1 zoned land vary between 311m² -992m². This is a variation of up to 55.6% for the R1 zoned corner lots. Indicative house designs have been provided to demonstrate the suitability of these lots for residential development.

All the lots provide the required 5m x 5m corner splay and a driveway can be appropriately located on each site. There are no significant implications for sight distances. The under sized corner lots are regularly sized and are not located on a busy road but on a local road. The reduced corner size of the lot will not prejudice its future potential development for a dwelling which would achieve compliance with Council's DCP controls particularly in relation to addressing potential streetscape impacts. The undersized corner lots are suitably shaped and positioned to permit satisfactory future development for residential purposes.

Lot size Objectives

Despite the variations proposed to the DCP, the proposal is considered to achieve the objectives under Clause 4 that apply to residential subdivision and the proposal is considered consistent with the objectives under Clause 4.1.

The objectives for all of the varied lot size controls under Clause 4.1 (Lot size) are:

Lots are to have sufficient area and take into account opportunities:

- *To enable water and energy efficient design of buildings and services*
- *To encourage waste minimisation, collection and disposal*
- *To assist conservation of habitat for native fauna and flora*
- *To retain of significant natural features*
- *To ensure privacy and security of residents*
- *To preserve local character*

Overall, each of the lots are suitably configured to accommodate a range and diversity of future housing types. The proposed lots despite their non-compliant width and area are suitably sized and configured to allow for energy efficient design, satisfactory waste storage and collection

arrangements, privacy and amenity, security for future occupants and preservation of local character and streetscape. A future dwelling that can achieve adequate amenity is able to be provided on each of the proposed lots created on the site.

Although variations are proposed to the DCP, the proposed lots are considered to be adequately configured to allow for future development in a manner that is consistent with the objectives under Clause 4.1. The variations are considered reasonable and recommended for support.

- Street Orientation and Lot Design for Solar Access

Clause 4.2 requires the lots to be designed to maximize their potential to receive solar access. Lots are to be of a shape and orientation which facilitates the design and construction of development to be energy efficient, attractive, and functional. The subdivision has been designed so that all streets are oriented to maximize solar access to the future dwellings and private open space.

- Urban Design

Clause 4.3 requires quality subdivision designs to ensure allotments promote attractive amenity and visual privacy. The subdivision design is required to be consistent with any established streetscape and the desired future character of the area. The proposed subdivision reflects a low-density residential lot layout, and the mix of lot sizes will promote a variety of low density housing outcomes as anticipated by the zoning.

The proposal has been assessed against the requirements of the DCP and the variations proposed are reasonable in the context of the site and proposal. Overall, the DCP variations proposed to the above design standards outlined under Wyong DCP Part 4 are considered satisfactory and reasonable in the site context and are supported. The development remains consistent with the objectives for the controls being varied. As outlined above a table of compliance is included with this report as an attachment.

DCP Chapter 3.1 Site Waste Management

Under Clause 2.1 of this Chapter, a Waste Management Plan (WMP) that complies with the requirements of Council's Waste Control Guidelines needs to be prepared prior to issue of a Construction Certificate. In accordance with DCP Chapter 3.1, a condition is recommended for submission of a Waste Management Plan for the development outlining the waste disposal, re-use, and recycling (on and off site) for the construction and operational stages of the development.

Chapter 3.3 – Floodplain Management

As part of the development, it is proposed to fill some land that lies within the 1% Annual Exceedance Probability (AEP) flood extent. The land identified to be filled is consistent with that of the precinct 7A study. In accordance with the DCP, a flood impact assessment that included

TUFLOW modelling to determine the impact of filling within the 1% AEP flood extent was provided. The proposed perimeter road is to ensure all lots and roads are flood free in all events up to and including the 1% AEP. Virginia Road to the east of the development site is to be raised above the 1% AEP level and sealed, with new culverts to convey the overland flow path.

The proposed development causes minor flood level increases, as a result of floodplain filling. These impacts are considered acceptable given impacts are in keeping with the Precinct 7A study outcomes, and the impacts are contained within conservation areas and offset by immediately adjacent decreases. There are negligible (less than 10mm) impacts in the wider floodplain showing that proposed filling of the development site is acceptable.

Chapter 3.10 - Wetlands Management

The proposal has been designed to include a clear delineation to the wetland areas including the construction of a perimeter road and cycleway (consistent with Clause 2.1b). No clearing is proposed in the wetlands, and downstream impacts are addressed through the provision of proposed water quality basins. The basins aim to ensure that the future development does not directly or indirectly impact adversely on the ecological values and integrity of the downstream Porters Creek Wetland. The purpose of the basins is to improve the quality of stormwater run-off from the development (in accordance with Clause 2.1.1 & 2.1.2).

d) Any planning agreement

No VPA relates to this DA other than that which has been entered into with the Minister for the satisfactory arrangements. There is a Deed of Agreement and new Land Transfer Agreement that was entered into, separate and distinct from this application.

e) Relevant Regulations

Environmental Planning and Assessment Regulations 2000 (Regs)

The Environmental Planning and Assessment Regulations 2000 (Regs) applies to the application which was lodged on 8 Dec 2021 and therefore pre-dates the introduction of the Regulation 2021. The application has been assessed in accordance with the relevant clauses under these Regulation. The submission of the latest amended plans for the proposal were accepted in accordance with Clause 55 of EPA Regulation 2000.

There are no other matters requiring specific discussion in relation to the Regulation which was in place at the time.

Environmental Planning and Assessment Regulations 2021

The 2021 EP&A Regulation commenced on 1 March 2022. Transitional arrangements apply for certain provisions including this application. The 2000 Regulation continues to apply to a

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Development Application made but not finally determined before 1 March 2022. Notwithstanding this, the following section has been considered under the Regulation 2021 in relation to the DA.

- *Council related Development Applications*

Section 66A requires that Council related development applications must not be determined by the consent authority unless:

- a) The council has adopted a conflict-of-interest policy, and
- b) The council considers the policy in determining the application.

Central Coast Council's Council Related Development Applications Conflict of Interest Protocol, Revision 1, was adopted by Council in 2023 in response to Section 66A of the Regulations.

The Protocol aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development. This application is considered under the Protocol as the site is Council owned land.

In accordance with the Protocol:

Appropriate and correct owners' consent was obtained from Council in relation to the proposed development.

The application was notified for a period of 28 days with nil submissions received and given the minor works Council has no adopted management strategy for the application (under Section 30B of the Regs).

Likely Impacts of the Development:

Built Environment, Context and Setting

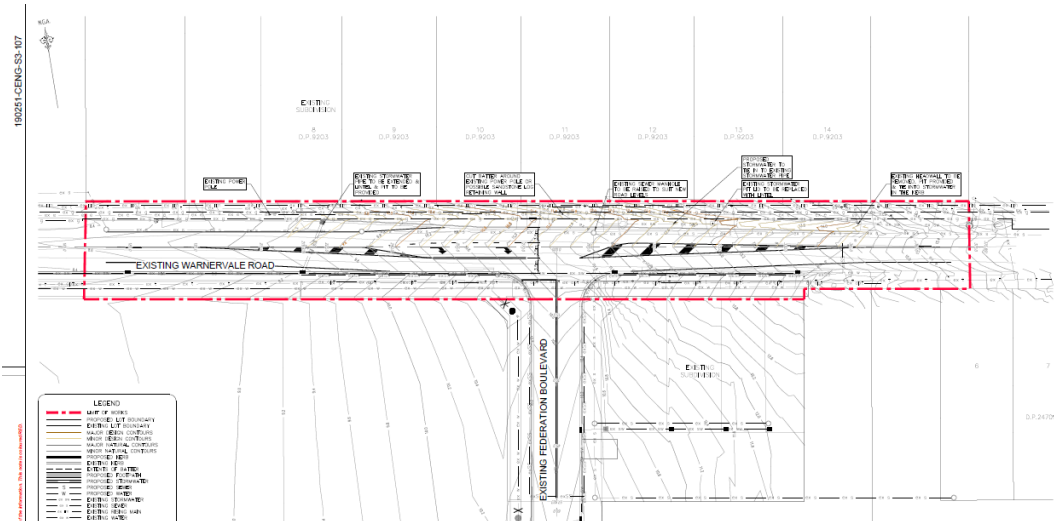
The subdivision layout includes regularly shaped lots that are generally in a north-south orientation. The orientation can afford the future dwelling development opportunity to establish a building footprint with useable open space and reasonable solar access, and a suitable streetscape presentation.

Roads, Access & Traffic

Construction of proposed stages 3-5 triggers an upgrade of the Federation Boulevard/ Warnervale Road intersection to a Chanellised Right Turn (CHR) treatment for eastbound traffic due to the increase in vehicle movements, and the proximity to the level crossing for Warnervale train station.

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A detailed intersection design has been provided by the applicant. The design will be conditioned to be in accordance with Austroad design requirements. A road safety audit shall be undertaken of the intersection to identify any safety improvements.



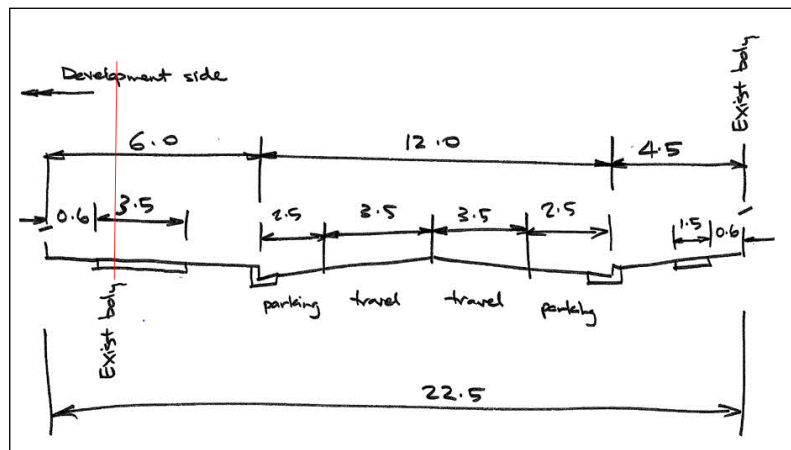
Above: Intersection design of Federation Boulevard and Warnervale Road

A vehicle swept path plan has been provided for the two proposed roundabout intersections of proposed Road 03 with Federation Boulevard, and Songlark Avenue for a 12.5m bus/heavy rigid vehicle. The wheel paths of the bus appear to conflict with the splitter islands on the approach/departure of the roundabouts. The proposed roundabouts shall be designed in accordance with Council's Civil Works design specification and current Austroads guidelines. Suitable alternative treatments such as raised thresholds may be required at the proposed four way intersections to accommodate the geometry required for buses (HRV) to negotiate.

Civil works (Road Reserve)

The development will necessitate the construction and provision of bulk earthworks and site regrading to provide the necessary civil infrastructure including full road construction formation including pavement, footpaving/cycleways, longitudinal stormwater drainage works (incl. pit and pipe network) including two constructed stormwater wetlands, water and sewer servicing and associated retaining walls to provide benching of the sites.

The Federation Boulevard and Warnervale Road intersection will require upgrade works in accordance with the current Austroads Guidelines. The ultimate Warnervale Road profile shall provide for the following widths.



Warnervale Road shall provide a carriageway width of 12.0m kerb to kerb to accommodate bus route. The civil works to be delivered shall be in accordance with Council's Civil Works Design Guidelines and Construction Specification 2022.

Flooding (Lake, Riverine & Overland)

The proposed lot and perimeter roads are outside of the 1% AEP flood extents. The land for Stage 3 & 4 has been filled to ensure lot are above the flood planning level (1%AEP + 0.5m) to be flood free.

Stormwater Runoff Management (Quantity & Quality)

The applicant is proposing the construction of two permanent constructed stormwater wetlands for the end of line treatment of stormwater runoff from Stages 3A and 3B (eastern wetland) and Stage 4A, 4B & 5 (western wetland). The western wetland discharges into a designated (SEPP14 now SEPP R&H) coastal wetland downstream (Porters Creek).

The applicant has provided an amended Stormwater Management Report and MUSIC-link modelling report to support the application. Performance treatment targets of 85% (TSS), 65% (TP) and 45% (TN) specified in CCDCP 2022 – Chapter 5.25 Warnervale South, Clause 5.25.2.10 have been satisfied through the water quality modelling.

Detailed design of the constructed wetland basin will be required to be undertaken in accordance with industry best guidelines. Suitable areas are to be provided for the ongoing future maintenance of the Gross Pollutant Traps (GPT's – CDS units) and desilting of the inlet sedimentation basins.

The drainage pits discharging to the gross pollutant traps shall be splitter pit, which will enable the frequent/first flush flows to enter the GPT and wetland for treatment. High flows from larger events shall be directed to the high flow bypass channel.

Bulk Earthworks/excavation (Retaining/Benching)

The development involves significant bulk earthworks for the proposed regrade activities that are expected to occur to reach design levels. Filling is predominately associated with low-lying areas around the perimeter of the site in the east, south and west of the development, while cutting is generally associated with the central elevated portion of the site.

The applicant is proposing significant regrading/benching of the land to enable level building pad for dwelling construction. The majority of retaining walls are between 0.5 to 1.0m in height. However, there are a limited number of 1.5m -2.5m high retaining walls.

The extent of benching of the land is considered appropriate considering the advantage of being able to control the construction of retaining structures and services during the subdivision stage (rather than at a later stage). The large proportion of retaining walls are at or below 1.5m. All retaining walls and garden landscaping walls more than 1m in height are to be engineer designed.

The construction of the gravity sewer is expected to require a maximum depth of excavation in the order of 4.0m. The alignment is expected to intersect the north-south oriented ridgeline in the central portion of the site.

Neighbouring Properties

Standard dilapidation reports will be required to be prepared for the protection of Council civil assets in the road reserve.

Construction Issues

A traffic management plan (TMP) will be required to be prepared by a suitably qualified traffic engineering consultant, particularly for road intersection works within Warnervale Road.

Subdivision, Easements, 88B Requirements

Subdivision plans shall provide easements for rights of carriageway, easements for inter-allotment stormwater drainage where the lots don't fall to the public street drainage system.

Traffic Impacts

A Traffic assessment report was prepared for the development which identified that the resulting subdivision would generate additional traffic in the order of approximately 3.1 vehicle movements per minute, on average, in the AM and PM peaks. This will not have a significant impact on the surrounding road network.

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The potential cumulative impacts from the intensification of development in the Warnervale and Wadalba areas on various intersections in the vicinity of the subdivision has been considered in the Precinct 7A Traffic and Transport study (2012). The performance of existing and future network capacity within the Precinct 7A study area has been assessed.

Future years modelling was undertaken for 2021 and 2031 using land use data sourced from Council and included the cumulative growth from following planned developments including:

- Precinct 7A;
- Wyong Employment Zone (WEZ);
- Bruce Crescent;
- Warnervale Town Centre (WTC);
- The Lakes Anglican Grammar School;
- Precinct 14, and
- Wadalba Precinct

In this regard, the cumulative effects of this and other proposed developments in the greater Warnervale area has been considered. Traffic generation for the site that is subject to this development application was included in the study and the applicant will be required to pay a development contribution towards intersection upgrades in accordance with the adopted section 7.11 contributions plan.

Aboriginal heritage impacts

The proposal will involve ground disturbance in the form of bulk earthworks for the creation of infrastructure and levelled residential lots and will require an AHIP under Section 90 of the *National Parks and Wildlife Act 1974* due to the disturbance of known sites. The AHIP must be obtained prior to commencement of any works for the development. If harm to an Aboriginal object or place cannot be avoided, an Aboriginal cultural heritage assessment report needs to be prepared in accordance with the Aboriginal cultural heritage guidelines.

In 2017, an Aboriginal Cultural Heritage Assessment Report (ACHAR), was undertaken as part of the rezoning of the site, which identified two Aboriginal archaeological sites within the study area:

- Warnervale Residential Isolated Find 1 (AHIMS #45-3-4055; WR IF1) of low heritage significance.
- Warnervale Residential Artefact Scatter 1 (AHIMS # 45-3-4054; WR AS1) of moderate heritage significance. The artefact scatter is a low-density surface and subsurface scatter that comprises the 15 previously identified Aboriginal archaeological sites within the study area, on the crest and slopes of the southern ridgeline.

The ACHAR prepared as part of the rezoning application was also lodged with the DA. Heritage NSW provided initial advice recommending that Council request the applicant to either revise the existing ACHAR or prepare a new ACHAR, and if Aboriginal objects will be harmed, recommended that the DA be referred as Integrated Development to Heritage NSW as an Aboriginal Heritage Impact Permit (AHIP) would be required under NPW Act prior to any works commencing.

Heritage NSW confirmed that a revised ACHAR was required, which addressed several gaps in the previously submitted report. The applicant was also required to prepare the report in line with the 'Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW' and Heritage NSW requirements.

The applicant revised the ACHAR and the application was subsequently lodged and advertised as integrated development with Heritage NSW. General Terms of Approval have been provided by Heritage NSW for the development. The ACHAR identified 16 aboriginal sites where stone artifacts have been observed on ground surface exposures. The ACHAR identifies that impacts to objects is not anticipated in stages 3A and 3B, nor in the construction of the water detention basins. Construction of stages 4A, 4B and 5 will result in impacts and an AHIP will be required.

The application was also accompanied by an Aboriginal Cultural Heritage Management Plan, however, this plan (as well as the ACHAR) will need revision and updating as part of the AHIP assessment process. The application was also referred to Darkinjung Local Aboriginal Land Council and Gur-ring-gai and Awabakal Local Aboriginal Land Council for comment, with no response received.

Bushfire Risk

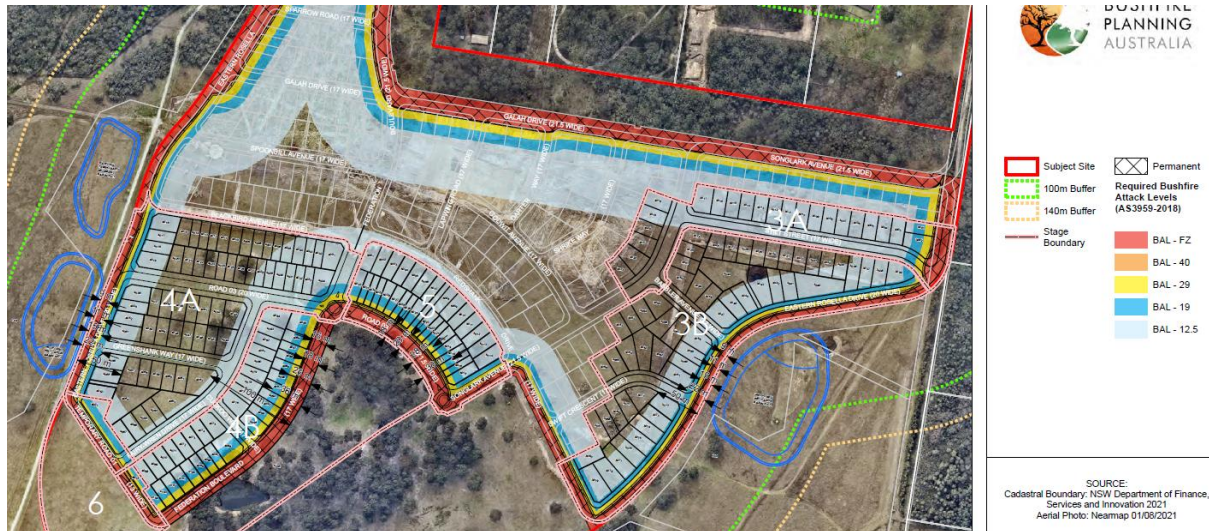
The subject site is identified as bushfire prone land and residential subdivisions are classified as integrated development under Section 4.46 of the EP &A Act 1979 requiring issue of a Bush Fire Safety Authority (BFSa) under Section 100B of the *Rural Fires Act 1997* for a Special Fire Protection Purpose.

The site is currently exposed to a medium bushfire hazard consistent with a *forest (dry sclerophyll forest)* to the east and a *forest (coastal swamp)* to the west of the development site and is separated by an existing grass floodplain. There is also low threat vegetation within the site intended to be retained as public open space. Vegetation Category 1 bushfire prone land exists to the east and a narrow strip to the north-east of the development site within the approved residential zone. The remainder of the development site is mapped as a bushfire Buffer.

The development application was accompanied by a Bushfire Assessment Report identifying how the development will comply with Planning for Bushfire Protection 2019. In accordance with s.4.46(1) of EP & A Act, the application and report were referred to the NSW Rural Fire Service and General Terms of Approval and a BFSa under Section 100B of the *Rural Fires Act 1997* have been granted by the NSW RFS for the development.

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The bushfire report identifies that the proposal provides for a minimum APZ to achieve BAL 29 construction on each lot. The bushfire report was amended to clarify that no proposed APZ encroaches into any wetland areas and wetland buffer areas. The assessment report concludes the proposed subdivision does not increase the bushfire hazard the development is exposed to, as the application seeks to subdivide land previously identified for residential development in an urban release area.



Above: Proposed APZ's from Bushfire Assessment Report

Section 4.47, subsections (1), (2) and (3) of the EP&A Act 1979 state as follows:

4.47 Development that is integrated development

- (1) *This section applies to the determination of a development application for development that is integrated development.*
- (2) *Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.*
- (3) *A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.*

Having regard for the above, the consent authority can be satisfied that General Terms of Approval have been obtained from the NSW Rural Fire Service (s.4.47(2)), and that the draft conditions of consent are consistent with the General Terms of Approval that have been granted.

As a result, the proposed development is considered satisfactory in terms of impacts on the built environment.

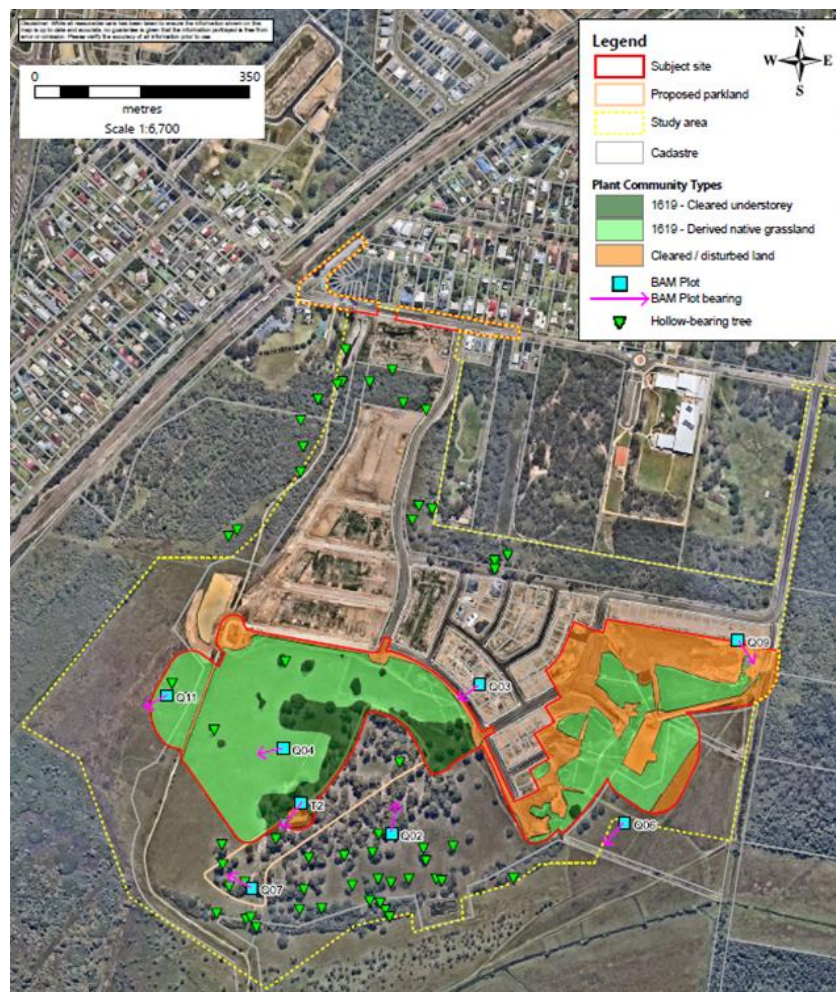
Natural Environment

Flora and Fauna

A Biodiversity Development Assessment Report (BDAR) accompanied the proposal to address the ecological impacts of the proposed development. The proposal seeks to remove approximately 13.75ha of remnant vegetation of various conditions (predominantly low condition). Large areas of the site are classified as derived native grassland.

In accordance with the BC Act, the application has taken measures to avoid and minimise the impact on biodiversity values. However, avoidance of biodiversity impacts is primarily provided by the provision and management of a biodiversity corridor (Lot 2192/DP.1273022) required under previous stages of development (DA/129/2019). Trees will also be retained within the proposed park. Surrounding land (Lot 704/DP.1275094) has also been previously dedicated to Council for floodplain rehabilitation works under a Deed of agreement.

The BDAR has assessed the below footprint (red outline):



As detailed in the BDAR, to offset the residual impacts of the development, the following Biodiversity Credits will be required to be retired, as conditioned:

- 45 Ecosystem Credits for PCT 1619 Smooth-barked Apple - Red Bloodwood - Brown Stringybark - Hairpin Banksia heathy open forest of Coastal Lowlands (all including hollow bearing trees)
- 60 Species Credits for the Squirrel Glider
- 62 Species Credits for the Southern Myotis

A Critically Endangered orchid species *Thelymitra adorata* (Wyong Sun Orchid) has been detected within proposed residue Lot 2193. There are no works required in that area as part of the current application. Surveys within the development footprint for the current application (stages stage 3, 4 and 5) were conducted at appropriate times and did not detect the species.

Two threatened flora species have been recorded within the Study Area. There is a historical record within the Study Area for two individual records of *Rutidosia heterogama* (Heath *Wrinklewort*). Subsequent surveys of the Subject Site in 2015, 2016 and 2018, could not relocate

the specimens. It is assumed that they are no longer present as a result of cattle grazing and trampling of habitat.

No serious and irreversible impacts (SALLs) are likely to occur as a result of the proposal.

Some large and hollow bearing trees near the edge of the park have been nominated for retention and protection. The existing dam within proposed park to be filled. Bushfire Assessment was revised to ensure that no APZ (temporary or otherwise) extends within the SEPP Wetland boundary or extends outside the footprint of the BDAR.

The proposed subdivision is outside, but close to the Coastal Wetlands "buffer" boundary mapped under SEPP (Resilience and Hazards) 2021 and associated with Porters Creek wetland. The property is within a Wetland Management Area mapped in DCP Chapter 3.10.

Increase in pollutants and quantity of water being released into the wetland is a potential concern in relation to the degradation of the ecological values of ecosystems downstream, including the Porters Creek SEPP Coastal Wetland. The wetland also qualifies as Endangered Ecological Communities listed under the *Biodiversity Conservation Act* and provides a range of threatened species habitats. To address this concern, the applicant proposes two constructed wetland basins for stormwater quality and quantity control to ensure no impacts to downstream Porters Creek wetland. The constructed wetland basins are proposed to be placed in cleared areas. The revised BDAR (April 2023) includes the footprint of these basins.

Overall

All other relevant issues regarding the likely impacts of the development have been discussed throughout this report. In general, it is considered that the property is suitable for the proposed residential subdivision subject to conditions.

Economic and Social Impacts

The proposed subdivision will provide employment opportunities during the construction of the development and will provide much needed housing on the Central Coast.

Suitability of the Site for the Development

The site is in a suitable context for the nature, scale and type of development proposed. The site is located within a recently rezoned urban release area and the proposal is consistent with the broader and longer-term strategic planning for the area. The site is well serviced and accessible to public transport and facilities, and the proposed development provides land for future low-density housing in the area which will broaden the availability and choice of housing for the community.

**1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171
Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots
(cont'd)**

There are no significant site constraints or hazards that would render the location of the development as unsuitable. There are no other constraints that would render the site unsuitable for development.

Submissions

Any submission from the public

The original plans for the application were notified in accordance with DCP 2013 – Chapter 1.2 Notification of Development Proposals with no submissions being received. Following the submission of amended plans which reduced the proposed lots from 239 to 216 residential lots, the application was renotified in accordance with DCP 2013 – Chapter 1.2 Notification of Development Proposals and no submissions were received.

Any submission from public authorities

NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service as integrated development requiring issue of a Bush Fire Safety Authority (BFSA) under Section 100B of the *Rural Fires Act 1997* for a Special Fire Protection Purpose. The development application was accompanied by a Bushfire Assessment Report, which was referred to the Rural Fire Service. A BFSA and General Terms of Approval have been issued for the development (dated 4 Feb 2024) and will be referenced under the recommended conditions.

Department of Planning and Environment

The application was referred to the Department of Planning and Environment in respect of Clause 6.1 of WLEP. A Secretary's Certificate for Satisfactory Arrangements for designated State public infrastructure (SVPA 2017/8485 dated 17.12.21) has been issued by the delegate of the Department of Planning and Environment, to certify that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the proposed development.

Heritage NSW

The application was referred to Heritage NSW under the integrated development provisions as the development will impact on known Aboriginal sites which would require an Aboriginal Heritage Impact Permit (AHIP) pursuant to Section 90 of the *National Parks and Wildlife Act 1974*. Heritage NSW have provided their General Terms of Approval (DOC24/468183).

Transport for NSW

The application was referred to Transport for NSW for comment under the provisions of Section 2.122 (Traffic Generating Development) of *SEPP (Transport and Infrastructure) 2021*. This provision includes the subdivision of land (Column 1) involving 200 or more allotments where the subdivision includes the opening of a public road and where the site has access to a road (generally) (Column 2). Transport for NSW reviewed the information provided and raised no objection to or requirements for the proposed development.

Transport for NSW - Sydney Trains

The application was referred to Sydney Trains (Transport for NSW) for concurrence under the provisions of Section 2.97 (Development involving access via level crossing) of *SEPP (Transport and Infrastructure) 2021*. Sydney Trains granted concurrence to the development subject to the imposition of operational conditions that will need to be complied with. The concurrence and conditions are included under the recommended conditions.

Internal Consultation

Senior Ecologist	Supported, subject to conditions.
Contributions Officer	Supported, subject to conditions.
Traffic and Transport Engineer	Supported subject to conditions.
Water and Sewer-Water Assessments Team	Supported, without conditions.
Senior Development Engineer	Supported, without conditions.
Tree Assessment Officer	Supported, without conditions
Senior Environmental Protection Officer	Supported, without conditions

Ecologically Sustainable Principles:

The proposal has been assessed having regard to ecologically sustainable development principles and is consistent with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of the assessment of the application.

This assessment has included consideration of such matters as potential rise in sea level, potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood, and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts. The proposed development will incorporate appropriate Asset Protection Zones and flooding has been considered as part of the assessment of the application. Future development of the lots will be subject to BASIX requirements.

Planning Agreements

The proposed development is not subject to a Planning Agreement or Draft Planning Agreement that has been entered into with Council. However, the applicant has entered into a Planning Agreement with the Department of Planning and Environment in respect of Clause 6.1 of WLEP. A Secretary's Certificate for Satisfactory Arrangements for designated State public infrastructure (SVPA 2017/8485 dated 17.12.21) has been issued.

Other Matters for Consideration

Contributions Plans (Section 7.11 and 7.12)

The application falls under the Warnervale District Section 7.11 Plan 2021 and the recommended conditions have been included in accordance with the proposed stages.

Water and Sewer Contributions

Water and sewer developer contributions will be applicable for the creation of each new lot under the provisions of the *Water Management Act 2000*, and a Section 305 application will need to be submitted in order to obtain a Section 307 Certificate of compliance. The resulting Section 306 letter of requirements will contain Water Authority conditions.

Panel Planning Directions

The application includes works (being two water quality basins being constructed) on Council owned land which necessitates the application to be forwarded to the Local Planning Panel (LPP) for determination under Schedule 2 of the Ministers Directions (dated 6 March 2024). Although the proposal has resulted in no submissions being received from notification of the DA, the development taking place on Council owned land has capital value above \$1 million and so does not qualify for an exclusion.

1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)

Conflict of Interest Policy

The subject site for the proposed development is on Council owned Land and this matter is discussed earlier in the report under the section on the current EPA Regulation that is in place.

Central Coast Regional Plan 2041 and North Wyong Structure Plan (2012)

The site is identified under the North Wyong Structure Plan (2012) for residential development in the short term (Precinct 7) at a dwelling density of 15 dwellings per hectare. The site is identified as a residential area within an 'emerging growth area centre' and is within a 'regionally significant growth area'. The proposal is consistent with the planning under each strategic plan.



Above: Extract from CC Regional Plan 2041 with site shown circled in red.

The Public Interest:

There are no matters associated with the proposal that are contrary to the local or community interest.

CONCLUSION

The application seeks approval for a residential subdivision including 216 lots and associated works including earthworks servicing and roads infrastructure in stages at 15-35 Warnervale Road and 95-105 Virginia Road, Warnervale

The proposed variations to WDCP are considered reasonable and acceptable in the circumstances. There were no submissions received from the notification of the proposal and the site is in a suitable context for the nature, scale and type of development proposed.

Following a thorough assessment of the relevant planning policies and controls, it is considered the application is appropriate and can be supported for the following reasons:

1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots (cont'd)





1. The proposal is satisfactory having regard for the relevant environmental planning instruments, plans and policies.
2. The proposed development satisfies the provisions and pre-conditions of the grant of consent of *State Environmental Planning Policy (Resilience and Hazards) 2021*, *SEPP (Transport and Infrastructure) 2021* and *SEPP (Koala Habitat Protection) 2021*.
3. The proposal has been considered against the permitted uses and objectives of the R2 Low Density Residential and R1 General Residential under *Wyang Local Environmental Plan 2013*. The proposal is permissible with development consent in the R2 and R1 zone and is considered satisfactory in terms of the objectives of the zone.
4. The proposal is considered satisfactory in relation to the pre-conditions of the granting of consent under Clause 7.1 (Acid Sulphate Soils), Clause 5.21 (Flood Planning), Clause 5.10 (Heritage Conservation), Clause 6.1 (Arrangements for designated State public infrastructure), Clause 6.2 (Public utility infrastructure), and Clause 7.9 (Essential Services) of *Wyang Local Environmental Plan 2013*.
5. The proposal satisfies the provisions of Section 4.14 of the *Environmental Planning and Assessment Act 1979*.
6. The proposal is considered satisfactory in relation to the requirements of Wyong Development Control Plan 2013, Chapter 6.5 (Warnervale South), Part 4 (Subdivision), Chapter 3.3 (Floodplain Management) Chapter 3.10 (Wetlands Management) and Chapter 3.1 (Site Waste Management) and the variations proposed are satisfactory with respect to the control objectives.
7. There are no significant issues or impacts identified with the proposal under s. 4.15 of *Environmental Planning and Assessment Act 1979* and no submissions have been received.
8. The proposed development is considered suitable within the context of the site and surrounding development and is in the public interest.

The development application has been considered in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and the Regulations, as outlined in this report.

The proposal is recommended for approval subject to conditions.

**1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171
Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots
(cont'd)**

Attachments

- | | | |
|--|---|-----------|
| 1  | Attachment 1 - DCP Compliance | D16341259 |
|  | | |
| 2  | Draft conditions DA/1892/2021- 15-35 Warnervale Rd, 95-105 Virginia Rd, | D16162037 |
|  | 216 lot residential subdivision | |

Attachment 1 – Compliance Table

Application No: DA/1892/2021

Description of Land: 15-35 Warnervale Road, 95-105 & 107-171 Virginia Road, Warnervale

Proposal: Proposed residential subdivision of 216 residential lots in stages

DCP Provision	Proposed	Required	Compliance
Site Area		-	-
SUBDIVISION DCP Part 4			
Minimum lot size R2 WLEP 2013 (80 lots)	450m ² to 1,402.86m ² .	450m ²	Yes
Minimum lot size R1 WDCP (159 lots)	239.9m ² to 1,499m ² .	Generally, 450m ² (DCP)	No, but satisfactory for future dwelling
Minimum lot size – battle axe lot	Lot 3061 - 1,499m ² (incl handle) 1373.6m ² (excl handle) Lot 4038- 1,402.86m ² (incl handle) 1270.14m ² (excl handle)	750m ² (excluding access handle)	Yes
Minimum lot size and width – small lot housing	No small lot housing	200m ² – 450m ² 7.5m width	N/A
Minimum corner lot size	534m ² - 768m ² (R2 land) Within R2, 11 of the 12 corner lots do not comply. 311m ² - 992m ² (R1 land) Within R1, 18 of the 23 corner lots don't comply.	700m ²	No (variation 24% for the R2 zoned corner lots and a variation of 55.6% for the R1 zoned corner lots)
Minimum lot width	10m – 49.55m (R2 zone) Within R2 - 24 lots (out of 80) do not comply. 7.5m-30.2m (R1 zone) Within the R1 zone 33 lots comply out of 159 comply	15m at building line	No, (24 lots in the R2 zone and 126 lots in the R1 zone have a variation of up to 50% to the 15m min requirement)
Minimum lot depth	All lots generally comply	30m minimum	Yes
Multi lot subdivision - Range of lot sizes	239.9m ² - 1,499m ² (in R1) 450m ² - 1,402.86m ² (in R2)	Range to accommodate a variety of future housing types	Yes
Corner sites splay & access	Splays provided to corner lots	A 5m x 5m corner splay to be provided. Driveway setback from intersection to be maximised and a minimum of 6m from the above splay.	Yes
Subdivision for 10 or more lots on land under 10% slope where under 450m ² permitted	30 out of 159 R1 zoned lots are over 450m ² (19%).	Between 10% - 20% need to meet 450m ² min area.	Yes
Street access and frontage or legal and physical access to a street frontage.	All lots to have legal & physical access to a street.	- Each lot to access street frontage or legal and physical access to a street frontage. - No access permitted over or in vicinity of pedestrian or school crossings or other traffic management facilities.	Yes

DCP Provision	Proposed	Required	Compliance
Slope - Minimal lot sizes & minimum lot width in any direction. All residential zones <ul style="list-style-type: none"> - 0-10% slope - 11%-15% - 16%-20% - 21%-25% - > 25% 	Bulk earthworks across the site will ensure that all lots have a slope of 10% or less. Therefore, the minimum site area is applicable.	450m ² & 15m 600m ² & 18m 1000m ² & 20m 1200m ² & 25m On slopes exceeding 25% subdivision is discouraged & need to demonstrate building platform, access, servicing & minimal impacts on vegetation and site.	Yes
Slope - Minimal lot sizes Battle axe lots <ul style="list-style-type: none"> - 0-10% slope - 11%-15% - 16%-20% 	Bulk earthworks across the site will ensure that all lots have a slope of 10% or less.	- - 750m ² & 20m 1000m ² & to be demonstrated 1200m ² & to be demonstrated	Yes
Solar access	Complies but dependent on sensitive future dwelling designs.	Mid-point of each lot access a minimum 3 hours sunshine between 9am-3pm midwinter.	Yes
Battle axe lots - Access handle	There are no shared access handles and no curved access handles. The two proposed battle axe lots each have their own access handle of 4m in width and 30m and 34m in length.	<ul style="list-style-type: none"> - Max of 4 lots to share an access handle. - Max longitudinal grade for access handle is 20% - Min access width 4m for 1 & 2 lots and 6m for 3 & 4 lots. - A 5m passing point at 40m intervals & at bends. - Passing bay where handle includes a bend. - Services to be within handle - Where access is to a collector road or serves more than 3 lots, simultaneous vehicle entry & exit and queuing is required. - Where access serves 3 or more dwellings or is greater than 50m length all vehicles must enter & exit in a forward direction & turning heads required at end of handle. - No blind bends. 	Yes
Services	All proposed servicing will be located underground	All services provided underground	Yes
Road widths	Refer further below for compliance for each proposed road design.	As per site specific DCP Chapter 6.5 (which is the more specific DCP Chapter).	Yes
Shared cycle/pedestrian pathways	2.5m shared pathways provided throughout the site consistent with the DCP road design types.	All new residential estates to have 2.5m shared pathway. Footpaths provided on one side of street. Pedestrian links to be provided.	Yes
Cut/Fill	Retaining walls 0.5-2.5m in height and continuous in length across more than 2 boundaries.	<ul style="list-style-type: none"> - Boundary retaining walls not exceed 900mm height plus length not to exceed 2 lots - All fill to be contained within site boundaries - Retaining walls to street need to be decorative material 	No

DCP Provision	Proposed	Required	Compliance
Lot orientation/Streets axis	The majority of lots are aligned in an east/west or north/south configuration.	Generally north/south and east west to maximise solar access. –Lots on southern side of E-W to have increased width) Lots on northern side of E-W to have narrower dimensions and be smaller lots. All to have north facing POS. Driveways to be on southern or western side of future dwelling	
Residential street blocks	205m & 265m length of 2 blocks but under 80m depth non traditional configuration	Max length 160m Max depth 80m	No, block length does not comply
Subdivision design and street network	No cul-de-sacs proposed. Footpath and roads provided along the boundary of the open space. Road hierarchy with intersection controls proposed.	-Avoid cul-de-sacs or max 75m in length -Footpath/carriageway along the boundary of the open space/bushland is to be provided (UIA). Only where significant vegetation -No blind bends -Establish road hierarchy and suitable intersection controls	Yes
Tree planting	Landscape plans propose street trees every 15m, with species chosen from Council's preferred species list.	1 semi-advanced native tree/15m frontage	Yes
Open Space provision	Lot 3126 will contain a future park ensuring that all lots will be within 400m walking distance to open space. No lots abut the future park providing superior casual surveillance. Shared pathways (2.5m cycleways) are located along all sides of the perimeter of the future park. Lot 3126 is not flood affected.	-In accordance with Contributions Plans. - No residential lot more than 400m walking distance from public open space. - No residential lot more than 500m walking distance from a playground. Max 25% of lots adjacent to larger public open space allowed to abut that open space on side/rear boundary. Path/cycleway on perimeter of open space	Yes
Aboriginal archaeological heritage or European heritage items	The site contains Aboriginal sites. Refer to Aboriginal Cultural Heritage Management Plan and Aboriginal Cultural Heritage Assessment Report provided for the development. An AHIP will need to be obtained for the development.	Details of proposed heritage sites or sites and their proposed treatment and protection to minimise impacts.	Yes
Land clearing	No vegetation removal is required within non-urban zones. The basin located within the E3 zone has been deliberately positioned to avoid tree removal. BDAR provided for impacts to urban zoned land.	Clearing on non urban land proposed? If not, then compliance with DCP Ch 3.6 Is consent required under relevant legislation? Ecological assessment and VMP required.	Yes
Threatened Species or Endangered Ecological Communities	The development has been assessed under the Biodiversity Conservation Act through the provision of BDAR.	Meet relevant legislative obligations and requirements with regard to threatened species and EEC.	Yes

DCP Provision	Proposed	Required	Compliance
Urban Interface Area	<p>The development has been designed with a perimeter road which separates the development from the floodplain and Porters Creek wetland. This road will accommodate APZs, a cycle way and native street trees in accordance with the UIA requirements.</p> <p>Eastern Rosella Drive provides for a 20m wide perimeter road incorporating a 2.5m wide cycleway on the outer edge which accommodates all APZs (excluding front dwelling setbacks).</p>	UIA required. Retained vegetation (5-10m); WSUD treatment (5-20m); Access (5-20m).	Yes
Community Safety and security	The development has been designed to comply	Sightlines, lighting, lot design (passive surveillance), street design (limit speed)	Yes, subject to conditions
Urban Design		<p>Best practice design in lot orientation, streetscape, and landscape design.</p> <p>Community focus – places</p> <p>Public and private landscaped areas.</p> <p>Ordered but varied development</p> <p>Mix of housing opportunities</p>	
WARNERVALE SOUTH (DCP Chapter 6.5)			
Open Space and parks	Consistent with the DCP (figure 3), a park is to be created (on the RE1 zoned land) that will generally be within 400m of each lot.	Access to -at minimum- a small neighbourhood park within 400m of each lot	Yes
Road layout and hierarchy	The road and intersection layout and hierarchy is generally in accordance with the DCP (Figure 4) except for the removal of laneways.	The DCP (figure 4) includes local roads, bus route roads a park edge road and 2 laneways (in the R1).	No, but supported as minor non numerical variation.
Collector Road width	Warnervale Road No change to existing road reserve only intersection construction (CHR) to service development subject to road safety audit and detailed design. A requirement for 12m pavement width has been agreed upon by the engineering section.	DCP Chapter 6.5 (Type 1) 24.5m width comprising -4.5m (verge) & -15m (carriageway) & -5m (verge) Including 2.5m cycle way and a 1.5m footpath	No, but subject to future detailed design and a road safety audit under recommended conditions
Perimeter Road width	Eastern Rosella Drive 20m comprising: -4.5m verge & -8m carriageway & -7.5m verge Includes 2.5m cycleway one side and 1.5m path on the other side	DCP Chapter 6.5 (Type 11) 19.9m (type 11) comprising: -4.5m (verge) & -7.9m (carriageway) & -7.5m (verge) Including 2.5m cycle way and a 1.5m footpath	Complies
Park Edge Road width	Federation Boulevard 17m width comprising -4m verge & -8m carriageway & -5m verge	DCP Ch.6.5 (Types 9A & 9B) 16.9m road comprising - 4.5m verge & - 7.9m carriageway & - 4.5m verge	Complies

DCP Provision	Proposed	Required	Compliance
	Includes 2.5m cycleway & 1.5m footpath	Includes 2.5m shared path & 1.5m footpath	
Bus Route Road width	<p>Road 03 (east end) 21.5m comprising: -5.5m verge & -11.5m carriageway & -4.5m verge Includes 2.5m cycleway & 1.5m footpath</p> <p>Songlark Avenue 21.5m comprising: -5.5m verge & -11.5m carriageway & -4.5m verge Includes 2.5m cycleway & 1.5m footpath</p>	<p>DCP Ch.6.5 (Type 3) 21.5m or 24.5m road comprising - 5.5m verge & - 11.5m or 14m carriageway & - 4.5m verge</p>	Complies
Local Road widths	<p>Stilt Street, Babbler Avenue, Redshank Drive & Swift Crescent 17m comprising -4.5m verge & -8m carriageway & -4.5m verge Includes 1.5m footpath both sides</p> <p>Greenshank Way, Cuckoo Way, & Fairy Wren Drive 17m comprising -4.5m verge & -8m carriageway & -4.5m verge Includes 1.5m footpath one side only</p> <p>Road 03 (west end) 20m comprising: -6m verge & -8m carriageway & -6m verge Includes 2.5m cycleway & 1.5m footpath</p>	<p>DCP Chapter 6.5 (Type 4) 16.9m comprising: -4.5m (verge) & -7.9m (carriageway) & -4.5m (verge) 1.5m footpath on each side</p> <p>DCP Chapter 6.5 (Type 6) 17.6m comprising: -5.2m (verge with 2.5m cycleway) - 4.5m (verge with 1.5 footpath)</p>	Complies
Laneway	Laneway removed under the amended plans	DCP Chapter 6.5 8m comprising: -0.5m (verge) & -6m (carriageway) & -1.5m (verge)	No, but minor variation and satisfactory.
Footpaths	All roads have 1.5m foot paths on at least one side and street trees to be planted on both sides.	All roads are required to have footpaths, and street trees	Yes
Pathway on park side of road	There is a 2.5m park edge cycleway/pathway on the park side of the road and around the perimeter road.	All park edge roads and to have the cycleway/footpath located on the park side of the road.	Yes
New streets connection	New streets are connected to the approved street network under DA/129/2019 which are connected to the existing street network.	New streets to connect to existing street network	Yes

DCP Provision	Proposed	Required	Compliance
Landscape buffers	There are no new lots created fronting established busy roads.	Landscape buffers to busy roads	Yes
Perimeter roads to open spaces	All open space is separated from new lots via a perimeter road and no lots back directly onto open space areas.	Perimeter roads to open space. No lots to back directly on to open space to preserve amenity and safety of open space.	Yes
Cycleways	The proposal provides a number of cycleways through the development including: A park edge cycleway along the park side of the	Provision of cycleway in accordance with DCP (Figure 5). 1. Provision of a Park edge pedestrian/bike path along park side of required park side road. 2. Provision of a shared path along Warnervale Road frontage.	No as road layout has changed but satisfactory provision of cycleways.
Dwelling Density	15 dwellings/hectare (80/5.2) 18 dwellings/hectare (159/8.8)	15 dwellings per hectare for new release R2 zoned land. 18 dwellings per hectare for R1 zone land	Yes
Lot size and dimensions employment land	N/A	Minimum lots size 4000m ² Minimum width at building line 45m	N/A
Noise Assessment	No lots adjoin Sparks Road but potential noise impacts from railway has been assessed. No further requirements.	Acoustic wall to properties fronting Sparks Road. Acoustic report when nearby railway, or busy roads	Complies
Water Cycle Management	Water quality measures post construction have been provided.	WSUD and IWCM Scheme (reliant on development of adjoining lot)	Satisfactory
Floodplain Management	DA includes minor filling consistent with Precinct 7A strategic approach. Flood assessment provided.	DA is to be consistent with DCP Ch.3.3 Floodplain Management and measures in Ch6.5 cl.2.11	Yes
Potential site contamination	Site not identified in Appendix B	Appendix B identifying areas of concern for contamination. Where further assessment required.	Yes
Indigenous heritage	AHIP will be required as the site contains Aboriginal sites that will be disturbed. Aboriginal Cultural Heritage Management Plan and Aboriginal Cultural Heritage Assessment Report provided for the development.	Review AHIMS. A cultural Heritage Management Plan required for identified sites.	Yes
Ecological Issues	BDAR provided which addressed the ecological impacts of the development.	Compliance with any offset strategy or ecological management plan. VMP required for land to be transferred to Council as environmental or recreational management (parks). Consistent with any bio certification requirements.	Yes, subject to recommended conditions.
Development Principles - Residential			
Character considerations	N/A	Dwelling design considerations	N/A
Development Principles – Warnervale Town Centre			
Neighbourhood Centre	N/A	Development Provisions	N/A
Development Principles – Employment Lands			
Employment Lands	N/A	Development Provisions	N/A

Attachment – Draft conditions

Applicant	Bitova Pty Ltd
Application No	DA/1892/2021
Portal No.	PAN-173646 (CNR-32723)
Description of Land	15-35 Warnervale Road & 95-105 Virginia Road, 107-171 Virginia Road, Warnervale, (the works taking place on a more specifically and narrowly identified area being 50 Federation Bvd Lot 2079 DP.1273682), which originally included Lot 1 DP.385242, Lots 73-76 DP.7091, Lots 1 & 2 DP 1101086, (basin infrastructure on Lot 704 DP127094 and servicing works in road reserve).
Proposed Development	Residential subdivision (216 Lots) and associated infrastructure and works in stages (Stages 3-5)

*Draft Conditions***1. PARAMETERS OF THIS CONSENT**

- 1.1. Implement the development substantially in accordance with the plans listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" and supporting documents unless modified by any following condition.

Architectural Plans:

Description/Title	Drawing No	Rev	Date	Author
Draft Subdivision Layout	DA-301	D	18.10.23	ADW Johnson
Staging Plan	DA-302	D	18.10.23	ADW Johnson
Detail Plan Sheet 1	DA-304	D	18.10.23	ADW Johnson
Detail Plan Sheet 2	DA-305	D	18.10.23	ADW Johnson
Detail Plan Sheet 3	DA-306	D	18.10.23	ADW Johnson
Detail Plan Sheet 4	DA-307	D	18.10.23	ADW Johnson
Traffic Management Plan Sheet	DA-312	D	18.10.23	ADW Johnson
Nikko Road Watermain Upgrades	DA-313	D	18.10.23	ADW Johnson
Landscape Plans 13491.5	DA L001-L008	D	8.10 21	Terras Landscape Architects

Supporting Documentation

Document	Title	Date
D14963208 & D15699645	Statement of Environmental Effects (SEE) prepared by ADW Johnson, Issue B Amended by "Response to RFI letter" Ref 190251(3)P SVD/LF dated 17 April 2023	30 Nov 2021

D14963196	Report on Geotechnical Investigation prepared by Cardno	21 April 2017
D15699660	Biodiversity Development Assessment Report prepared by AEP dated Ref: 1786.05 Revision: 01	10 April 2023
D16039781	Bushfire Assessment Report prepared by Bushfire Planning Australia, Ref.1933 Version V7: Amended Dec 2023	22 Dec 2023
D15699647	Arboricultural Impact Assessment Report prepared by AEP	6 April 2023
D14963209	Traffic Impact Assessment prepared by ADW Johnson, issue A	Nov 2021
D15634259	Stormwater Management Report prepared by ADW Johnson Version A	March 2023
D14963201	Flood Impact Assessment Report prepared by Cardno Ref.NW30203:MG	13 November 2021
D14992950	Secretary's Certificate Satisfactory Arrangements for Designated State Public Infrastructure & Correspondence (IRF21/5037) Issued by NSW Department of Planning and Environment	17 Dec 2021
D14963200	Aboriginal Cultural Heritage Management Plan prepared by Extent Heritage Advisors.	5 May 2020

- 1.2. Carry out all building works in accordance with the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate.
- 1.3. Approval is granted for the development to be carried out in 5 stages in the following manner:
 - Stage 3A – 23 residential lots
 - Stage 3B – 57 residential lots
 - Stage 4A – 67 residential lots
 - Stage 4B – 37 residential lots
 - Stage 5 – 32 residential lots

Works and contributions are to be finalised appropriate for each stage prior to the release of the Subdivision Certificate. Each stage is including all road and services formation and installation and associated subdivision works. Each condition applies to **all stages** unless specified otherwise

- 1.4. Comply with the General Terms of Approval / requirements from the Authorities as listed below and attached as a schedule of this consent.

Government Agency / Department / Authority	Description	Ref No	Date
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NSW Rural Fire Service	GTA's and Bush Fire Safety Authority CNR - 32723	DA20211215005520-CL55-2 (D16063748)	4 Feb 2024
Heritage NSW	Aboriginal Cultural Heritage Referral	D)C23/1069720-14 (D16039770)	19 Dec 2023
Transport for NSW	SEPP (T&I) Referral (Schedule 3) -	CR2021/005846 SF2014/023451 KML (D15357089)	22 Dec 2021
Sydney Trains	Concurrence -SEPP (T&I)	CNR-32723 (D15357080)	9 March 2022

- 1.5 A Subdivision Works Certificate is to be issued by the Principal Certifying Authority prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the *Environmental Planning and Assessment Regulation 2021*.
- 1.6 Submit, and have approved, an application for a Subdivision Certificate to Council / Certifying Authority. The Subdivision Certificate application is to satisfy all of the requirements of the *Environmental Planning and Assessment Regulation 2021*.
- 1.7 Where conditions of this consent require approval from Council under the *Roads Act 1993*, the *Local Government Act 1993* or the *Water Management Act 2000*, a completed Works application form must be lodged with Council and be accompanied by detailed design drawings and supporting information. Upon submission to Council, fees and charges will be calculated in accordance with Council's Management Plan. The fees and charges must be paid prior to Council commencing the design assessment.
- 1.8 This consent is related to DA/129/2019 and the works under this earlier DA need to be completed prior to issue of any Subdivision Certificate under this DA.
- 1.9 If any Aboriginal object/s will be harmed, an Aboriginal Heritage Impact Permit (AHIP) is required under NPW Act prior to any works commencing.

2. PRIOR TO ISSUE OF ANY SUBDIVISION WORKS CERTIFICATE

- 2.1 All conditions under this section must be met prior to the issue of any Subdivision Works Certificate. Each condition applies to **all stages** unless specified otherwise
- 2.2 Submit amendments to the approved plans that must detail:
 - a) The Landscape Plan prepared by Terras Landscape Architects (DA L001 – L008 Issue D) is to be updated to reflect the latest approved subdivision layout being the subject of this consent.

- 2.3 The road signage and pavement marking design drawings identifying parking, other regulatory elements and traffic management facilities must be endorsed by the Local Traffic Committee prior to any installation on site. The road signage and pavement marking design drawings are to be submitted to Council with the *Application for Subdivision Works Certificate or Construction Certificate, Roads Act Works Approval and other Development related Civil Works*.
- 2.4 Design and construct street lighting in accordance with Australian Standard AS/NZS 1158: *Lighting for roads and public spaces* including the provision of current best practice energy efficient lighting. Designs must detail street light footings, locations in relation to boundaries and infrastructure including offsets from road kerbs and safety barriers. Designs must be submitted to Council for review and comment prior to finalisation of the design and Council providing endorsement as the Public Lighting customer.
- 2.5 Servicing associated with the development for electricity and telecommunications are to be provided underground at the developer's expense.
- 2.6 Submit to Council as part of the Roads Act Works Approval and/or the Subdivision Works Certificate application Road Safety Audit for the intersection and subdivision prepared by a minimum Level 3 and Level 2 Road Safety Auditor who are registered on the NSW Register of Road Safety Auditors. No recommendations are to be made in the Road Safety Audit to address any identified deficiencies. Resolutions of the identified deficiencies are to be carried out in consultation with Council and Council to sign off the corrective actions prior to the issue of a Roads Act Works Approval and/or a Subdivision Works Certificate. This condition must be identified in the Audit Report.
- 2.7 Submit an application to Council under section 305 of the Water Management Act 2000 for a section 307 certificate of compliance. The Application form can be found on Council's website www.centralcoast.nsw.gov.au. Early application is recommended.

The section 305 application will result in a section 306 letter of requirements which must be obtained prior to the issue of any Construction Certificate. The requirements letter will outline which requirements must be met prior to each development milestone eg. prior to construction certificate, subdivision works certificate, occupation certificate and/or subdivision certificate.

- 2.8 Obtain a Roads Act Works Approval by submitting an application to Council for a section 138 Roads Act Works Approval for all works required within the road reserve. The application is to be lodged using an *Application for Subdivision Works Certificate or Construction Certificate, Roads Act Works Approval and other Development related Civil Works* form.

The application is to be accompanied by detailed design drawings, reports and other documentation prepared by a suitably experienced qualified professional in accordance with Council's *Civil Works Specifications*.

Fees, in accordance with Council's Fees and Charges, will be invoiced to the applicant following lodgement of the application. Fees must be paid prior to Council commencing assessment of the application.

Design drawings, reports and documentation will be required to address the following works within the road reserve:

- a) A Channelised Right Turn (CHR) intersection treatment (for east-bound traffic) at the intersection of Federation Boulevard and Warnervale Road, in accordance with the latest edition of Austroads Guides to Road Design/Traffic Management and NSW Transport Roads and Maritime Services (RMS) supplements to Austroads Guides if applicable.
- b) Full width road construction including on both sides of the road kerb and channel, subsurface drainage, concrete footpath, verge formation, stormwater street drainage and a minimum face of kerb to face of kerb dimension of 12.0 metres across the full frontage of the site with end transitions on the northern side of Warnervale Road.
- c) Construction of concrete footpath 1.5 metres wide on the northern side of Warnervale Road for the full street frontage of the development.
- d) Construction of the road verge/footway formation graded at +2% from the top of existing kerb to the property boundary, across the full frontage of the intersection on the northern side of Warnervale Road. Construction to include transitions to existing formation either side of the site.
- e) Reconstruction of the residential vehicle access crossings on the northern side of Warnervale Road including construction of a gutter crossing and road pavement adjacent to the gutter crossing.
- f) Removal of all redundant vehicle gutter crossings / laybacks and replacement with kerb.
- g) Removal and replacement of all damaged kerb and gutter with new kerb and channel.
- h) Construction of street storm water drainage including tail out drainage.
- i) Construction of any works required to transition new works into existing infrastructure and the surrounding land formation.
- j) Installation of roadside furniture and safety devices as required by design e.g. fencing, signage, guide posts, chevrons, directional arrows, and/or safety barriers in accordance with Austroads Guides, NSW Transport Roads and Maritime Services Supplements and Australian Standards and manufacturers requirements.

- k) Installation of road signage and pavement marking in accordance with Austroads guides, Transport for NSW Roads and Maritime Services Supplements and Australian Standards.
- l) Construction of retaining walls, including details of surface and subsurface drainage required for the retaining wall. Retaining wall design must not conflict with existing or proposed services or utilities. Retaining walls designs must be certified by a registered practising Civil or Structural engineer as being in accordance with Australian Standards.
- m) Road pavement designs. An Investigation and Design report prepared by a practising Geotechnical Engineer must be provided. The pavement design thickness must be determined in accordance with Council's specifications and the following traffic loadings:

Name of Street	Minimum Traffic Design Loading (ESAs)
Warnervale Road (Bus Route)	8x 10 ⁶

The section 138 Roads Act Works Approval must be issued by Council and all conditions of that approval must be addressed prior to occupying and commencing any works in the road reserve.

- 2.9 Submit to Council a dilapidation report detailing the condition of all Council assets within the vicinity of the development. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs, street lights or any other Council assets in the vicinity of the development. The dilapidation report will be required to be submitted to Council prior to the issue of the Section 138 Roads Act Works approval or the issue of any construction certificate for works on the site. The dilapidation report may be updated with the approval of Council prior to the commencement of works. The report will be used by Council to establish damage to Council's assets resulting from the development works.
- 2.10 Submit an application to Council or an Registered Certifier for a Subdivision Works Certificate under the *Environmental Planning and Assessment Act 1979*. Where this application is being submitted to Council, use an *Application for Subdivision Works Certificate or Construction Certificate, Roads Act Works Approval and other Development related Civil Works* form.

The application is to be accompanied by detailed design drawings, reports and other documentation prepared by a suitably experienced qualified professional in accordance with Council's *Civil Works Specifications*.

Where the application is submitted to Council, fees in accordance with Council's adopted fees and charges will be invoiced to the applicant following lodgement of the application. Fees must be paid prior to Council commencing assessment of the application.

Design drawings, reports and documentation will be required to address the following works and any related works:

- a) Full width road construction including on both sides of the road kerb and gutter, subsurface drainage, footpath verge formation and stormwater street drainage. The minimum face of kerb to face of kerb carriageway widths are to be:

Road Name/No.	Minimum Width.
Federation Boulevard (Bus Route)	11.5m
Songlark Avenue (Bus Route)	11.5m
Road 03 (Bus Route)	11.5m
Cuckoo Way	8.0m
Eastern Rosella Drive	8.0m
Greenshank Way	8.0m
Fairy-Wren Drive	8.0m
Temporary Road 01	6.0m (minimum 2 coat seal)

- b) Construction of 1.5 metre wide reinforced concrete footpath on one side of road all roads including kerb ramps where required.
- c) Construction of 2.5 metre wide reinforced concrete shared path including any signage and pavement marking on one side of road as proposed and kerb ramps.
- d) Design and construction of suitable traffic management treatments at the two (2), four (4) way intersections.
- e) Installation on all new roads of roadside furniture and safety devices as required e.g. Street name signs, fencing, guide posts, chevrons, directional arrows, and/or safety barriers in accordance with Austroads Guides, Transport for NSW Roads and Maritime Services Supplements and Australian Standards.
- f) Installation on all new roads of road signage and pavement marking in accordance with Austroads guides, Transport for NSW Roads and Maritime Services Supplements and Australian Standards.
- g) Construction of retaining walls, including details of surface and subsurface drainage required for the retaining wall where indicated on development approval documentation. Retaining wall design must not conflict with existing or proposed services or utilities. Retaining wall designs must be certified by a registered practising Civil or Structural engineer as being in accordance with Australian Standards.
- h) Construction of suitable industrial/commercial vehicle access crossings to accommodate the design vehicle (Heavy Rigid Vehicle) for wetland maintenance purposes.

- i) Road pavement designs. An Investigation and Design report prepared by a practising Geotechnical Engineer must be provided. The pavement design thickness must be determined in accordance with Council's specifications and the following traffic loadings:

Name of Street	Traffic Loading (ESAs)
Federation Boulevard (Bus Route)	8x10 ⁶
Songlark (Bus Route)	
Road 03 (Bus Route)	
Others (8.0m Access Road)	5x 10 ⁵

- j) Construction of a concrete accessway comprising a minimum 3.0 metre wide reinforced concrete pavement with integral kerb on the low side, 3% reverse cross fall, drainage (including lot drainage) to proposed Lot 4054 in Stage 4.
- k) Installation of services conduits (including draw wire) for all available services which may include electricity, telecommunications, gas and water within the right of access or access handle in accordance with the relevant authority's specifications and requirements.
- l) Construction of inter-allotment stormwater drainage where stormwater from individual allotments cannot be discharged directly into the proposed street drainage system or existing street drainage system.
- m) Construction of on-site stormwater detention system/s. Designed to be in accordance with Council's Chapter 3.1 – *Floodplain Management/Water Cycle Management: Part B* of the Central Coast Development Control Plan (CCDCP) 2022. The system(s) must be designed to limit post development peak flows from the development site to less than or equal to predevelopment peak flows for all storm events up to and including the 1% Annual Exceedance Probability (AEP) storm event. A runoff routing method must be used. An on-site stormwater detention design report including an operation and maintenance plan must accompany the design. The on-site stormwater detention facility is not permitted within drainage easements, and / or secondary flow paths. A safety fence may be required around the facility.
- n) Construction of nutrient and pollution control measures/facilities. Design to be in accordance with Council's Chapter 3.1 – *Floodplain Management/Water Cycle Management* of the Central Coast Council Development Control Plan (CCDCP) 2022. A nutrient and pollution control design report including an operation and maintenance plan must accompany the design.
- o) Construction of earthworks including filling. The earthworks design must be endorsed by a practising Geotechnical Engineer or be in accordance with the recommendation of a practising Geotechnical Engineer. The endorsement or

recommendations must only be made following an investigation of the site by the practising Geotechnical Engineer.

- p) Construction of earthworks including all excavation and filling including treatment of cut and fill surface for permanent stability. The earthworks design must be endorsed by a practising Geotechnical Engineer or be in accordance with the recommendation of a practising Geotechnical Engineer. The endorsement or recommendations must only be made following an investigation of the site by the practising Geotechnical Engineer.

All detailed design drawings and design reports addressing the above construction items must form part of the Subdivision Works Certificate Application. Subdivision Works must not commence until Council as the Principal Certifier has received a *Notice of Intention to Commence Subdivision, Roads and Stormwater Drainage Works* and a pre-commencement meeting with Council, the Developer and their Contractor has taken place.

- 2.11 Submit to Council a request for approval proposed new road names for each new road within the subdivision. The request is to reference the development application number and a plan showing the location of the proposed roads and the names of the proposed roads. (Two alternate names to be proposed in accordance with NSW Addressing User Manual.)
- 2.12. Identify trees and native vegetation proposed for retention and those approved for removal on all final engineering and landscaping plans. All fenced tree protection areas must be clearly marked as "No Go Area" on all plans.
- 2.13 A Waste Management Plan shall be prepared in accordance with the Waste Control Guidelines, to provide the following information:
 - i type and amount of waste / recyclable materials which will be generated;
 - ii how waste / recyclable materials will be stored and treated on site;
 - iii how disposal of waste / management or resale of recyclable materials will take place, and
 - iv how ongoing waste management will be accommodated in the design of the development.

The Waste Management Plan is required to cover all stages of the development including clearing; site preparation; subdivision; construction; and vi long term operation.
- 2.14 All retaining walls within view of the street are to be designed and constructed using a high quality decorative masonry product.
- 2.15 An Unexpected Finds Management Plan must be developed and implemented prior to the issue of any Subdivision Works Certificate for the discovery of any unexpected contamination during any construction works at the site.

3. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1 All conditions under this section must be met prior to the commencement of any works. Each condition applies to **all stages** unless specified otherwise
- 3.2 No works are to commence until an Aboriginal Heritage Impact Permit (AHIP) is obtained from Heritage NSW under s 90 of National Parks and Wildlife Act 1974 (if any Aboriginal objects will be harmed).
- 3.3 No activity is to be carried out on-site until the Subdivision Works Certificate has been issued, other than:
- a) Site investigation for the preparation of the construction, and / or
 - b) Implementation of environmental protection measures, such as erosion control and the like that are required by this consent
- 3.4 Appoint a Principal Certifying Authority for the building work:
- a) The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
 - b) Submit to Council a Notice of Commencement of Building Works or Notice of Commencement of Subdivision Works form giving at least two (2) days' notice of the intention to commence building or subdivision work. The forms can be found on Council's website: www.centralcoast.nsw.gov.au
- 3.5 Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
- a) The name, address and telephone number of the Principal Certifying Authority for the work; and
 - b) The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
 - c) That unauthorised entry to the work site is prohibited.
 - d) Remove the sign when the work has been completed.
- 3.6 Install run-off and erosion controls to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:
- erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
 - diverting uncontaminated run-off around cleared or disturbed areas, and
 - preventing the tracking of sediment by vehicles onto roads, and

- stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.

3.7 Erect a temporary hoarding or temporary construction site fence between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works, if the works:

- could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- could cause damage to adjoining lands by falling objects, or
- involve the enclosure of a public place or part of a public place.

Note 1: A structure on public land or on or over a public road requires the prior approval of the relevant authority under the *Local Government Act 1993* or the *Roads Act 1993*, respectively.

Note 2: The *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2011* contain provisions relating to scaffolds, hoardings and other temporary structures.

3.8 Prior to commencement of construction or site works, a Soil and Water Management Plan (SWMP) prepared in accordance with the latest edition of the Landcom Publication "Managing Urban Stormwater: Soils and Construction – Volume 1" (the Blue Book). Sediment control fencing must remain in place until such time as the site is landscaped or turf is established.

Note: Discharge of sediment from a site may be determined to be a pollution event under provisions of the *Protection of the Environment Operations Act 1997*. Enforcement action may commence where sediment movement produces a pollution event.

3.9 Provide or make available toilet facilities at the work site before works begin and maintain the facilities until the works are completed at a ratio of one toilet plus one additional toilet for every twenty (20) persons employed at the site. Each toilet must:

- be a standard flushing toilet connected to a public sewer, or
- have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- be a temporary chemical closet approved under the *Local Government Act 1993*.

3.10 Prepare a Construction Traffic and Pedestrian Management Plan (CTPMP) for all activities related to works within the site. The plan must be prepared and implemented only by persons with Roads and Maritime Service accreditation for preparing and implementing traffic management plans at work sites.

The CTPMP must describe the proposed construction works, the traffic impacts on the local area and how these impacts will be addressed.

The CTPMP must address, but not be limited to, the following matters:

- Ingress and egress of construction related vehicles to the development site.
- Details of the various vehicle lengths that will be used during construction and the frequency of these movement.
- Use of swept path diagrams to demonstrate how heavy vehicles enter, circulate and exit the site or Works Zone in a forward direction.
- Deliveries to the site, including loading / unloading materials and requirements for work zones along the road frontage to the development site. A Plan is to be included that shows where vehicles stand to load and unload, where construction plant will stand, location of storage areas for equipment, materials and waste, locations of Work Zones (if required) and location of cranes (if required).
- Works Zones if heavy vehicles cannot enter or exit the site in a forward direction.
- Control of pedestrian and vehicular traffic where pre-construction routes are affected.
- Temporary Road Closures.

Where the plan identifies that the travel paths of pedestrians and vehicular traffic are proposed to be interrupted or diverted for any construction activity related to works inside the development site an application must be made to Council for a Road Occupancy Licence. Implementation of traffic management plans that address interruption or diversion of pedestrian and/or vehicular traffic must only take place following receipt of a Road Occupancy Licence from Council or the Roads and Maritime Service where on a classified road.

Where a dedicated delivery vehicle loading and unloading zone is required along the road frontage of the development site a Works Zone Application must be lodged and approved by Council. A minimum of 3 months is required to allow Traffic Committee endorsement and Council approval.

The Construction Traffic and Pedestrian Management Plan must be reviewed and updated during construction of the development to address any changing site conditions.

A copy of the Construction Traffic and Pedestrian Management Plan must be held on site at all times and be made available to Council upon request.

- 3.11. Submit to Council a completed Notice of Intention to Commence Subdivision, Roads and Stormwater Drainage Works Form with supporting documentation prior to the commencement of any Subdivision Works Certificate works, Roads Act Works Approval works, or Section 68 Local Government Act Stormwater Drainage Works Approval works. These works are not to commence until a pre-commencement site meeting has been held with Council.

3.12. Like for Like (Ecosystem Credit Retirement)

1. Prior to commencement of any works, including prior to any vegetation clearing, the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.
2. The requirement to retire ecosystem credits in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Conservation Fund Charge System.
3. Evidence of the retirement of ecosystem credits or payment to the Biodiversity Conservation Fund must be provided to the consent authority prior to commencement of any works, including prior to any vegetation clearing works.

a. *Table 1. Ecosystem credits required to be retired – like for like*

Impacted plant community type	Number of ecosystem credits	HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
PCT 1619 Smooth-barked Apple - Red Bloodwood - Brown Stringybark - Hairpin Banksia heathy open forest of Coastal Lowlands	45	Yes	Wyong, Hunter, Pittwater and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Sydney Coastal Dry Sclerophyll Forests.

Like for like species credit retirement

1. Prior to commencement of any works including prior to any vegetation clearing, the class and number of species credits in Table 2 must be retired to offset the residual biodiversity impacts of the development.
2. The requirement to retire species credits outlined in Table 2 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the Biodiversity Conservation Fund Charge System.

3. Evidence of the retirement of ecosystem credits or payment to the Biodiversity Conservation Fund must be provided to the consent authority prior to commencement of any works, including prior to any vegetation clearing works.

b. Table 2. Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
<i>Myotis Macropus</i> /Southern Myotis	62	Anywhere in NSW
<i>Petaurus norfolcensis</i> /Squirrel Glider	60	Anywhere in NSW

- 3.13. Prior to commencement of any works, including any vegetation clearing works, a site specific Biodiversity Management Plan for Stages 3, 4 and 5 must be approved by Council's Ecologist.

The Biodiversity Management Plan must identify the development site as per the Biodiversity Development Assessment Report and approved plans.

The Biodiversity Management Plan must identify any trees that are to be retained as outlined in the Arboricultural Impact Assessment and approved plans.

Construction impacts must be restricted to the development site and must not encroach into areas of retained native vegetation and habitat, including Residue Lot 2193. All materials stockpiles, vehicle parking, machinery storage and other temporary facilities must be located within the areas for which biodiversity impacts were assessed in the Biodiversity Development Assessment Report. The extent of development footprint must be fenced prior to commencement of any works.

The BMP must include a dam dewatering plan.

The Biodiversity Management Plan must identify all impact mitigation and minimisation measures from the approved Biodiversity Development Assessment Report (Andersen Environment and Planning, 10 April 2023) to mitigate and manage impacts on biodiversity, including performance measures for each commitment. It must also include all relevant conditions of consent.

Note: A service fee applies for Council to review compliance with a condition of development consent where the concurrence of Council staff is required, as identified in Council's Fees and Charges.

- 3.14. A minimum of eight (8) nest boxes and/or salvaged hollows are to be installed as detailed in the Biodiversity Development Assessment Report no less than 4 weeks prior to commencement of clearing.
- 3.15 Implement the impact mitigation and minimisation measures in the Biodiversity Management Plan for Stages 3, 4 and 5 approved under this consent and the approved Biodiversity Development Assessment Report (Andersen Environment and Planning, 10

April 2023). Where these recommendations contained within the Biodiversity Development Assessment Report are inconsistent, the conditions of consent prevail.

3.16. Applicant responsibility

Ensure that all parties / trades working on the site are fully aware of their responsibilities with respect to tree protection conditions.

3.17 Tree Protection

Tree protection is to be as per the recommendations within sections 6,7 and Appendix A & D of the Arboricultural Impact Assessment, prepared by AEP, dated 6/4/23.

Sign-post fences around Tree Protection Zones to warn of its purpose.

4. DURING WORKS

4.1 All conditions under this section must be met during works. Each condition applies to **all stages** unless specified otherwise

4.2 Carry out construction or demolition works during the construction phase of the development only between the hours as follows:

- 7.00am and 5.00pm Monday to Saturday

No construction or demolition works associated with the development are permitted to be carried out at any time on a Sunday or a public holiday.

4.3 During the construction phase of the development, if any Aboriginal object (including evidence of habitation or remains), is discovered during the course of the work:

- a) All excavation or disturbance of the area must stop immediately in that area, and
- b) The Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

Note: If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

4.4 Implement and maintain all erosion and sediment control measures at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

4.5 Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.

- 4.6 Notify Council when plumbing and drainage work will be ready for inspection(s) and make the work accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*. This condition only applies if no installation / alteration of plumbing and / or drainage works are proposed (excludes stormwater drainage).
- 4.7 Place all building materials, plant and equipment on the site of the development during the construction phase of the development so as to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure. Further, no construction work is permitted to be carried out within the road reserve unless the works are associated with a separate approval issued under the provisions of the *Roads Act 1993*.
- 4.8 Re-use, recycle or dispose of all building materials in accordance with the Waste Management Plan submitted with the subject application. (BU026)
- 4.9 Arrange with the relevant service provider / Authority (eg. Ausgrid, Jemena, communications provider) for the supply of services concurrently with the engineering work approved by this consent. Arrangements must include, where required, any relocation of existing mains and services, and dedication of easements for mains and services.
- 4.10 During construction works, all cut or fill is to be constructed in such a manner that surface water will not be permanently or temporarily diverted to adjoining land and so that natural drainage from adjoining land will not be obstructed or affected.

Stockpiles are to be managed to suppress dust, prevent erosion and reduce the impact of sediment and other contaminants on the environment.

- 4.12. Supervision by a suitably qualified Ecologist is required for all vegetation clearing and certain construction works. The Ecologist must:
 - Mark trees for retention and removal
 - Supervise the installation of fencing around any conservation and No Go areas
 - Provide an environmental induction to civil contractors and subcontractors
 - Supervise all clearing, removal of habitat trees and any earthworks that may impact habitats, such as fill in of dams

The Ecologist must provide updates in writing to Council's Ecologist upon completion of the above environmental control measures. The outcomes of the clearing supervision are to be reported to Council's Ecologist within 14 days.

- 4.13 Install a temporary fence around the endangered ecological community / threatened species / Vegetation Management Zone.

All fenced conservation areas are to be clearly marked as a "No Go Area" on the fencing itself. No clearing of vegetation, storage of vehicles or machinery, stockpiling, materials storage or unauthorised access is to occur within the fenced conservation area.

- 4.14 Maintain the temporary fence around the conservation area. The fence must be maintained for the duration of construction works.
- 4.15. Undertake clearing in accordance with the approved tree removal/retention survey plan. Trees must be removed in such a manner so as to prevent damage to surrounding trees to be retained.
- 4.16. Manage native fauna appropriately during clearing and construction phase of the approved works. In this regard, an appropriately licensed Fauna Ecologist is to be engaged to advise and supervise the clearing of trees. Where, in spite of precautions, wildlife is injured, the Fauna Ecologist is to take the necessary action to treat the animal, which may include veterinary treatment or transfer of the animal to a volunteer wildlife carer group such as WIRES or Wildlife Arc.
- 4.17. Construction impacts and access must be restricted to the development site and must not encroach into areas of retained native vegetation and habitat, including Residue Lot 2193 and the area containing threatened orchid species. All materials stockpiles, vehicle parking, machinery storage and other temporary facilities must be located within the areas for which biodiversity impacts were assessed in the Biodiversity Development Assessment Report.
- 4.18 Implement the impact mitigation and minimisation measures in the Biodiversity Management Plan for Stages 3, 4 and 5 approved under this consent and the approved Biodiversity Development Assessment Report (Andersen Environment and Planning, 10 April 2023). Where these recommendations contained within the Biodiversity Development Assessment Report are inconsistent, the conditions of consent prevail.
- 4.19 Tree Removal
Trees to be removed to accommodate for the development as specified in sections 6 & Appendix A of the Arboricultural Impact Assessment report by AEP on the 6/4/23.
- 4.20. Arborist to supervise
Appoint a Project Arborist (AQF 5) to oversee the works in relation to tree protection measures during critical stages of construction. The Project Arborist is to ensure all trees identified for retention are retained with tree protection measures consistent with the Australian Standard AS4970-2009 Protection of Trees on Development Sites.
- 4.21 Restrictions within the TPZ
Activities generally excluded from the Tree Protection Zone, but not limited to:
 - Machine excavation, trenching, material storage, prepare chemicals or cement, park, refuel, dump waste, wash down, fill or change soil level.
- 4.22 Comply with all recommendations specified in the Acid Sulfate Soil Assessment by Douglas Partners (CCC ref: D15981157).
- 4.23 The developer is solely responsible for any costs relating to alterations and extensions of existing roads, drainage, water and sewer infrastructure and other utilities for the proposed development.

5. PRIOR TO ISSUE OF ANY SUBDIVISION CERTIFICATE

- 5.1 All conditions under this section must be met prior to the issue of any Subdivision Certificate. Each condition applies to **all stages** unless specified otherwise
- 5.2 Submit details to Council/Principal Certifier that demonstrate the completion of all works and implementation of any plans required under Development Consent No 1892/2021.
- 5.3 Submit to the Principal Certifying Authority certification prepared by a Registered Surveyor certifying that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. The certification must be accompanied by a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red and signed by the surveyor.
- 5.4 Submit written confirmation from the relevant service authorities that satisfactory arrangements have been made for the provision of the following services to each lot where available:
 - telecommunications
 - electricity supply
 - gas supply
 - national broadband network
 - water supply
 - sewerage
- 5.5 Include the following encumbrances within the plan of subdivision and Section 88B instrument with Council being nominated as the sole authority to release, vary or modify each encumbrance unless specifically noted otherwise. Wherever possible the extent of the land affected shall be defined by bearings and distances shown on the plan of subdivision:
 - Reciprocal 'Rights of Carriageway' between both Lots over the entire driveway.
 - 'Easement to Drain Water' as required.
 - 'Easement for Services' including water and sewer as required.
- 5.6 **STAGE 3A** Before the issue of a Subdivision Certificate pursuant to Section 7.11 of the Environmental Planning & Assessment Act, the applicant must pay the following contributions to Council for:

Warnervale District - Open Space Land	\$ 97,674.81
Warnervale District - Open Space Works	\$ 122,354.04
Warnervale District - Community Facilities Land	\$ 3,576.36
Warnervale District - Community Facilities Works	\$ 98,792.69
Warnervale District - Drainage Land	\$ 36,705.01
Warnervale District - Drainage Works	\$ 104,830.30
Warnervale District- East W'vale - Transport Land	\$ 18,362.09
Warnervale District- East W'vale - Transport Works	\$ 273,919.38
Warnervale District- East W'vale - Floodplain Restoration	\$ 11,512.46
Warnervale District - Stormwater Quality Works	\$ 77,689.83
Warnervale District - Plan Prep & Administration	\$ 16,230.04
TOTAL	\$ 861,647.02

The total contribution payable to Council under this condition is \$861,647.02 as calculated at the date of this consent, in accordance with the Warnervale District Section 7.11 Plan.

The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of Warnervale District Section 7.11 Plan. Contributions under Warnervale District Section 7.11 Plan are subject to quarterly indexation by CPI.

A copy of the Contributions Plan is available for inspection at 2 Hely St, Wyong or on Council's website: <https://www.centralcoast.nsw.gov.au/plan-and-build/development-contributions-plans-and-planning-agreements>.

- 5.7 **STAGE 3B** - Before the issue of a Subdivision Certificate pursuant to Section 7.11 of the Environmental Planning & Assessment Act, the applicant must pay the following contributions to Council for:

Warnervale District - Open Space Land	\$ 242,063.65
Warnervale District - Open Space Works	\$ 303,225.22
Warnervale District - Community Facilities Land	\$ 8,863.16
Warnervale District - Community Facilities Works	\$ 244,834.07
Warnervale District - Drainage Land	\$ 90,964.59
Warnervale District - Drainage Works	\$ 259,796.84
Warnervale District- East W'vale - Transport Land	\$ 45,506.05
Warnervale District- East W'vale - Transport Works	\$ 678,843.69
Warnervale District- East W'vale - Floodplain Restoration	\$ 28,530.88
Warnervale District - Stormwater Quality Works	\$ 192,535.66
Warnervale District - Plan Prep & Administration	\$ 40,222.28
TOTAL	\$ 2,135,386.10

The total contribution payable to Council under this condition is \$2,135,386.10 as calculated at the date of this consent, in accordance with the Warnervale District Section 7.11 Plan.

The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of Warnervale District Section 7.11 Plan. Contributions under Warnervale District Section 7.11 Plan are subject to quarterly indexation by CPI.

A copy of the Contributions Plan is available for inspection at 2 Hely St, Wyong or on Council's website: <https://www.centralcoast.nsw.gov.au/plan-and-build/development-contributions-plans-and-planning-agreements>

- 5.8 **STAGE 4A** - Before the issue of a Subdivision Certificate pursuant to Section 7.11 of the Environmental Planning & Assessment Act, the applicant must pay the following contributions to Council for:

Warnervale District - Open Space Land	\$ 288,777.69
Warnervale District - Open Space Works	\$ 361,742.37
Warnervale District - Community Facilities Land	\$ 10,573.60
Warnervale District - Community Facilities Works	\$ 292,082.75
Warnervale District - Drainage Land	\$ 108,519.16
Warnervale District - Drainage Works	\$ 309,933.07
Warnervale District- East W'vale - Transport Land	\$ 54,287.92
Warnervale District- East W'vale - Transport Works	\$ 809,848.61
Warnervale District- East W'vale - Floodplain Restoration	\$ 34,036.84
Warnervale District - Stormwater Quality Works	\$ 229,691.67
Warnervale District - Plan Prep & Administration	\$ 47,984.48
TOTAL	\$ 2,547,478.15

The total contribution payable to Council under this condition is \$2,547,478.15 as calculated at the date of this consent, in accordance with the Warnervale District Section 7.11 Plan.

The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of Warnervale District Section 7.11 Plan. Contributions under Warnervale District Section 7.11 Plan are subject to quarterly indexation by CPI.

A copy of the Contributions Plan is available for inspection at 2 Hely St, Wyong or on Council's website: <https://www.centralcoast.nsw.gov.au/plan-and-build/development-contributions-plans-and-planning-agreements>

- 5.9 **STAGE 4B** - Before the issue of a Subdivision Certificate pursuant to Section 7.11 of the Environmental Planning & Assessment Act, the applicant must pay the following contributions to Council for:

Warnervale District - Open Space Land	\$ 161,375.77
Warnervale District - Open Space Works	\$ 202,150.15
Warnervale District - Community Facilities Land	\$ 5,908.78
Warnervale District - Community Facilities Works	\$ 163,222.71
Warnervale District - Drainage Land	\$ 60,643.06
Warnervale District - Drainage Works	\$ 173,197.89
Warnervale District- East W'vale - Transport Land	\$ 30,337.37
Warnervale District- East W'vale - Transport Works	\$ 452,562.46
Warnervale District- East W'vale - Floodplain Restoration	\$ 19,020.59
Warnervale District - Stormwater Quality Works	\$ 128,357.11
Warnervale District - Plan Prep & Administration	\$ 26,814.86
TOTAL	\$ 1,423,590.73

The total contribution payable to Council under this condition is \$1,423,590.73 as calculated at the date of this consent, in accordance with the Warnervale District Section 7.11 Plan.

The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of Warnervale District Section 7.11 Plan. Contributions under Warnervale District Section 7.11 Plan are subject to quarterly indexation by CPI.

A copy of the Contributions Plan is available for inspection at 2 Hely St, Wyong or on Council's website: <https://www.centralcoast.nsw.gov.au/plan-and-build/development-contributions-plans-and-planning-agreements>

- 5.10 **STAGE 5** - Before the issue of a Subdivision Certificate pursuant to Section 7.11 of the Environmental Planning & Assessment Act, the applicant must pay the following contributions to Council for:

Warnervale District - Open Space Land	\$ 135,895.38
Warnervale District - Open Space Works	\$ 170,231.70
Warnervale District - Community Facilities Land	\$ 4,975.81
Warnervale District - Community Facilities Works	\$ 137,450.70
Warnervale District - Drainage Land	\$ 51,067.84
Warnervale District - Drainage Works	\$ 145,850.86
Warnervale District- East W'vale - Transport Land	\$ 25,547.26
Warnervale District- East W'vale - Transport Works	\$ 381,105.23
Warnervale District- East W'vale - Floodplain Restoration	\$ 16,017.34
Warnervale District - Stormwater Quality Works	\$ 108,090.20
Warnervale District - Plan Prep & Administration	\$ 22,580.93
TOTAL	\$ 1,198,813.25

The total contribution payable to Council under this condition is \$1,198,813.25 as calculated at the date of this consent, in accordance with the Warnervale District Section 7.11 Plan.

The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of Warnervale District Section 7.11 Plan. Contributions under Warnervale District Section 7.11 Plan are subject to quarterly indexation by CPI.

A copy of the Contributions Plan is available for inspection at 2 Hely St, Wyong or on Council's website: <https://www.centralcoast.nsw.gov.au/plan-and-build/development-contributions-plans-and-planning-agreements>

- 5.11. Prepare and submit a final certification report detailing the level of compliance for each stage of the development. The report with all conditions relating to ecology/trees must be prepared by the engaged Ecologist and forwarded to Council for review.
- 5.12. Complete construction of all subdivision works covered by the Subdivision Works Certificate(s). Completion of works includes the submission and acceptance by Council of all work as executed drawings plus other construction compliance documentation and payment of a maintenance/defects bond to Council in accordance with Council's adopted fees and charges.
- 5.13. Construct any additional civil works, where required by Council, to ensure satisfactory transitions to existing site formations and pavements where designs contained in the Roads Act Works Approval and/or the Subdivision Works Certificate do not adequately address transition works.
- 5.14. Repair any damage to Council's infrastructure and the road reserve as agreed with Council. Damage not shown in the dilapidation report submitted to Council before the development works had commenced will be assumed to have been caused by the development works unless the Developer can prove otherwise.
- 5.15. Achieve a minimum of 95% standard compaction for all lots filled in accordance with Australian Standard AS 1289: Methods of testing soils for engineering purposes. Certification by a practising Geotechnical Engineer that all lot fill has been inspected and tested to Level 1 Inspection and Testing requirements of AS 3798: Guidelines on earthworks for Commercial and Residential Developments and the minimum compaction has been achieved is to be provided to Council / Principal Certifier.
- 5.16. Complete construction of all works within the road reserve in accordance with the Roads Act Works Approval. Completion of works includes the submission and acceptance by Council of all work as executed drawings plus other construction compliance documentation and payment of a maintenance/defects bond to Council in accordance with Council's Fees and Charges.
- 5.17. Obtain the Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development from Central Coast Council as the Water Supply Authority, prior to issue of the Subdivision Certificate.

All water supply and sewer works for the development must be completed and all other conditions of the Section 306 letter satisfied. Completion of works includes the submission and acceptance by Council of all work as executed drawings plus other construction compliance documentation and payment of a maintenance / defects bond to Council in accordance with Council's adopted fees and charges.

- 5.18 Submit to Council written confirmation from the relevant service authorities that satisfactory arrangements have been made for the provision of the following services to each lot where available:

- Telecommunications / national broadband network (NBN)
- electricity supply

Provide documentation that demonstrates that provision for gas supply to all lots.

- 5.19 Show on the plan of subdivision at no cost to Council the dedication of road reserve to Council resulting from a 5.0 metres x 5.0 metres splay corner on all proposed corner lots located at road intersections.

- 5.20. Include on the Deposited Plan (DP) an Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants must be defined by bearings and distances shown on the plan. The plan and instrument must:

- a) Create a 'Restriction on the use of Land' over all lots containing an on-site stormwater detention system restricting any alterations to such a facility or the erection of any structure over the facility or the placement of any obstruction over the facility.
- b) Create a 'Restriction on the use of Land' over all lots containing a nutrient / pollution control facility restricting any alteration to such a facility or the erection of any structure over the facility or the replacement of any obstruction over the facility.
- c) Create an easement to drain water 1.5 metre wide as indicated on the approved plans.

Note: Standard wording, acceptable to Council, for covenants can be obtained by contacting Council Subdivision Certificate Officer.

- 5.21. Submit to Council a "Pre-Opening" stage Road Safety Audit for the Warnervale Road Intersection prepared by an Audit team of a minimum Level 3 and Level 2 Road Safety Auditor registered on the NSW Register of Road Safety Auditors. No recommendations are to be made in the Road Safety Audit to address any identified deficiencies. Resolutions of the identified deficiencies are to be carried out in consultation with Council with sign off of the Corrective Actions by Council. Any works required as a

result of the signed off Corrective Actions are to be satisfactorily completed and accepted by Council prior to issue of the Subdivision Certificate.

- 5.22. Include on the Deposited Plan (DP) of subdivision the following:
 - a. Dedication to Council of all roads as public road to the boundary of adjoining sites.
- 5.23. Provide a report to Council prepared by a practising Geotechnical Engineer classifying each of the proposed and completed lots in accordance with AS 2870: Residential Slabs and Footings, prior to issue of a Subdivision Certificate.
- 5.24. Submit, and have approved, an application for a Subdivision Certificate to Council / Principal Certifier. The Subdivision Certificate application is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2021.
- 5.25. All water and sewer works for the development must be approved by Council as the Water and Sewer Authority.
- 5.26. Legal and physical access to the subdivision is to be provided to Council's satisfaction.
- 5.27. Carry out the landscaping and street tree planting as shown on the adopted landscape plan for each stage.

6. ONGOING

- 6.1. Use external lighting that minimises overspill into retained vegetated areas.
- 6.2. Monitor nest boxes/salvaged hollows to determine their usage and to carry out repairs or replacement as required every six months for a minimum period of five years following installation. Monitoring and reporting is to be undertaken by the consulting Ecologist and reports are to be submitted to Council after each monitoring event.

Item No: 1.2
Title: DA/42661/2012/E - 69-71 Avoca Drive, Avoca Beach - Alterations & Additions to existing Theatre
Department: Environment and Planning

Central Coast
Local Planning Panel

22 August 2024 Local Planning Panel Meeting

Reference: DA/42661/2012/E - D16282236
Author: Robert Eyre, Principal Development Planner. Residential Assessments
Section Manager: Ailsa Prendergast, Section Manager. Residential Assessments
Manager: Andrew Roach, Unit Manager. Development Assessment

Recommendation

- 1 That the Local Planning Panel grant consent to DA/42661/2012/E – 69 Avoca Drive, Avoca Beach – Proposed Alterations and Additions to existing Theatre, subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.**
- 2 The consent be modified by:**
 - a. The amendment of conditions 1.1A, 1.1, 2.2, 2.7, 2.13.**
 - b. The addition of conditions 1.5, 2.22, 2.9, 5.23, 5.24.**
 - c. The deletion of condition 6.14.**
- 3 That Council advise those who made written submissions of the Panel's decision.**
- 4 That Council advise relevant external authorities of the Panel's decision**

Background

This matter was previously considered by the Local Planning Panel on 16 May 2024. The matter was deferred at that meeting (see report included as Attachment 19, and further explanation below).

Subject Land

The subject land comprises Lot 140 DP 9359 and Lot 651 DP 16791, No's. 69 and 71 Avoca Drive, Avoca Beach, having an area of 1,802.10m². No.69 (Lot 651) Avoca Drive, Avoca Beach is occupied by a commercial premises known as the *Avoca Beach Theatre*. An existing part one and two storey theatre building is located on. The building contains the theatre itself, as well as the box office, toilets, projection room, storage rooms and first floor office. An awning extends out over the footpath at the entry to the theatre off Avoca Drive. No.71 Avoca Drive,

1.2 DA/42661/2012/E - 69-71 Avoca Drive, Avoca Beach - Alterations & Additions to existing Theatre (cont'd)

Avoca Beach (Lot 140) is occupied by three outbuildings (metal, weatherboard and fibro respectively) and a single storey weatherboard garage.

Previous Consent/s

Consent was originally granted to DA/42661/2012 on 18 April 2017 by the NSW Land & Environment Court (LEC), comprising:

- Demolition of the existing cottage, shed, outbuildings and shade sails on Lot 140 and removal of the disused speaker box and ramp from the rear of the existing theatre on Lot 651, as well as the staircase and ancillary storage rooms on the northern side of the theatre;
- Preparation of the site, including removal of existing trees and the undertaking of earthworks and excavation for the basement; and
- Construction of a part two, part three storey building to the north and east of the existing theatre to provide one mixed use commercial and residential building containing four cinemas and associated foyers and facilities; terrace; cafe/gallery and five apartments.

Since that time there have been a number of modification applications, which are elaborated upon in the original report considered by the Panel (16 May 2024, refer Attachment 19). The development has physically commenced.

Proposed Development

The applicant is seeking to further modify the consent for Development Application DA/42661/2012 under section 4.56(1) of the *Environmental Planning & Assessment Act 1979*, by amendment of approved plans. The amendments are broadly set out as follows:

- Amendments to the basement through addition of plant room, alterations to waste storage, relocation of disabled parking spaces and amendment to access ramp;
- Amended layout to ground, first and second floor including amended entries, layout and seating adjustments to cinemas, residential circulation spaces amended, altered layout to units including balcony layout;
- Amendment to roof which includes rood height and shape, and additional of solar panels to assist in BASIX requirements; and
- Total reduction of cinema seating from 616 to 462, a reduction of 154 seats.

Further details on the proposed modifications are provided in the assessment report at Attachment 19.

Previous Consideration By Local Planning Panel

The Panel considered the matter at its meeting on 16 May 2024 (report included as Attachment 19).

The minutes of that meeting set out that the item was deferred from consideration, as follows:

'The registered speakers for Item 3.1 – DA/42661/2012/E were briefed by the Chair, that this matter would need to be rescheduled to another panel meeting due to procedural issues and will be re-scheduled – see Item 3.1.

The Chair explained that the main reasons for deferring consideration of this matter to a future public meeting included:

- *Lack of certainty that reasonable notice had been given by Council to submitters of the public meeting as required by the Local Planning Panels Direction – Operational Procedures and that the notification requirements of Central Coast Local Planning Panel Operational Guideline had been met, which requires all people who have made written submissions to be notified of the Panel meeting the week prior to the meeting.*
- *The business papers inadvertently did not include a copy of the current set of proposed plans which the Panel was advised had not been notified. A set of plans were provided to the Panel on the day of the Panel meeting, however there was no opportunity for the Panel to review such late material ahead of the meeting; and*
- *Uncertainty whether the current plans were available to the public on Council's website notwithstanding they were not attached to the business paper and had not previously been notified.*

Accordingly, to ensure procedural fairness and compliance with the relevant direction and guidelines are achieved, the Panel postponed hearing from speakers and considering this matter until all such matters had been satisfactorily met.'

The minutes of the meeting also include the following as formal reasons for the deferral of the matter at the meeting:

'The Local Planning Panel deferred consideration of this matter to a future public meeting in order for Council to address the following matters detailed below:

- *A full set of the final proposed plans and the original court approved plans with the business papers.*

- *Provide the Panel with copies of all supporting documentation related to and referenced in the assessment report and draft conditions. This should include a copy of the original conditions issued by the Land and Environment Court and reasons given by the Court for granting consent pursuant to S. 4.56(1A).*
- *Provide a detailed assessment of the application against the original approval as required by Section 4.56 of the Environmental Planning and Assessment Act 1979. This should include but not be limited to key matters of building height, FSR, car parking, view loss, urban design and architectural quality.*
- *The Panel noted that Council's Architect had significant concerns with the proposed modified design and that the matter has not been before a design review panel. In the absence of a design review panel and noting the matters not supported by Council's architect compared to the originally approved scheme, the Panel suggests Council consider obtaining an independent design review of the proposed modified scheme against the originally approved development as part of its detailed assessment against the provisions of Section 4.56 of the Act.*
- *Confirm that the updated view impact assessment is based on an assessment of view impacts from all previously identified view impacted residences against the current set of proposed plans. Further, given the proposed increase in height provide confirmation that no additional properties would be significantly impacted by the proposed modification, beyond those previously considered acceptable by the Court approval.*
- *Provide more detailed assessment in relation to Section 7.18(3) and (5) of CCLEP 2022.*
- *Correct all reporting errors throughout the report in relation to proposed FSR and Height numerical figures and percentages and associated commentary regarding compliance and non-compliance.*
- *Clarify whether a VPA applies to the site given inconsistencies in reporting between the consultant documentation, Council's assessment report and the briefing.*
- *Confirmation whether the proposed modification plans require re-notification having due regard to the public interest in the matter and whether people who lodged a submission (either for or against) are also re-notified in accordance with Council's notification policy.*

- *Once an updated business paper that addresses all of the above matters is prepared, a copy is to be issued to the planning panel at least a week prior to the public meeting date in accordance with the Operational Guidelines.*
- *Council is to ensure that all people who lodged a submission receive notice of the date and time of the public meeting at least the week prior to the meeting as per Council's Local Planning Panel Operational Guidelines.*
- *Confirm that the proposed plans and all documentation submitted following the initial notification of the modification application have been uploaded to Council's website and are available for public viewing.*

Once the above matters have been addressed, a public Local Planning Panel determination meeting will be held.'

Each of the matters set out in the deferral are dealt with separately in the following pages of this report

CONSIDERATION OF MATTERS FOR DEFERRAL

A comment is made below, and on the following pages, in respect to each of the reasons for deferral at the Panel meeting of 16 May 2024:

A full set of the final proposed plans and the original court approved plans with the business papers.

Comment:

The originally approved (Land & Environment Court) plans are included as Attachment 1 and LEC conditions are included as Attachment 2.

The current/proposed plans are included as Attachment 5.

Provide the Panel with copies of all supporting documentation related to and referenced in the assessment report and draft conditions. This should include a copy of the original conditions issued by the Land and Environment Court and reasons given by the Court for granting consent pursuant to S. 4.56(1A).

Comment:

Refer to various attachments:

- Attachment 2 - original conditions issued by Land and Environment Court.
- Attachment 3 - current consent as modified.
- Attachment 7 - proposed conditions.

- Attachment 8 to 13 (inclusive) - supporting documentation, including View Impact Assessment, Apartment Design Guide Report, Design Verification Statement, Landscape Plan.

In relation to the Land and Environment Court determination, the Court did not give reasons for the imposition of conditions, as such, other than that referred to in Condition 6.14 which relates to restriction of hours during the peak summertime school holidays to avoid conflict with peak beach use.

The applicant has requested condition 6.14 be deleted as the reduction in the seating capacity decreases the parking demand generated by the proposal on the basis that the condition is no longer considered necessary. This issue is addressed below in more detail.

The Court judgement itself (*Norman McDonald & Anor v Central Coast Council* [2017] NSWLEC 1207) provides various reasons for the determination decision. In the findings within the judgement, Commissioner O'Neill C stated:

66. *Much of the objector evidence and the written submissions can be distinguished as objections to the amending LEP 456, which on its making inserted cl 49DN into the GPSO. The exhibition of the (then proposed) VPA, from 19 July 2006 until 16 August 2006 attracted 518 submissions against the VPA (and 2 in support) and Council, confronted with that opposition, resolved to execute the VPA (exhibit E, volume 3, f 435) and did so. The insertion of cl 49DN into the GPSO is merely a historical matter from the perspective of this appeal and I am bound to give weight to the fact that the application is to use the site for the specific permitted purpose for which it is zoned (BGP Properties v Lake Macquarie (2004) 138 LGERA 237 [117]). The relatively recent making of LEP 2014, including extensive community consultation, contains the enabling clause at 2.5 demonstrating that Council has recently looked again at the potential development of this site and confirmed that the permitted use is appropriate, subject to the considerations in Schedule 1(5) of LEP 2014 (BGP Properties v Lake Macquarie (2004) 138 LGERA 237 [119]). Importantly though, the zoning does not create a presumption that the use will necessarily be achieved, as the acceptability of the proposal depends on whether the design results in acceptable environmental impacts with reference to the matters for consideration under s 79C of the EPA Act.*

67. *I am satisfied that the proposal is consistent with the development envisaged by cl 49DN of the GPSO, as the proposal complies with the provisions of cl 49DN of the GPSO, including the maximum floor space ratio (FSR) of 1:1 and height of 10m, except as provided by sub-clause (5). The two merits contentions raised by the Council in this appeal, that the development application should be refused because the proposed development will have*

an adverse impact on the heritage character and qualities of the Avoca Beach Theatre and that inadequate car parking is provided for the proposed development, have not been made out, for the reasons given in the judgment.

68. *I am satisfied that the design of the proposal, by Artichoke Design Studios, provides a high standard of urban design and architectural quality, including the interface between the existing building and Hunter Park and it complements the heritage qualities of the existing Avoca Beach Theatre building; that it is consistent with the development envisaged by the amending LEP 456 and LEP 2014; and it satisfies the relevant aims and guidelines of SEPP 71. This new layer of development will harmonise with the special character and qualities of the Avoca Beach Theatre and its setting. For these reasons, the proposal can be granted consent.'*

The complete judgement is included in Attachment 16 for the information of the Panel.

Provide a detailed assessment of the application against the original approval as required by Section 4.56 of the Environmental Planning and Assessment Act 1979. This should include but not be limited to key matters of building height, FSR, car parking, view loss, urban design and architectural quality.

Comment:

A comparison table is included below which compares the proposed modification to the originally determined application (by the LEC) and the various other amendments approve over time.

It is considered the proposal is substantially the same development for which the consent was originally granted and as modified, and therefore satisfies the requirements of 4.56(1)(a).

Item	Original DA	Part A	Part B	Part D	Proposed Part E	Difference Original to Part E
GFA	1801.96m ²	1588.68m ²	1712.63m ²	No change	1874.40m ²	+72.44m ² or 4%
FSR	1:1	0.88:1	0.95:1	No change	1.04:1	+0.04:1 or 4%
Building Height	RL14.2m	No Change	RL 14.9m	No Change	RL 15.145m	+0.945m
Car Parking Spaces	14	14	14	14	14	Nil
Cinema Seating	4 cinemas-613	4 cinemas-614	4 cinemas-616	No change	4 cinemas-462	-151
Residential Units	5	5	5	No change	5	Nil

The increase in height from the original approval does not result in any significant view loss from surrounding properties. Refer View Assessment in Attachments and 8 and 15.

The proposal achieves a high standard of urban design and architectural quality, including in relation to the interface between the development and the adjoining public park. The reduction in cinema seating and number of residential bedrooms reduces the likely traffic impact generated by the proposal on the community use of the beach and park area. The proposal adds to the community activities in this location and economic and recreational facilities.

The proposed plans provided in Attachment 5 show the outline of the originally approved building for comparison purposes which has been used in the assessment of the current application.

The Panel noted that Council's Architect had significant concerns with the proposed modified design and that the matter has not been before a design review panel. In the absence of a design review panel and noting the matters not supported by Council's architect compared to the originally approved scheme, the Panel suggests Council consider obtaining an independent design review of the proposed modified scheme against the originally approved development as part of its detailed assessment against the provisions of Section 4.56 of the Act.

Comment:

An independent design review of the proposed modifications was undertaken by an external urban design/architect consultant in response to the LPP comments. The independent review, in summary, concludes:

"The proposed modifications will not cause any adverse environmental effects beyond those that have already been considered and approved under the original consent. As previously mentioned, building setbacks and landscaping remain consistent with that approved.

The proposed amendments to the approved FSR and building height does not significantly alter the visual relationship of the approved development to that of the existing character of the area and views enjoyed by surrounding developments.

Given the above brief review and consideration of the detailed submission, it is considered that sufficient planning grounds exist to support the proposed modification application".

The Written independent design review is included in Attachment 18.

Confirm that the updated view impact assessment is based on an assessment of view impacts from all previously identified view impacted residences against the current set of proposed plans. Further, given the proposed increase in height provide confirmation

that no additional properties would be significantly impacted by the proposed modification, beyond those previously considered acceptable by the Court approval.

Comment:

The view impact assessment is based on all previous and current submissions which raised view loss as an issue. The view impact assessment is based on the amended plans referred to in Attachment 5. Refer view impact assessment and statement. (Attachments 8 and 15).

Provide more detailed assessment in relation to Section 7.18(3) and (5) of CCLEP 2022.

Comment:

Clause 7.18 of the Central Coast Local Environmental Plan 2022 states:

- (1) This clause applies to Lot 140, DP 9359 and Lot 651, DP 16791, Avoca Drive, Avoca Beach, identified as "Avoca Beach Theatre" on the Key Sites Map.*
- (2) Development for the following purposes is permitted with development consent on land to which this clause applies—*
 - (a) entertainment facilities,*
 - (b) residential flat buildings,*
 - (c) restaurants or cafes.*
- (3) Development consent must not be granted to development referred to in subclause (2) unless the design of the development has been reviewed by a design review panel.*
- (4) In deciding whether to grant development consent, the consent authority must consider the following—*
 - (a) whether the development retains the existing theatre building,*
 - (b) whether the design of the development complements the heritage character of the existing theatre building,*
 - (c) whether the design of development achieves a high standard of urban design and architectural quality, including in relation to the interface between the development and the adjoining public park,*
 - (d) whether the design of the development is appropriate for the location of the land on the coast,*

- (e) *whether adequate car parking is provided,*
- (f) *whether the development provides measures to conserve water usage and increase water efficiency,*
- (g) *if applicable, the outcome of the review by the design review panel.*
- (5) *Subclause (3) does not apply to development if the Planning Secretary provides a written statement to the consent authority stating that the Planning Secretary considers the development is of a minor nature.*
- (6) *A building on land to which this clause applies resulting from development for the purposes of entertainment facilities may exceed the maximum height shown on the Height of Buildings Map if the consent authority is satisfied the part of the building that exceeds the maximum height is an integral part of the design of the building.*
- (7) *In this clause—*
- design review panel means a panel of 2 or more persons established by the consent authority for the purposes of this clause.*

There is currently no design review panel constituted for the Central Coast local government area, other than for proposals within the Gosford City Centre.

In the absence of a formal design review panel, Council has a list of approved design/architecture experts that it calls on to provide independent review and comment on the architectural and design merit of proposals and compliance with such measures as the NSW Apartment Design Guide.

For this application, Council assessment staff sought external urban design/architectural assessment which is provided for the information of the Panel.

The proposed development meets the requirements of Clause 7.18 of the Central Coast LEP and the Panel can be satisfied that the provisions of 7.18(4) have been complied with.

Correct all reporting errors throughout the report in relation to proposed FSR and Height numerical figures and percentages and associated commentary regarding compliance and non-compliance.

Comment:

The following tables shows the variations with development standards for building height and floor space ration from the Central Coast LEP 2022.

Development Standard	Required	Approved	Proposed	Compliance with Controls	Variation %	Compliance with Objectives
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1.2 DA/42661/2012/E - 69-71 Avoca Drive, Avoca Beach - Alterations & Additions to existing Theatre (cont'd)

cl. 4.3 (Height of Buildings)	10m	11.5m	11.745m	No	17.45%	Yes
cl. 4.4 (Floor Space Ratio)	1.:1	0.95:1	1.04:1	No	4%	Yes

Clarify whether a VPA applies to the site given inconsistencies in reporting between the consultant documentation, Council's assessment report and the briefing.

Comment:

A Voluntary Planning Agreement (VPA) applies to the site and is referred to in the conditions of consent granted by the Land and Environment Court.

This condition is not proposed to be modified and is retained in the proposed conditions. (Refer condition 2.20 in the recommended conditions at Attachment 7).

The VPA was entered into as an agreement to amend the planning instrument which existed at the time (Gosford Planning Scheme Ordinance) to facilitate and permit the redevelopment of the site as now proposed.

The VPA requires the payment of \$500,000.00 prior to the issue of a Construction Certificate and is to be used by Council for public works in the area, including car parking and upgrading nearby Hunter Park.

Confirmation whether the proposed modification plans require re-notification having due regard to the public interest in the matter and whether people who lodged a submission (either for or against) are also renotified in accordance with Council's notification policy.

Comment:

The current application (Part E) was lodged on 11 October 2022. The application was initially notified from 21 October 2022 to 11 November 2022 with 332 public submissions received.

(273 submissions were in support of the proposed development and 59 submissions objected to the proposed development).

The amendments within those plans placed on public exhibition proposed:

- A further height increase of 0.845m to the current approved plans (Part D, which as a current approved height of RL 14.9m); and
- A proposed FSR of 1.09:1 (which was greater than the initial 1:1 floor space ratio initially approved by the Land & Environment Court in April 2017, and higher than the current approval, Part D, which has a Floor Space Ratio of 0.95:1).

During the assessment of the application, Council raised concerns with both the proposed additional height and floor space.

Subsequently, the applicant submitted revised plans, dated 14 September 2023, which:

- Reduced the height (the current plans propose a maximum height of RL 15.145m which is an increase of 0.245 metres over the existing approved height of RL 14.9m) and
- Reduced the floor space ratio to 1.04:1.

Chapter 1.2 of CCDCP 2022 sets out notification procedures. Section 1.2.2.10 specifically deals with situations where proposals have been notified, and then amended plans received during the assessment process. Section 1.2.2.10 states:

'..... if in the opinion of Council or staff with the appropriate delegated authority the amendments are minor, or will result in no additional impacts, the amendments will not require readvertisement or re-notification.'

The amended plans were not required to be re-advertised/notified under the provisions of 1.2.2.10 of CCDCP 2022 as the changes/amendments were reductions/improvements to the application. These changes are minor and create no additional impacts on the surrounding properties. Further, the amendments made were in response to a number of issues raised in the public submissions and during the preliminary assessment of the application.

All those who made a submission to the application were notified of the initial public Local Planning Panel meeting on 16 May 2024.

Once an updated business paper that addresses all of the above matters is prepared, a copy is to be issued to the planning panel at least a week prior to the public meeting date in accordance with the Operational Guidelines.

Comment:

All information will be sent to panel members at least a week before the public meeting, as is required for Local Planning Panel meetings.

Council is to ensure that all people who lodged a submission receive notice of the date and time of the public meeting at least the week prior to the meeting as per Council's Local Planning Panel Operational Guidelines.

Comment:

All those who made a submission to the application were notified of the initial public Local Planning Panel meeting on 16 May 2024.

All people who lodged a submission will again be notified in reasonable time of the public meeting as per the Local Planning Panel Operational Guidelines and standard practice.

Confirm that the proposed plans and all documentation submitted following the initial notification of the modification application have been uploaded to Council's website and are available for public viewing.

Comment:

All documents have been uploaded to Council's website and are available for public viewing.

Once the above matters have been addressed, a public Local Planning Panel determination meeting will be held.

Comment:

A public Local Planning Panel meeting will be arranged in sufficient time.

Additional Comment in Relation to Condition 6.14 –

The applicant requests, as part of the modification application, to delete condition 6.14 from the consent.

Condition 6.14 of the consent is as follows:

- 6.14. The cinemas are limited to 75% of their seating capacity prior to 4pm on Sundays during the summer public school holiday period in December/January. The Applicant will restrict seat availability in the cinemas through the cinema Point of Sale ticket system by 25% for screenings or other performances or events which commences before 4.00 pm. Records of daily ticket sales for these specified days will be kept and will be made available for inspection by Council or will be produced to Council on request.

The applicant contends that this condition was intended as a means by which ticket sales could be restricted to limit the parking impacts during the summer school holidays. With the currently approved 616 seat (total) capacity, the 25% restriction of sales would result in 462 seats being available.

This number is only four (4) seats less than the proposed 466 total seats under the current proposal.

Given the greatly reduced number of seats – and the fact that the current maximum is only 4 less than the proposed total, the applicant contends that this condition is superfluous and should be removed.

Comment:

The 25% reduction in seating and decrease in size of residential apartments has reduced the demand for car parking.

It is considered that the reduction in seating has satisfactorily addressed the previous concerns with parking conflict during peak summer school holiday periods.

In addition, additional street parking and public car parking is to be constructed by Council using funds from the previously mentioned VPA. It is also noted that the peak usage of the theatre is more likely to be of an evening or night time, which does not coincide with the peak use of the beach and associated areas which is more likely to be during the daytime.

Council's Development Engineer has no objection to the deletion of condition 6.14, on the basis of parking impacts.

In the event that the current modification application is approved, it is not considered that this condition is no longer necessary and Council assessment staff recommend its deletion as part of this determination.

Conclusion










Based on the considerations provided in the initial assessment report presented to the Panel at its meeting on 16 May 2024, and the further material provided within this supplementary report, it is concluded the proposed modifications are not without merit and will not hinder the attainment of objectives under s.1.3 of the EP & A Act. It is considered there are sufficient grounds to justify a further variation of the development standard to that originally approved and subsequently amended.

The proposed development is considered to be substantially the same development and the proposed modifications are not considered to have significant additional impacts on surrounding properties or the environment.



The Development Application has been assessed against the heads of consideration of s.4.15 and s.4.56 of the EP & A Act and all other relevant instruments and policies. The proposed modifications are considered reasonable and therefore it is recommended that Council grant approval to Development Application No. 42661/2012/E, including:

- Amendment of conditions 1.1A, 1.1, 2.2, 2.7, 2.13.
- The addition of conditions 1.5, 2.22, 2.9, 5.23, 5.24.
- The deletion of condition 6.14.

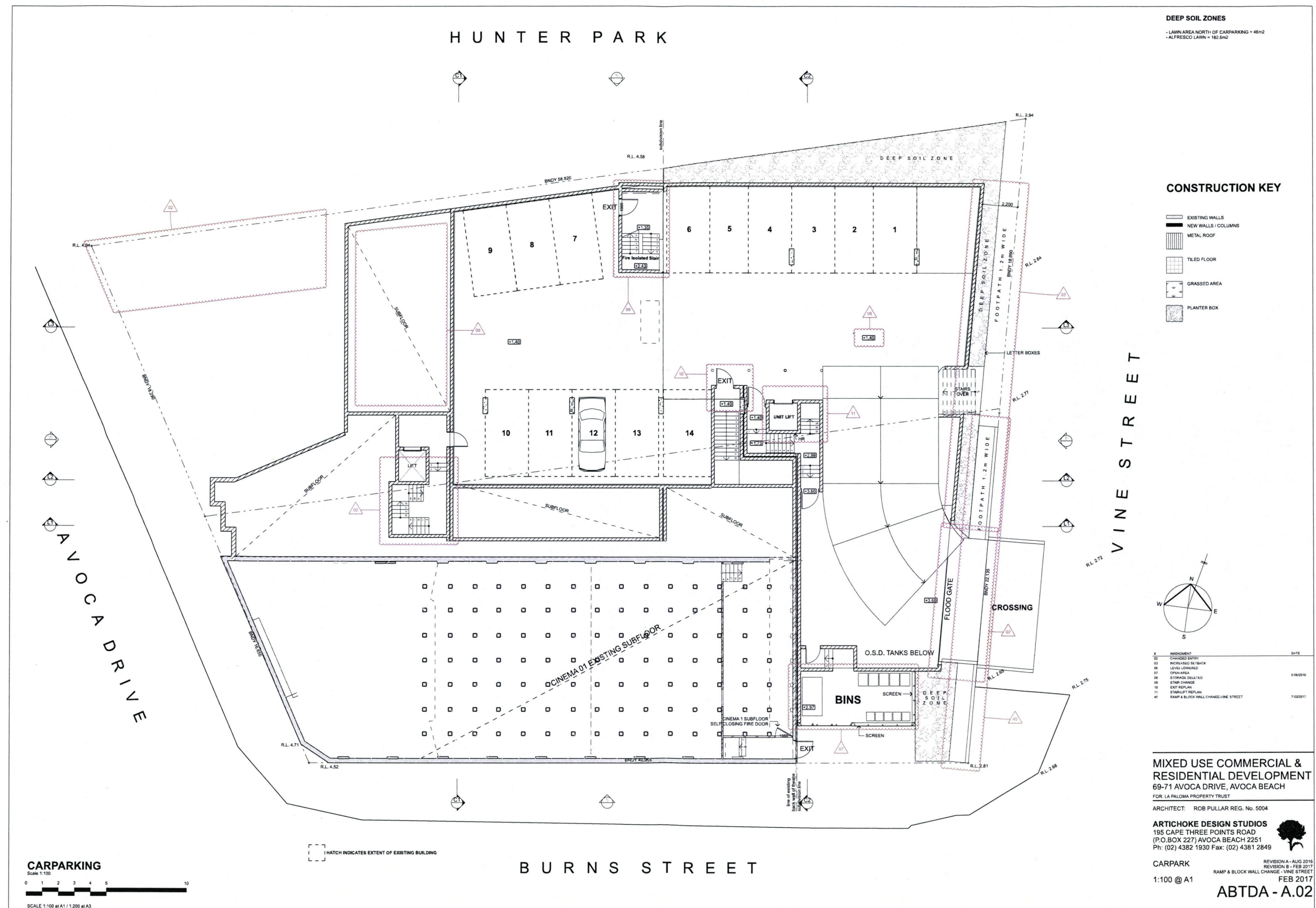
Attachments

 1	LEC Approved Plans DA42661 L651 DP16791 & L140 DP9359 H69-71 Avoca Dr Avoca Beach Part 1	ECMD23246807
 2	Annexure A - Conditions of Consent 155633.16 O'Neill (C) L&E Court NSW LEC 1090 DA 42661 H69 Avoca Drive Avoca Beach	ECMD23192378
 3	Approved Plans DA42661 L140 DP9359 H71 Avoca Drive AVOCA BEACH Part 3	ECMD24899443
 4	PUBLIC DA Assessment Section 4.55 Consent - 69 Avoca Dr, AVOCA BEACH NSW 2251 - DA 42661 2012 D - Johnson Projects	D15351409
 5	Architectural Plans (S4.56 Ver 8) - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D16105303
 6	PUBLIC - Redacted Notification Plans - Avoca Beach Theatre - 69 & 71 Avoca Dr Avoca Beach - DA/42661/2012/E	D16326712
 7	Draft conditions/reasons - Avoca Beach Theatre 69 & 71 Avoca Drive, AVOCA BEACH - DA/42661/2012/E - Central Coast Council	D16143009
 8	UPDATED View Impact Analysis[1] PAN-268705 - 69 Avoca Drive AVOCA BEACH - Avoca Theatre - 69 & 71 Avoca Drive AVOCA BEACH - DA/42661/2012/E	D15643909
 9	PUBLIC Apartment Design Guide Report - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367102

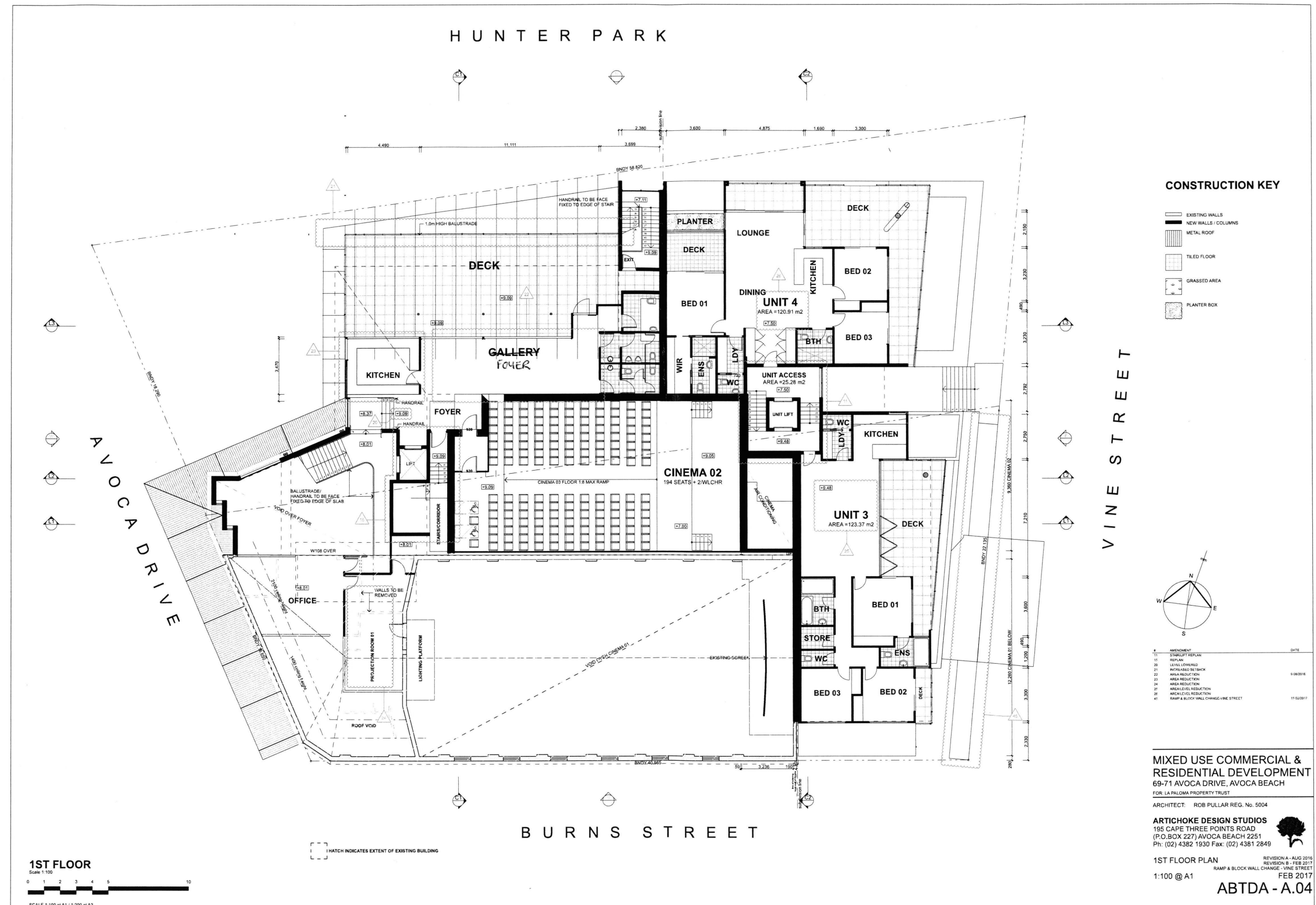
1.2 DA/42661/2012/E - 69-71 Avoca Drive, Avoca Beach - Alterations & Additions to existing Theatre (cont'd)

10 	PUBLIC Architectural Design Statement - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367082
11 	PUBLIC Design Verification Statement - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367081
12 	PUBLIC Landscape Plan - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367079
13 	Statement of Environmental Effects - DA/42661/2012/E - 69 Avoca Dr, Avoca Beach	D16122723
14 	Covering Letter - Deed of agreement - Avoca Beach Theatre - 69 Avoca Drive, AVOCA BEACH - DA/42661/2012/E	D16245193
15 	Visual Impact Analysis - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D16210627
16 	Land & Environment Court - NSWLEC - 2017- Ruling - Avoca Beach theatre Re Development Fee Accepted. - 69 Avoca Drive, AVOCA BEACH - DA/42661/2012/E	D16233718
17 	Assessment Report DA42661 L140 DP9359 H71 Avoca Drive AVOCA BEACH Part 3	ECMD24899306
18 	Cover Letter - DA/42661/2012/E - 69 Avoca Drive, AVOCA BEACH NSW	D16251449
19 	DA/42661/2012/E - 69 Avoca Drive, Avoca Beach - Alterations & Additions to existing Theatre	D15558924

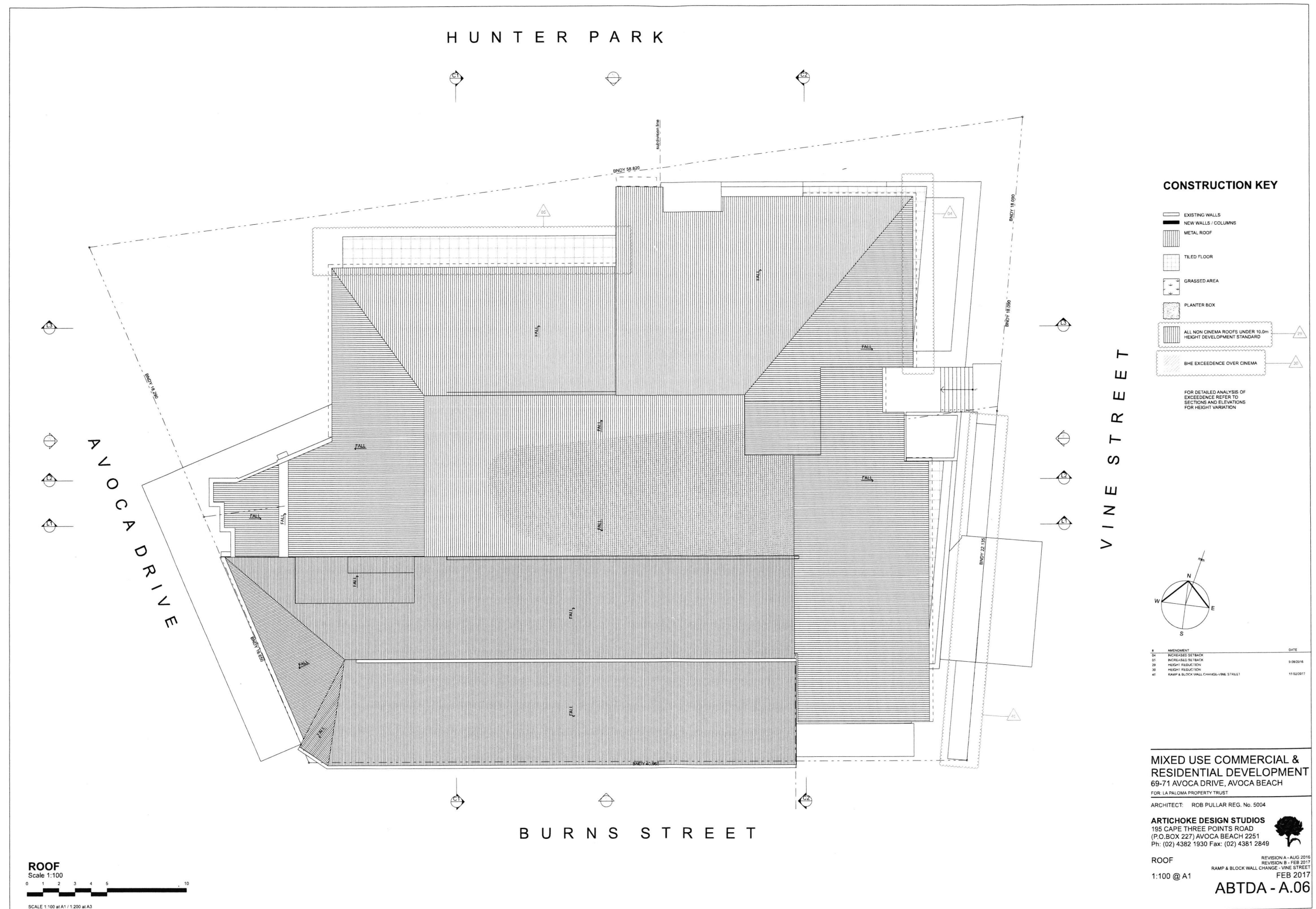


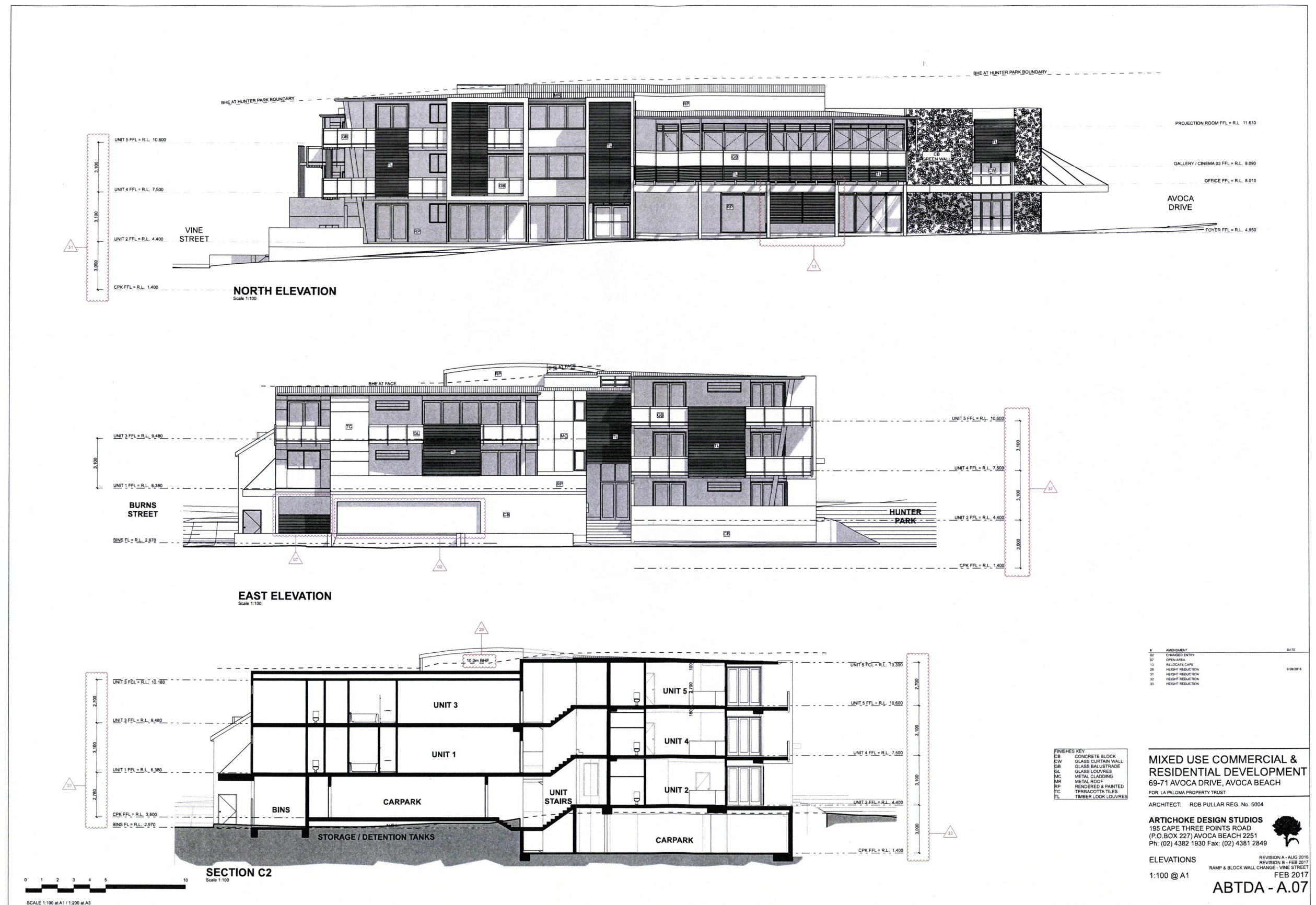


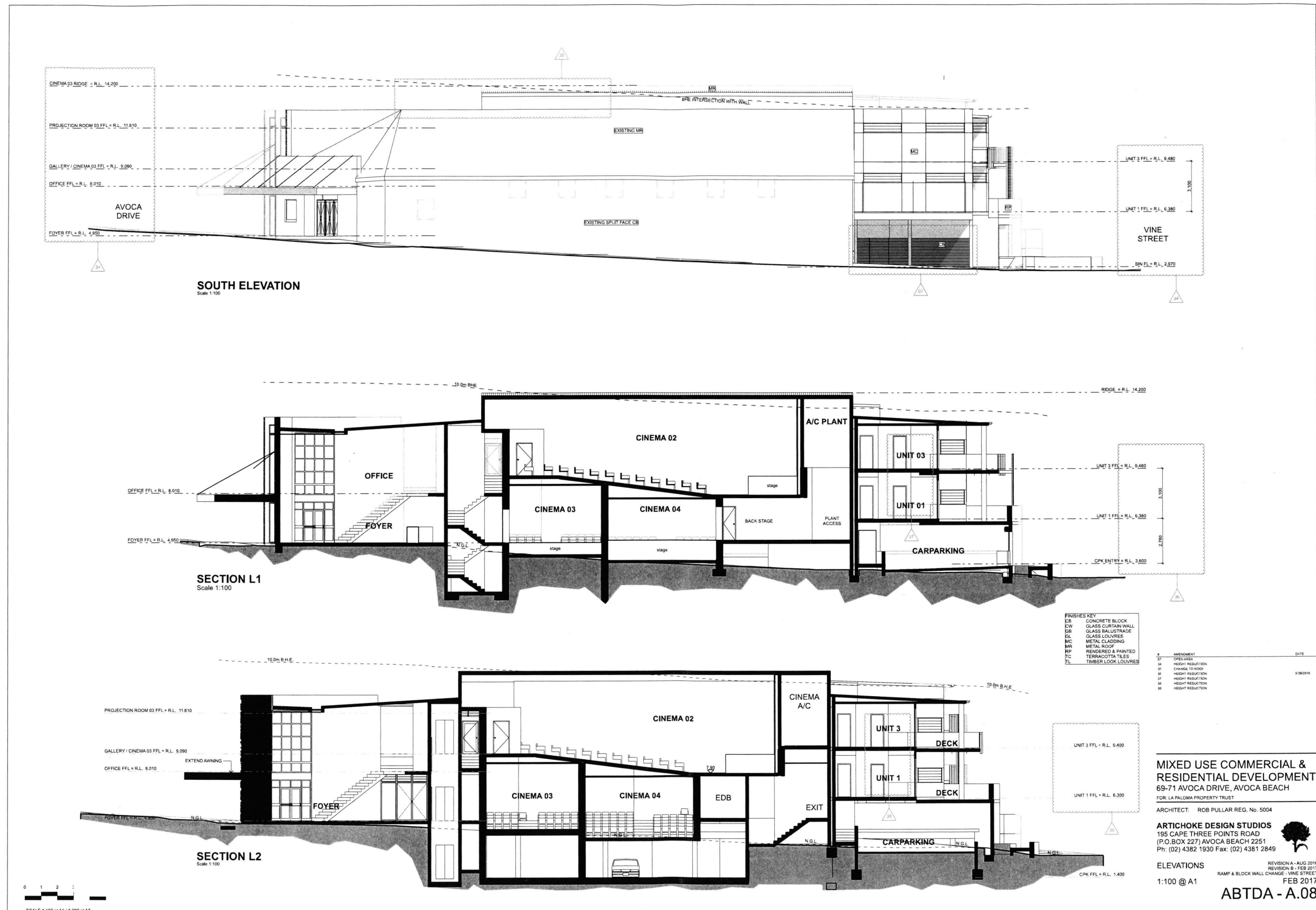


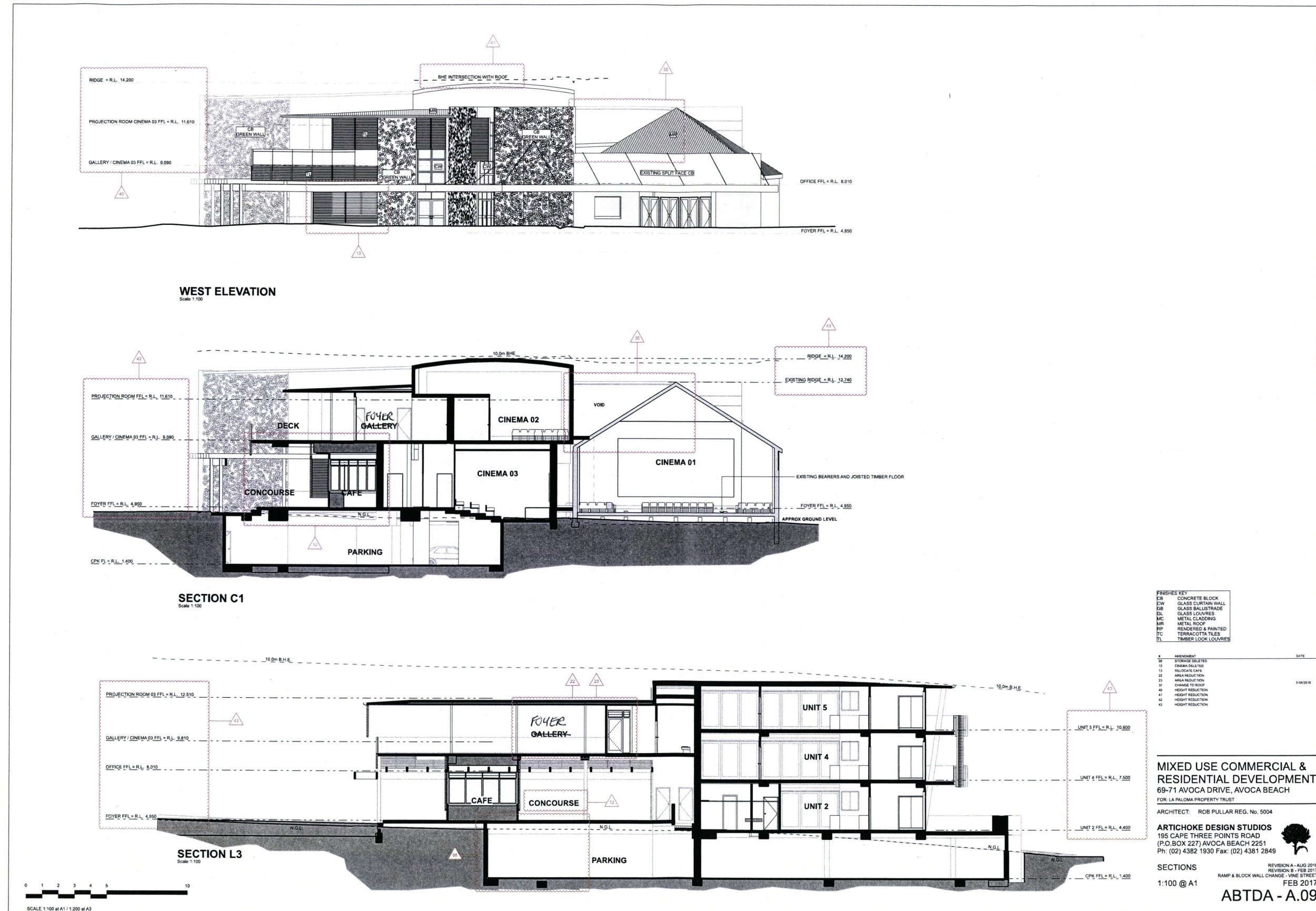


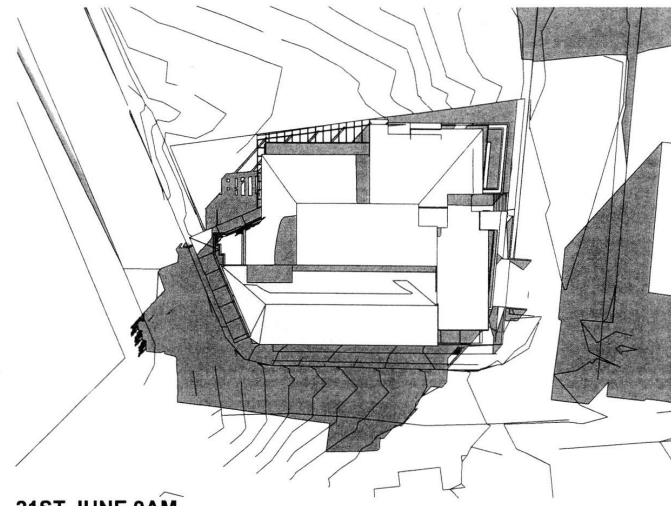




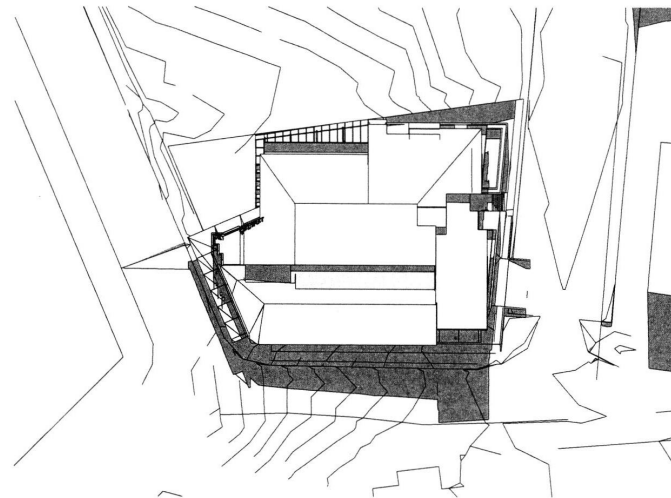




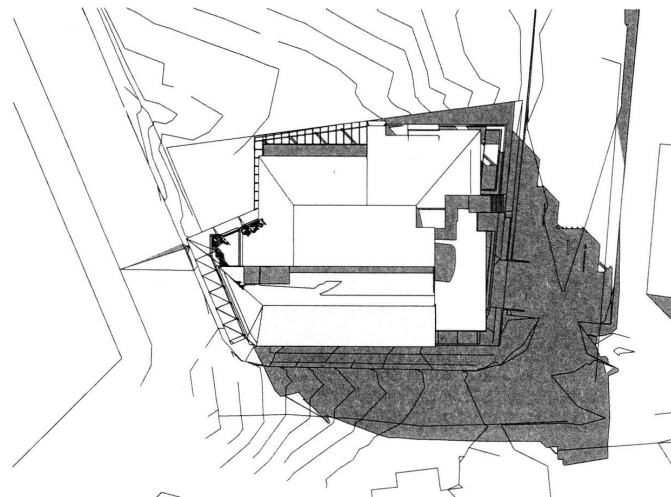




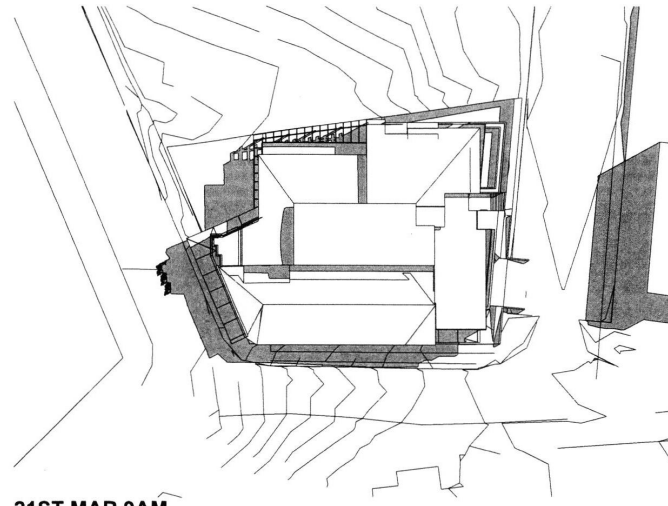
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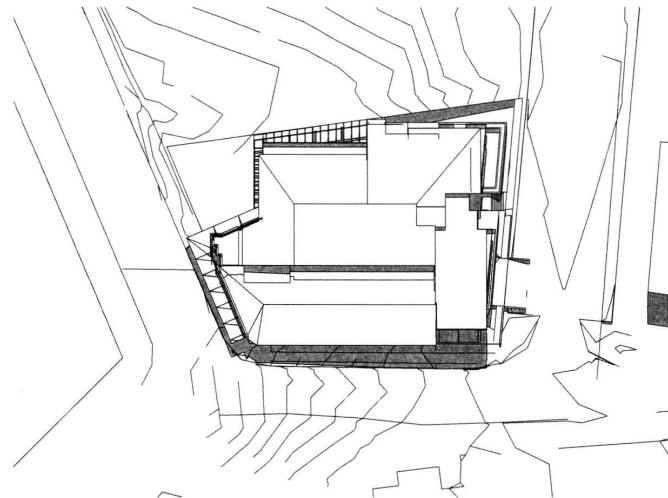
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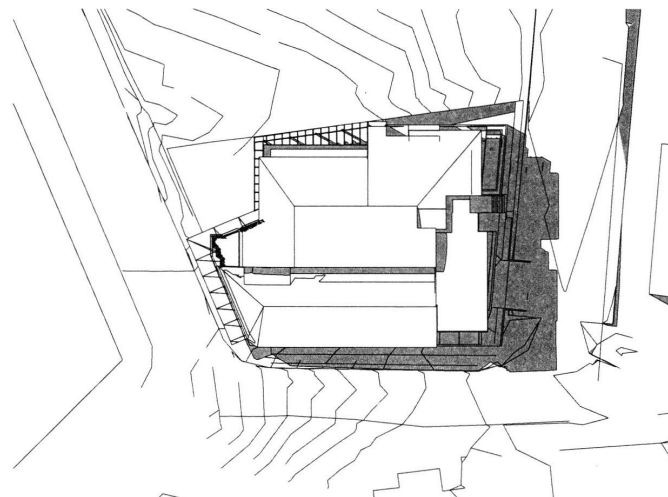
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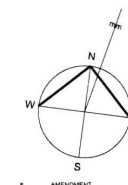
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21ST MAR 12 NOON
Scale 1:500



21ST MAR 3pm
Scale 1:500



AMENDMENT DATE
A1: RAMP & BLOCK WALL CHANGE - VINE STREET 5/8/2016
Work in Progress

MIXED USE COMMERCIAL & RESIDENTIAL DEVELOPMENT
69-71 AVOCA DRIVE, AVOCA BEACH
FOR LA PALOMA PROPERTY TRUST

ARCHITECT: ROB PULLAR REG. No. 5004

ARTICHOKE DESIGN STUDIOS
195 CAPE THREE POINTS ROAD
(P.O. BOX 227) AVOCA BEACH 2251
Ph: (02) 4382 1930 Fax: (02) 4381 2849



SHADOW DIAGRAMS
1:500 @ A1

REVISION A - AUG 2016
REVISION B - FEB 2017
RAMP & BLOCK WALL CHANGE - VINE STREET
FEB 2017

ABTDA - A.10

SCALE 1:500 at A1 / 1:1000 at A3



AMENDMENT DATE
1/9/2016

NOTE:
THESE IMAGES ARE ARTISTS IMPRESSIONS BASED ON THE ORIGINAL
LODGED DEVELOPMENT APPLICATION TO BE USED FOR MATERIAL AND
COLOUR REFERENCE ONLY.

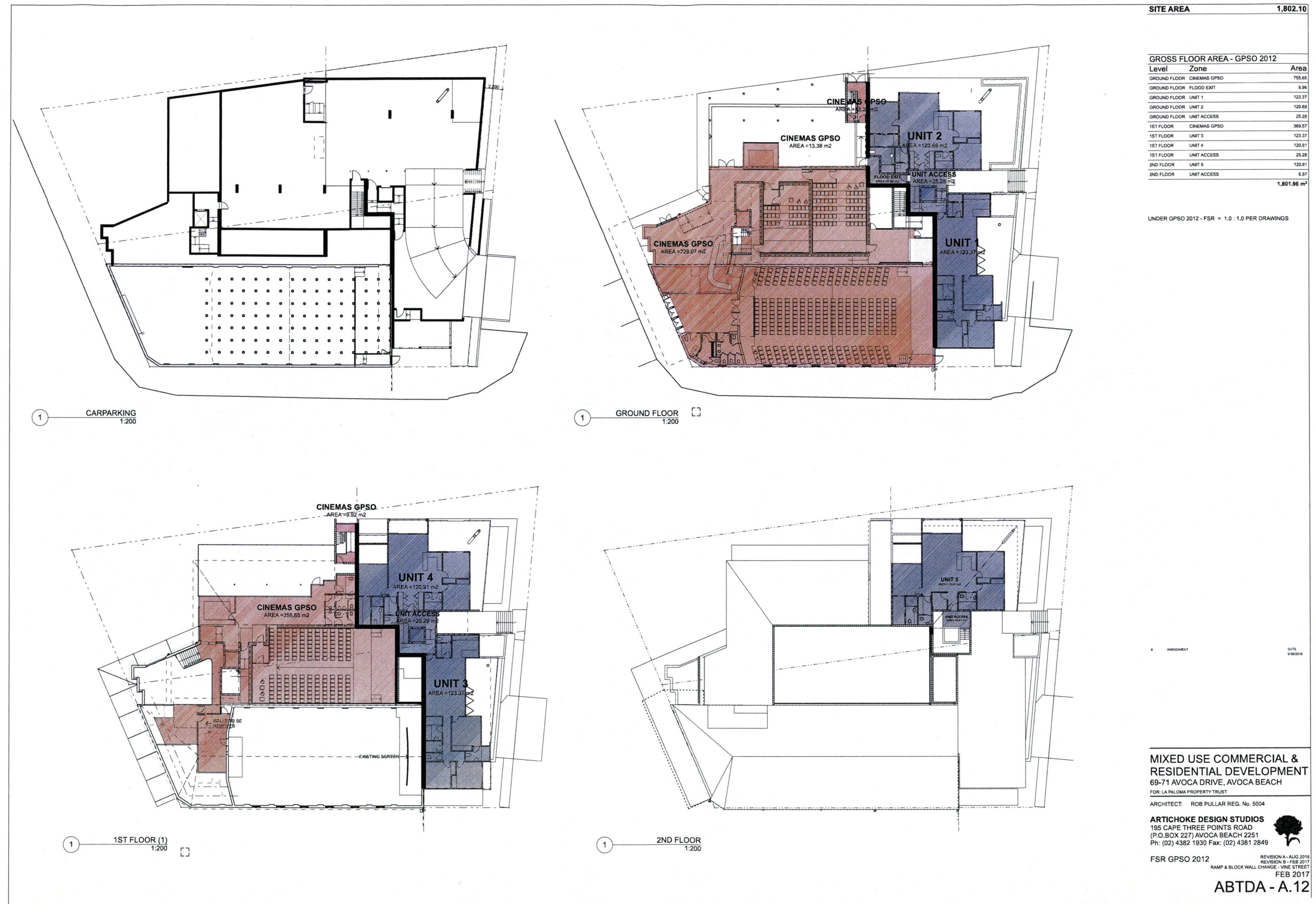
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COLOUR AND MATERIALS
PALETTE
REVISION A - AUG 2016
REVISION B - FEB 2017
RAMP & BLOCK WALL CHANGE - VINE STREET
FEB 2017

ABTDA - A.11



2016/155633

Annexure A Conditions of Consent

1. PARAMETERS OF THIS CONSENT

1.1A Description of the Approved Development

Approval is granted to Development Application No. 42661/2012 for alterations and additions to the Avoca Beach Picture Theatre, to include demolition of an existing cottage and ancillary buildings, retention of the existing theatre/cinema (cinema 1 with a maximum of 311 seats plus 4 wheelchair), three additional cinemas (providing a total of 4 cinemas) (cinema 2 with a maximum of 194 seats plus 2 wheelchair, cinema 3 with a maximum of 29 seats plus 2 wheelchair, and cinema 4 with a maximum of 69 seats plus 2 wheelchair), café, five (5) residential units, basement car parking at Lot 140 DP 9359 and Lot 651 DP 16791 and known as 69 and 71 Avoca Drive, Avoca Beach.

1.1. Approved Plans and Supporting Documents

Implement the development in accordance with the approved plans and documents unless modified by any following condition of this consent.

Architectural Plans by Artichoke Design Studios

Landscape Plans by Nova Hortus Landscapes

Drawing	Description	Sheets	Issue	Date
A.01 to A.12	Plans of proposed Development, prepared by Artichoke Design Studios	A.01 to A.12	A	February 2017 Revision B

Supporting Documentation

Document	Title	Date
	Supplementary Statement of Environmental Effects – Doug Sneddon Planning Pty Ltd	Sept 2016
	Report of Drew Bewsher – Flooding and Stormwater Issues	7 Sept 2016
	Draft Flood Emergency Response Plan for Theatre Avoca Beach by Dr Stephen Yeo, Flood Focus Consulting and Mr Drew Bewsher	7 Sept 2016
	Draft Flood Emergency Response Plan Residential Strata Development, Avoca Beach by Dr Stephen Yeo, Flood Focus Consulting and Mr Drew Bewsher	7 Sept 2016
	Traffic Report by Graham Pindar	13 Sept 2016
	Basix Certificate No 797799M	20/2/2017
	Stormwater Concept Management Plan by ADW Johnson	7 Sept 2016

1.2A Prior to the issue of a construction certificate, a BCA Report and a BCA Section J Compliance Assessment in relation to the development approved by this consent (which

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includes any changes to the development made by these conditions) is to be submitted to and approved by Council.

1.2. All building works are to be carried out in accordance with the Building Code of Australia.

1.3 Operating Hours

The Cinemas are to operate only within the following hours:

- (a) 8.30am to midnight Sunday to Thursday, 8.30 am to 12:30am Friday and Saturday;
- (b) The hours specified in (a) above do not preclude patrons leaving the premises after the times specified in (a) above if the film or performance or other event has finished by the time specified above, provided they leave within 30 minutes of the completion of the film, performance or other event;
- (c) The hours specified in (a) above do not preclude attendance on the premises of staff outside the hours specified in (a) above;
- (d) The hours specified in (a) above do not preclude special promotions or premiers of films or movie marathons being held outside those hours on a maximum of six occasions in any 12 month period in the existing Cinema 1, and on no more than 2 consecutive days and otherwise with at least 1 month between such promotions, premiers or marathons.

1.4 The applicant is to ensure that patrons leave the premises quietly after 10 pm on any day of the week. In the event that a substantiated noise complaint is received by Council, the applicant/business owner will seek the services of a suitably qualified person to undertake noise assessment of the activity, an acoustic report will be published from the assessment. The acoustic assessment is to be carried out as per procedures and guidelines of Australian Standard AS1055, "Acoustics - Description and Measurement of Environmental Noise, Part 1 General Procedures". A copy of the acoustic report will be provided to Council and noise mitigating measures are to be implemented. An Acoustic Validation Report may be requested by Council to demonstrate that mitigating measures have been effective.

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

All conditions under this section must be met prior to the issue of any Construction Certificate

2.1. No activity is to be carried out on site until any Construction Certificate required for that activity has been issued, other than:

- a. Site investigation for the preparation of the construction, and / or
- b. Implementation of environmental protection measures, such as erosion control etc that are required by this consent.

2.2. Prior to the issue of a Construction Certificate an application must be submitted to council under Section 138 of the *Roads Act, 1993*, for the approval of required works to be carried out within the road reserve.

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Prior to the issue of a Construction Certificate, Engineering plans for the required works within a public road that have been designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation Control*, must be submitted to and approved by Council. The Engineering plans must be included with the Roads Act application for approval by council.

Design the required works as follows:

- a. Avoca Drive (majority of) & Burns Road - Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontages of the site.
- b. Avoca Drive - Full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath (or similar) across the full frontage of the site.
- c. Burns Street - 1.5 metre wide reinforced (SL72 steel fabric, 100mm thick) concrete path (or similar) and landscaping across the full frontage of the site.
- d. Vine Street - 1.5m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath across the full frontage of the site.
- e. Vine Street - Heavy-duty vehicle crossing / ramp constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- f. Avoca Drive - All redundant vehicular crossings are to be removed and the footway formation reinstated with a full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath.
- g. Vine Street - Minor upgrade of the stormwater drainage system if the stormwater drainage pit is required to be relocated due to a conflict with the location of the proposed driveway crossing. Currently, a stormwater drainage pit is located at the low point of the frontage adjacent to the proposed driveway crossing servicing the basement car park.
- h. Roadside furniture and safety devices as required e.g. fencing, signage, guide posts, chevrons, directional arrows, and/or guard rail in accordance with RMS and relevant Australian Standards.
- i. Signage and line marking, such as no stopping / parking signage at the intersection of Avoca Drive & Burns Street, loading zone and signage for the access driveway. The signage and line marking plan must be approved by Council's Traffic Committee.
- j. Pram ramps at the intersection of Avoca Drive & Burns Street and Burns Street & Vine Street.
- k. Relocation of the existing plaques and hand imprints to a suitable alternative location.

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- I. All retaining walls shall be designed by a practising Civil/Structural engineer and shall not conflict with services.

The Roads Act application must be approved by council prior to the issue of a Construction Certificate.

A fee for the approval of engineering plans under the *Roads Act 1993* applies. The amount of this fee can be obtained by contacting council's Customer Services on (02) 4325 8222. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

- 2.3. A dilapidation report must be submitted to Council with the Roads Act application and / or Construction Certificate application. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.4. A security deposit of \$50,000.00 must be paid into Council's trust fund prior to the issue of any Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.5. Prior to the issue of a Construction Certificate, an application must be submitted to council, under Section 68 of the Local Government Act, for the approval of required drainage works associated with public stormwater / watercourse works.

Engineering plans for the works must be prepared and designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation Control*, and submitted to council for approval with the Local Government Act application.

The required works to be designed are as follows:

- a. Connection of all stormwater from impervious areas within the site via an on-site stormwater detention structure to council's drainage system located in Vine Street.

The Local Government Act application must be approved by council prior to the issue of a Construction Certificate.

A fee for the approval of engineering plans under the Local Government Act applies. The amount of this fee can be obtained by contacting council's Customer Services on (02) 4325 8222.

- 2.6. Prior to the issue of a Construction Certificate an application, with the relevant fee, must be submitted to council under Section 68 of the Local Government Act 1993 for an approval to discharge liquid trade waste to council's sewerage system. The Application to Discharge Liquid Trade Waste can be found on council's website: www.gosford.nsw.gov.au

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- 2.7. Prior to the issue of a Construction Certificate the Applicant/developer must apply for and obtain from Council (Water Authority) a Section 307 Certificate of Compliance under the *Water Management Act 2000*. Conditions and contributions may apply to the Section 307 Certificate.

The 'Application for 307 Certificate under Section 305 *Water Management Act 2000*' form can be found on Council's website www.gosford.nsw.gov.au. Early application is recommended.

- 2.8. Prior to the issue of a Construction Certificate Engineering details prepared and certified by a practising structural engineer must be submitted to the Council (Water Authority) for development constructed near or over the sewer main and / or adjacent to Council's water mains. The engineering details must comply with Council's guidelines for "Building Over or Near Council Sewer and Water Mains" and must be approved by Council prior to the issue of a Construction Certificate. A fee for engineering plan assessment must be paid when submitting the engineering details.

Additional fees for the submission of contractor's documentation and sewer inspection fees apply for the adjustment or encasement of Council's sewer main. Subject to approval of the engineering plans, and payment of the prescribed fees, the developer must contact Council's Water and Sewer Quality Inspector on mobile phone 0419 412 725 a minimum of one week prior to commencement of any work involving building over and / or adjacent to sewer mains.

- 2.9. Design details of the following engineering works within private property must be submitted to and approved by Council prior to the issue of a Construction Certificate:
- a. Driveways / ramps and car parking areas must be designed according to the requirements of AS2890: Parking Facilities for the geometric designs, and industry Standards for pavement designs. A longitudinal driveway profile between the parking level and Vine Street centreline, along the eastern (shortest) edge, shall be prepared by a suitably qualified and experienced engineer demonstrating that the driveway grades comply with the above standard.
 - b. A stormwater detention system must be designed in accordance with the Gosford DCP 2013 Chapter 6.7 - Water Cycle Management and council's Civil Works Specification. The stormwater detention system must limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1% AEP storm event. A runoff routing method must be used. An on-site stormwater detention report including an operation and maintenance plan must accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.
 - c. On-site stormwater retention measures must be designed in accordance with council's DCP Chapter 6.7 - Water Cycle Management. A report detailing the method of stormwater harvesting, sizing of retention tanks for

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re-use on the site and an operation and maintenance plan must accompany the design.

- d. Nutrient/pollution control measures must be designed in accordance with Gosford DCP 2013 Chapter 6.7 - Water Cycle Management. A nutrient / pollution control report including an operation and maintenance plan must accompany the design.
- e. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to council's drainage system located in Vine Street. This shall include the provision of a flap valve on the outlet to prevent backwater entering into the basement.
- f. Full details of the holding tank capacity, pump type and system, discharge rate and the delivery line size for the basement drainage.
- g. The minimum floor level of all habitable rooms in the development must be RL 4.1m AHD.
- h. All building materials used or located below RL 3.6m AHD must be of a type that is able to withstand the effects of immersion.
- i. The crest level to the basement carpark to be RL 3.6m AHD.
- j. Proposed structure certified to withstand the expected forces of floodwater.

These design details and any associated reports must be included in the construction certificate. The plans shall be generally in accordance (with required amendments) with the submitted stormwater concept management plan by ADW Johnson (refer Reference No. 238328 (1), dated 7/9/2016), which are to be advanced as necessary for Construction Certificate issue purposes.

- 2.10. A Road Safety Check prepared by a Road Safety Auditor recognised on the NSW Register of Road Safety Auditors must be submitted to the Council as the Roads Authority prior to the issue of a Construction Certificate. Any deficiencies identified within the audit must be resolved in consultation with Council prior to the approval of design drawings.
- 2.11. A "Flood Mitigation" report is to be submitted to and approved by Council prior to the issue of a Construction Certificate. The report is to detail industry best practice strategies and mitigation measures that will reduce the risk to life and property associated with the residential building's main access via a floodway (as detailed in Report of Drew Bewsher – Flooding and Stormwater Issues, Sept 2016).
- 2.12. The recommendations of the "Draft Emergency Response Plan for Residential and for the Theatre – Sept 2016" report are to be incorporated into the design of the development prior to the issue of a Construction Certificate.

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- 2.13. Prior to the issue of a Construction Certificate, amended plans are to be submitted to and approved by Council which provide the following changes to the development to address waste management matters:
- a. Submission of revised plans to indicate separate fully dimensioned Residential and Commercial waste storage enclosures.
 - b. The Residential waste storage enclosure is to be sized to accommodate a minimum of 5 x 120 litre mixed waste MGB's, 5 x 240 litre recyclable waste MGB's and a nominal number of 240 litre green waste MGB's should they be required for resident use only.
 - c. The Residential waste storage enclosure is to be located to provide internal resident access to the enclosure having a gradient not exceeding 10% alternatively an interim residential waste holding enclosure located adjacent to the resident lift may be considered with residential waste within the interim waste holding enclosure to be transferred by a caretaker or similar to a principal Residential waste enclosure located to facilitate roll out of MGB's to Burns St for kerbside collection.
 - d. Suitable internal access to the Residential and Commercial waste enclosure/s is required to ensure transfer of waste can be undertaken without travel outside the boundaries of the property.
 - e. A 10.0m long kerbside presentation location is to be indicated on the revised plans within Burns St adjacent to the proposed waste storage enclosure.
 - f. The Commercial waste storage enclosure is to be sized consistent with the multiple uses within the proposed development in accordance with Chapter 7.2 - Waste Management of Gosford DCP 2013 and the Better Practice Guide for Waste Management in Multi-Unit Dwellings published by DECC.
 - g. Mixed and recyclable mobile garbage bins for kerbside collection by a Private waste contractor are to be indicated.
 - h. Note: Bulk waste bins are not supported for servicing off the street. Bulk waste bins require the servicing to be undertaken with the Private waste contractor vehicle entirely within the boundaries of the property. Mixed waste and recyclables mobile garbage bins for kerbside collection are to be wheeled out on arrival of the Private waste collection contractor and returned to the Commercial waste storage enclosure immediately after servicing.
 - i. Assessment of Dwg No ABTDA-A.02, Revision A dated August 2016 notes the waste storage area located to require residents and the Commercial operator to transport waste from the carpark level down a ramp with excessive gradient, cross fall and stairs to access the waste storage area. Re-assessment of waste storage is required to provide for a sustainable, safe waste storage outcome for the proposed development. The waste storage enclosure/s are to be located to be readily accessible to the occupants of the residential units, the Commercial operator and the Residential and Commercial waste collection contractors.

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- j. The Residential and Commercial waste enclosure/s are required to be in accordance with Chapter 7.2 - Waste Management of Gosford DCP 2013 to ensure waste is appropriately stored to minimise any potential odour/vermin issues within the proposed development and the public domain.
- 2.14 Prior to the issue of a Construction Certificate the revised signed and dated Waste Management Plan consistent with advice provided to address/clarify solid waste issues, and consistent with the amended plans approved pursuant to condition 2.13 of this consent, must be submitted to and approved by Council.
- 2.15 A Waste Management Strategy to detail responsibilities of transfer of Residential and Commercial waste, servicing frequencies and management of waste enclosure/s, consistent with the amended plans approved pursuant to condition 2.13 of this consent, must be submitted to and approved by Council prior to the issue of a Construction Certificate.
- 2.16 An Interpretation Plan shall be prepared by a suitably qualified heritage consultant to include appropriate measures to interpret the heritage significance of the original theatre to be retained and adaptively reused, including measures for ongoing maintenance. The Plan is to be submitted to Council for approval and approval obtained prior to the approval of the Construction Certificate and approved measures shall be detailed in the application for the Construction Certificate, and the following:
 - a. A Photographic archival record of the Theatre is to be undertaken by a suitable qualified professional prior to commencement of construction works. The archival record and measured drawings should be undertaken in accordance with the Office of Environment and Heritage, Heritage Branch Guidelines *Photographic Recording of Heritage Items*. Two copies of the Record must be submitted to Council for approval and made available in the Library. Approval by Council must be confirmed in writing prior to construction.

A report is to be prepared by a practicing structural engineer by the applicant detailing the structural adequacy of the Theatre building to withstand the proposed excavation works. This report must include any measures required to be incorporated to ensure that no damage will occur during the course of works. The report must be submitted to Council and relevant adjoining property owners prior to the issue of any construction certificate.

 - b. Submit an updated landscape plan is required. Approval by Council must be confirmed in writing prior to construction.
- 2.17 The fitout of the food premises is to comply with the Food Act, 2003, Food Regulation 2010, Food Standards Code and the Australian Standard AS4674 for the Design, Construction and Fitout of Food Premises. Details of compliance are to be included in the plans and specifications for the **Construction Certificate** to the satisfaction of the certifying authority
- 2.18 Details of any proposed mechanical ventilation systems, detailing compliance with the relevant requirements of Clause F4.12 of the Building Code of Australia (BCA) and Australian Standard AS1668 Parts 1 & 2 (including exhaust air quantities and discharge

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location points) are to be submitted to and approved by the PCA **prior to a Construction Certificate being issued** for the subject works.

A certificate is to be submitted at the completion of the installation and prior to the issue of a Occupation Certificate, from a practising Mechanical Engineer certifying that the construction, installation and operation of the exhaust hood ventilation system meets the requirements as AS 1668.1 and/or AS 1668.

- 2.19 Appropriate noise attenuation is to be incorporated into the design of the residential units to minimise the impacts of elevated noise in accordance with a specification to be provided by an appropriately qualified and experienced Acoustic Consultant.
- 2.20 In accordance with the Voluntary Planning Agreement (ECM Doc No 3080720 – incorporating the Voluntary Planning Agreement executed between the parties dated 15 September 2006) signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited dated 22 January 2007 (the terms of which are incorporated herein as if fully set out herein), compliance with the following:
- In accordance with Recital E and clause 4(a) of the 2006 Voluntary Planning Agreement, payment of the total sum of \$500,000 for the public purpose of the provision of public amenities, namely, the construction and enhancement of car parking facilities near the development in South End Park, Avoca and the embellishment and beautification of the adjoining public open space known as Hunter Park, Avoca all as depicted on the plan annexed to the 2006 Voluntary Planning Agreement and marked with the letter "B"; and
 - In lieu of Section 94 Contributions, payment of an amount of \$10,296 for the provision of public amenities by Council ("the Contribution Amount"). The Contribution Amount will be increased on each of 1 January, 1 March, 1 July and 1 October in each year from the date of this Agreement [being the date of the 2006 Voluntary Planning Agreement] until the Contribution Amount is paid by the same percentage increase as the percentage change, if any, in the Consumer Price Index in the 3 months prior to the relevant review date.

The above contribution amounts are to be paid prior to the issue of any Construction Certificate.

Any Construction Certificate is not to be issued by a certifying authority until the developer has provided the certifying authority with a copy of a receipt issued by Council that verifies that the contributions have been paid in accordance with the wording of this condition. A copy of this receipt is to accompany the documents required to be submitted by the certifying authority to Council under Clause 104 of the Environmental Planning and Assessment Regulation 2000.

- 2.21 Prior to the issue of a Construction Certificate the development consent to DA 6344/1999 for the Outdoor Theatre is to be relinquished.

3. PRIOR TO COMMENCEMENT OF ANY WORKS

All conditions under this section must be met prior to the commencement of any works

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- 3.1. A Principal Certifying Authority is to be appointed after the construction certificate for the building work has been issued and prior to the commencement of any works.
 - a. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
 - b. Submit to Council a *Notice of Commencement of Building Works* or *Notice of Commencement of Subdivision Works* form giving at least two (2) days notice of the intention to commence building or subdivision work. The forms can be found on Council's website www.gosford.nsw.gov.au
- 3.2. A copy of the stamped approved plans must be kept on site for the duration of site works and the plans must be made available upon request to either the Principal Certifying Authority or an officer of Council.
- 3.3. Site works must not be commenced until the sediment control measures have been installed in accordance with the approved plans / Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation and Control*.
- 3.4. Prior to the commencement of any works a sign is to be erected in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
 - a. The name, address and telephone number of the principal certifying authority for the work; and
 - b. The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c. That unauthorised entry to the work site is prohibited.

Remove the sign when the work has been completed.

- 3.5. Both a Plumbing and Drainage Inspection Application must be submitted to Council prior to the commencement of any works, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the *Plumbing and Drainage Act 2011* (to be provided by licensed plumber). These documents can be found on Council's website at: www.gosford.nsw.gov.au.

Contact Council prior to submitting these forms to confirm the relevant fees.

- 3.6. Prior to the commencement of any works, a Tree Protection Zone is to be established around the Eucalyptus tree located on the road reserve corner of Vine and Burns Street. Due to the limited area available, the distance from the tree to a protective fence should be no less than 2m. The protective fence is to consist of a 1.8 metre high chain mesh fence

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erected around the tree and must remain intact until construction is completed. The fence is to be sign posted to warn of its purpose.

- 3.7. Prior to the commencement of any works a Construction Traffic Management Plan is to be prepared for the development and submitted to and approved by Council. The Plan shall include Traffic Control Plans prepared by a suitably qualified and experienced consultant with necessary construction management measures identified during demolition, excavation, delivery and construction phases. All works must ensure the safety of all vehicles and pedestrians.
- 3.8. Demolition involving asbestos must be undertaken in accordance with the *Work Health and Safety Act 2011*.

The person having the benefit of this consent must ensure that the removal of:

- a. more than 10m² of non-friable asbestos or asbestos containing material is carried out by a licensed non-friable (Class B) or a friable (Class A) asbestos removalist, and
- b. friable asbestos of any quantity is removed by a licensed removalist with a friable (Class A) asbestos removal licence.

The licensed asbestos removalist must give notice to the regulator before work commences in accordance with Clause 466 of the *Work Health and Safety Regulation 2011*.

4. DURING WORKS

All conditions under this section must be met during works

- 4.1. Clearing of land, excavation, and / or earthworks, building works, and the delivery of building materials must only be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

- a. No work is permitted on Sundays and Public Holidays
- b. No work is permitted on:
 - Saturdays when a public holiday is adjacent to that weekend.
 - Construction industry awarded rostered days off.
 - Construction industry shutdown long weekends.

Clause b does not apply to works of a domestic residential nature as below:

- i Minor renovation or refurbishments to single dwelling construction.
- ii Owner occupied renovations or refurbishments to single dwelling construction.
- iii Owner builder construction of single dwelling construction; and / or
- iv Any cottage constructions, single dwellings or housing estates consisting of predominantly unoccupied single dwellings.

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- 4.2. Erosion and Siltation control measures must be undertaken and maintained during the carrying out of all works, in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls must comply with Gosford DCP 2013 Chapter 6.3 - *Erosion and Sedimentation Control*.
- 4.3. A copy of the stamped approved plans must be kept on site for the duration of site works and the plans made available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.4. Council must be notified when plumbing and drainage work will be ready for inspection(s) and the work must be made accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.
- 4.5. The following Crime Prevention Through Environmental Design (CPTED) principles and strategies must be incorporated into the development during the carrying out of "works" to minimize the opportunity for crime:
 - a. Provide adequate lighting to common areas as required under *AS1158: Lighting for roads and public spaces*.
 - b. Paint the ceiling of the car park white.
 - c. Design of landscaping, adjacent to mailboxes and footpaths, must not provide concealment opportunities for criminal activity.
 - d. Design the development to avoid foot holes or natural ladders so as to minimise unlawful access to the premises.
 - e. Provide signage within the development to identify all facilities, entry/exit points and direct movement within the development.
- 4.6. The works within the road reserve that required approval under the Roads Act must be constructed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control.
- 4.7. The location of all electrical fixtures and/or gas outlets are to be at a minimum height of RL 3.6m AHD.
- 4.8. All Site Preparation, Demolition and Construction commitments as detailed within the required revised signed and dated Waste Management Plan in accordance with the Gosford City Council Development Application Guide and Chapter 7.2 - Waste Management of Gosford DCP 2013 must be complied with during the carrying out of works.
- 4.9. During construction, the Applicant/developer must arrange with the relevant service provider / Authority (e.g. Ausgrid, Jemena, communications provider) for the supply of services concurrent with the engineering work. Arrangements must include where required any relocation of existing mains and services and dedication of easements for mains and services.

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- 4.10. Filling or debris must not be placed within any watercourse or drain.
- 4.11. Should any Aboriginal objects or artefacts be uncovered during works on the site, all works shall cease. The Office of Environment and Heritage shall be contacted immediately and any directions or requirements complied with.

5. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

All conditions under this section must be met prior to the issue of any Occupation Certificate

- 5.1. An application for the Occupation Certificate is to be submitted to the Principal Certifying Authority for approval.
- 5.2. The premises must not be occupied until the Occupation Certificate has been issued.
- 5.3. A Certificate of Compliance for all plumbing and drainage work and a Sewer Service Diagram showing sanitary drainage work (to be provided by licensed plumber) in accordance with the *Plumbing and Drainage Act 2011* must be submitted prior to the issue of an Occupation Certificate.
- 5.4. Lot 140 DP 9359 and Lot 651 DP 16791 must be consolidated into a single allotment under one Certificate of Title prior to the issue of any Occupation Certificate.
- 5.5. Prior to the issue of an Occupation Certificate, the Applicant must construct, grade, drain, seal and line mark including directional arrows with impervious paving material the driveway, vehicle manoeuvring area and 14 car parking spaces as shown on the approved plan, in accordance with *AS2890.1-2004: Parking facilities - Off-street parking*.
- 5.6. Prior to the issue of an Occupation Certificate, mail receptacles appropriately numbered for each dwelling unit in the development, as well as for the managing body, in consultation with Australia Post, must be provided.
- 5.7. Prior to the issue of an Occupation Certificate, works within the road reserve that required approval under the Roads Act are to be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'. Documentary evidence for the acceptance of such works obtained from the Roads Authority must be provided prior to the issue of any Occupation Certificate.

Note 1: A maintenance bond shall be paid on completion of the works in accordance with Section 1.07 Maintenance of the 'Civil Construction Specification'.

- 5.8. Any damage not shown in the dilapidation report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of any Occupation Certificate.

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5.9. Prior to the issue of an Occupation Certificate the internal engineering works within private property must be completed in accordance with the plans and details approved with the construction certificate.

5.10. Prior to the issue of any Occupation Certificate the Deposited Plan (DP) must be amended to:

- Include an Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan.
 - a To create a 'Restriction as to User' over all lots containing an on-site stormwater detention system and/or a nutrient/pollution facility restricting any alteration to such facility or the erection of any structure over the facility or the placement of any obstruction over the facility.

And,

- Include an instrument under the Conveyancing Act 1919 for the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).
 - a To ensure on any lot containing an on-site stormwater detention system and/or a nutrient/pollution facility that:
 - (i) The facility will remain in place and fully operational.
 - (ii) The facility is maintained in accordance with the operational and maintenance plan so that it operates in a safe and efficient manner
 - (iii) Council's officers are permitted to enter the land to inspect and repair the facility at the owners cost.
 - (iv) Council is indemnified against all claims of compensation caused by the facility.

Registered title documents showing the restrictive and positive covenants must be submitted to and approved by the Principal Certifying Authority prior to the issue of any occupation certificate.

5.11. Prior to the issue of an Occupation Certificate, a registered surveyor is to confirm that the finished floor level of the car park and the finished crest level to the car park are in accordance with the design levels.

5.12A Prior to the issue of an Occupation Certificate, a suitably qualified engineer is to certify that the automatic flood gates have been installed in accordance with the manufacturer's instructions, and that they are operating as designed.

5.12. Flood mitigation strategies, in accordance with the "Flood Mitigation" report, are to be installed and/or constructed.

5.13. Prior to the issue of an Occupation Certificate the Applicant/developer must arrange with the relevant service provider / Authority (e.g. Ausgrid, Jemena, communications provider) for the supply of services concurrent with the engineering work. Arrangements must

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include where required any relocation of existing mains and services and dedication of easements for mains and services.

- 5.14. Prior to the issue of an Occupation Certificate all existing buildings and structures must be connected to the stormwater systems.
- 5.15. Prior to the issue of an Occupation Certificate all existing buildings with plumbing fixtures must be connected to the sewer systems.
- 5.16. Pursuant to clause 4(c) of the Voluntary Planning Agreement (ECM Doc No 3080720 - incorporating the Voluntary Planning Agreement executed between the parties dated 15 September 2006) signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited dated 22 January 2007 (the terms of which are incorporated herein as if fully set out herein), the Applicant will, on registration of a strata plan of subdivision for the Land or the issue of an occupation certificate for the development of the Land, whichever occurs first, dedicate to the Council without costs to the Council the strip of land 1.2 metres wide along Vine Street frontage (Vale Street) depicted on the plan annexed to the Voluntary Planning Agreement and marked with the letter "D".
- 5.17. Certification from a suitably qualified and experienced flooding consultant demonstrating that the recommendations within the Report of Drew Bewsher dated 7 September 2016 have been fully implemented for the development, including the Flood Emergency Response Plans (FERP's) must be submitted to Council prior to the issue of an Occupation Certificate.
- 5.18. Prior to the issue of an Occupation Certificate the refrigerated/cooling/freezing chamber, which is of sufficient size for a person to enter must have-
 - (a) a door which is capable of being opened by hand from inside without a key; and
 - (b) internal lighting controlled only by a switch is located adjacent to the entrance doorway inside the chamber; and
 - (c) an indicator lamp positioned outside the chamber which is illuminated when the interior light is switched on; and
 - (d) An alarm that is-
 - a. located outside but controllable only from within the chamber; and
 - b. able to achieve a sound pressure level outside the chamber of 90dB(A) when measured 3m from the sounding device.

The door required by (a) above must have a doorway with a clear width of not less than 600mm and a clear height of not less than 1.5m.

Reason: to ensure compliance with the Building Code of Australia (BCA).

- 5.19. Council is to be notified upon completion of work and following the issue of the occupation certificate, prior to trading commencing to enable the premises to be inspected by Council's Environmental Health Officer and for the premises to be registered with the Council as a food premises.

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Reason: to ensure that the fit out of the food premises complies with relevant standards and to enable registration of the food premises.

- 5.22 A Liquid Trade Waste Approval must be obtained from council prior to the issue of an Occupation Certificate.

6. ONGOING OPERATION

- 6.1. The on-site stormwater detention facility is to be maintained in accordance with the operation and maintenance plan.
- 6.2. The nutrient / pollution control facilities are to be maintained in accordance with the operation and maintenance plan.
- 6.3. No obstructions to the wheel out of the waste bins are permitted including grills, speed humps, barrier kerbs etc.
- 6.2. All Use of Premises and On-Going Management of waste requirements as detailed within the required revised signed and dated (and approved) Waste Management Plan in accordance with the Gosford City Development Application Guide and Chapter 7.2 – Waste Management of Gosford DCP 2013 must be complied with.
- 6.3. Comply with all commitments as detailed within the approved, required Waste Management Strategy.
- 6.4. The Residential mobile garbage/recycling/green waste containers must be placed at the approved location at the kerbside no earlier than the evening prior to the collection day and return to the approved Residential waste storage enclosure as soon as possible after service, no later than the evening on collection day. The residents, caretaker and Body Corporate are responsible for the placement and return of the mobile waste containers.
- 6.5. Commercial waste mixed and recyclable mobile garbage bins to be wheeled out on arrival of the private Commercial waste collection contractor and immediately returned to the approved Commercial waste storage enclosure.
- 6.6. Commercial waste to be serviced at such times to not conflict with Residential waste services.
- 6.7. Commercial waste to be serviced at a suitable frequency to ensure adequate storage capacity is available within the sealed mixed and recyclable waste MGB's at all times and to minimise potential odour issues.
- 6.8. Food waste to be serviced at maximum 3 day intervals. Alternatively, food waste may be stored within a dedicated food waste refrigerator/chiller and placed in waste MGB's on arrival of the Commercial waste collection contractor for immediate servicing.

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- 6.9. No waste material, waste packaging or waste product to be placed or stored outside of the approved, sealed mixed and recyclable waste storage containers within the approved waste storage enclosures.
- 6.10. The waste storage enclosure must be constructed and managed in accordance with the provisions of Gosford DCP 2013, Part 7: Chapter 7.2 - *Waste Management, Appendix D and Appendix G*, as applicable.
- 6.11. The conditions of the Liquid Trade Waste Approval must be complied with at all times.
- 6.12. The cinemas are limited to 75% of their seating capacity prior to 4pm on Sundays during the summer public school holiday period in December/January. The Applicant will restrict seat availability in the cinemas through the cinema Point of Sale ticket system by 25% for screenings or other performances or events which commence before 4.00 pm. Records of daily ticket sales for these specified days will be kept and will be made available for inspection by Council or will be produced to Council on request.

(reason: to limit parking impacts of the proposed development)
- 6.13. The area identified on the approved plans as "Foyer" (previously noted as "gallery") is an ancillary use to the cinema and is not permitted to be leased separately or operated as a separate entity.

7. GENERAL

- 7.1. Public authorities who may have separate requirements in the following aspects are to be consulted:
 - a. *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b. *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c. *Ausgrid* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d. *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e. *Central Coast Council* in respect to the location of water, sewerage and drainage services.
- 7.2. All work under this Consent is to be carried out in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011 No 10* and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 7.3. Dial Before You Dig

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Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

- 7.4. Separate application is required should the applicant require a new or upsized water supply connection to Council's water supply system.
- 7.5. Backflow prevention device(s) must be installed and maintained in accordance with Council's *WS4.0 Backflow Prevention Containment Policy*. This policy can be found on Council's website at: www.gosford.nsw.gov.au

Remove only if no installation/alteration of plumbing and/or drainage works proposed (excludes stormwater drainage)

- 7.6. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with council's current fees and charges policy.
- 7.7. Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with council's fees and charges.
- 7.8. The inspection fee for works associated with approvals under the Local Government Act is calculated in accordance with council's current fees and charges policy.

8. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

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Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Element	Material Type	Detail
External walls	Concrete Block + R1.0 Insulation + PB Lightweight cladding + R1.0 Insulation + PB	Medium colour
Internal walls	Plasterboard on studs Brick + R1.0 Insulation + PB	Intra-tenancy walls Inter-tenancy walls
Windows	ALM-002-02 A Aluminium B 50 Tint	NFRG Glazing System values: ⇒ U ≤ 0.60 and SHGC = 0.49 (± 10%)
Sightlights	N/A	
Floor	Concrete slab	Tile: kitchen & wet Timber: living areas Carpet: bedrooms
Ceiling	Concrete Plasterboard + foil (top floor)	
Roof	Metal + R1.0 Insulation	Light

CENTRAL COAST COUNCIL
DEVELOPMENT CONSENT
Modified under Section 4.55
Application No 42661/2012 Part No 3
Date of Amended Consent: 08/04/2019
Original Date of Consent: 18/04/2017
Plan Approved subject to conditions and the
amendments, if any, shown in RED

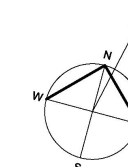
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A.02	CARPARK
A.03	GROUND FLOOR PLAN
A.04	1ST FLOOR PLAN
A.05	2ND FLOOR PLAN
A.06	ROOF
A.07	ELEVATIONS
A.08	ELEVATIONS
A.09	SECTIONS
A.10	SHADOW DIAGRAMS
A.11	COLOUR AND MATERIALS PALETTE
A.12	FSR

SITE AREA	1.802.10
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GROSS FLOOR AREA		
Level	Zone	Area
GROUND FLOOR	CINEMAS GFA	742.98
GROUND FLOOR	UNIT 1	116.96
GROUND FLOOR	UNIT 2	116.04
1ST FLOOR	CINEMAS GFA	357.52
1ST FLOOR	UNIT 3	117.56
1ST FLOOR	UNIT 4	119.48
2ND FLOOR	UNIT 5	140.09
		1,712.63 m²

PROPOSED FSR = 0.95 : 1

EXISTING BUILDINGS TO BE DEMOLISHED



#	AMENDMENT	DATE
01	BIN AREA DIVIDED	
02	VENTILATION OPENINGS TO CARPARKS	
16	EXTEND BALCONY ROOF	23/07/2018
17	CINEMA 02 ROOF HEIGHT RAISED	
	FSR CHANGES	

**MIXED USE COMMERCIAL &
RESIDENTIAL DEVELOPMENT**
69-71 AVOCA DRIVE, AVOCA BEACH

FOR: LA PALOMA PROPERTY TRUST

ARCHITECT: ROB PULLAR REG. No. 5004

ARTICULO DE DISEÑO STUDIO

ARTICHOKE DESIGN STUDIOS
195 CAPE THREE POINTS ROAD

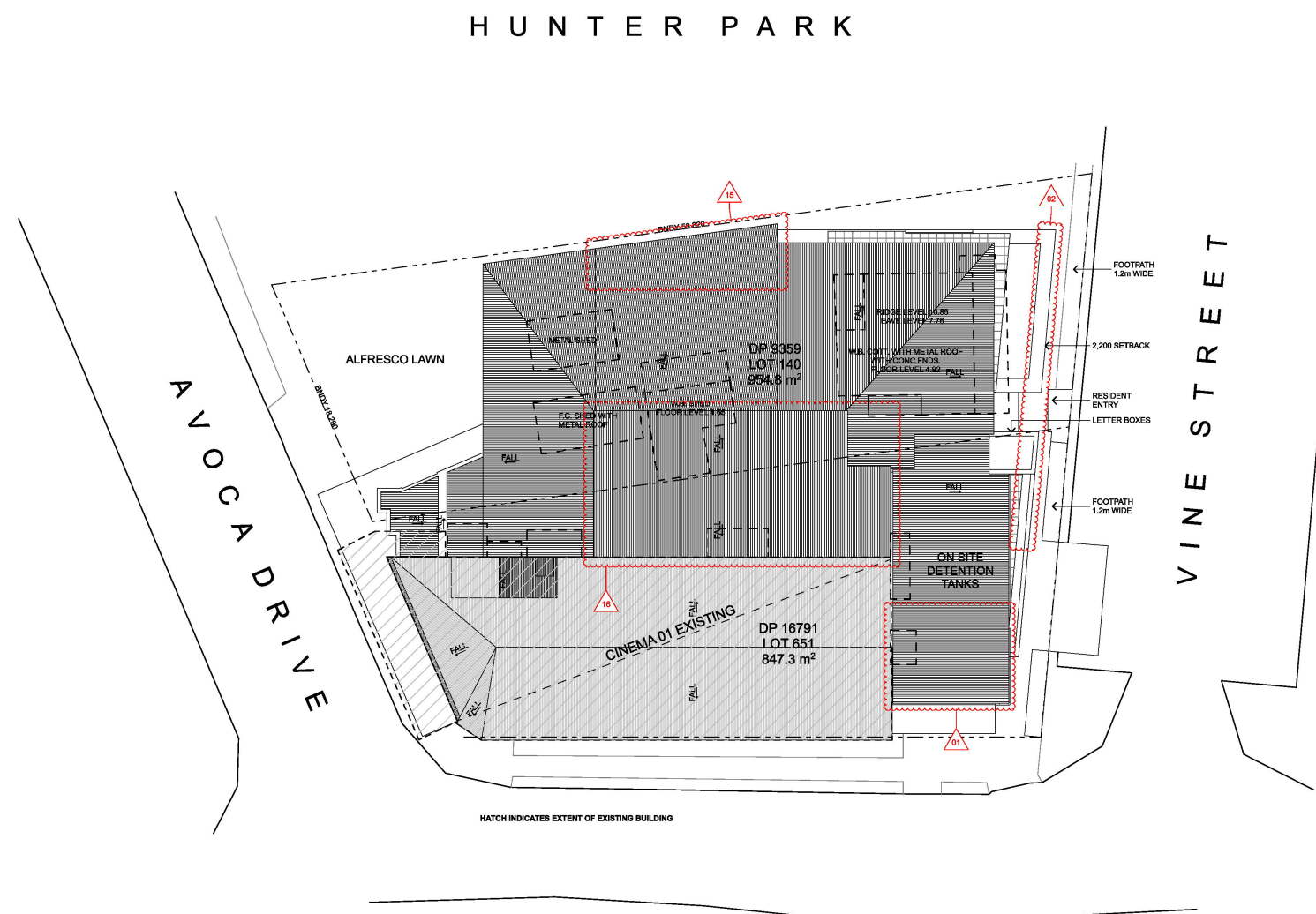
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SITE PLAN

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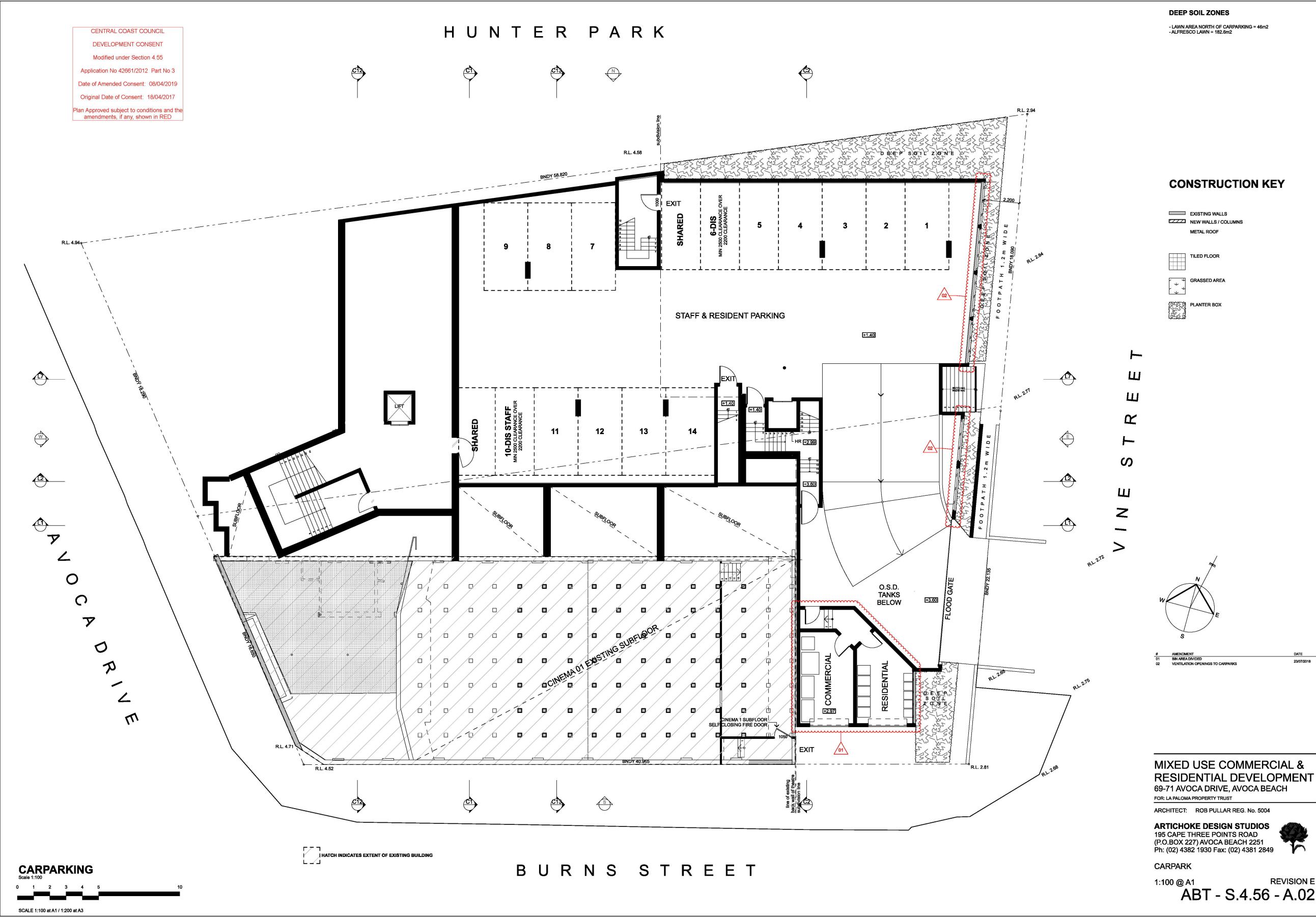
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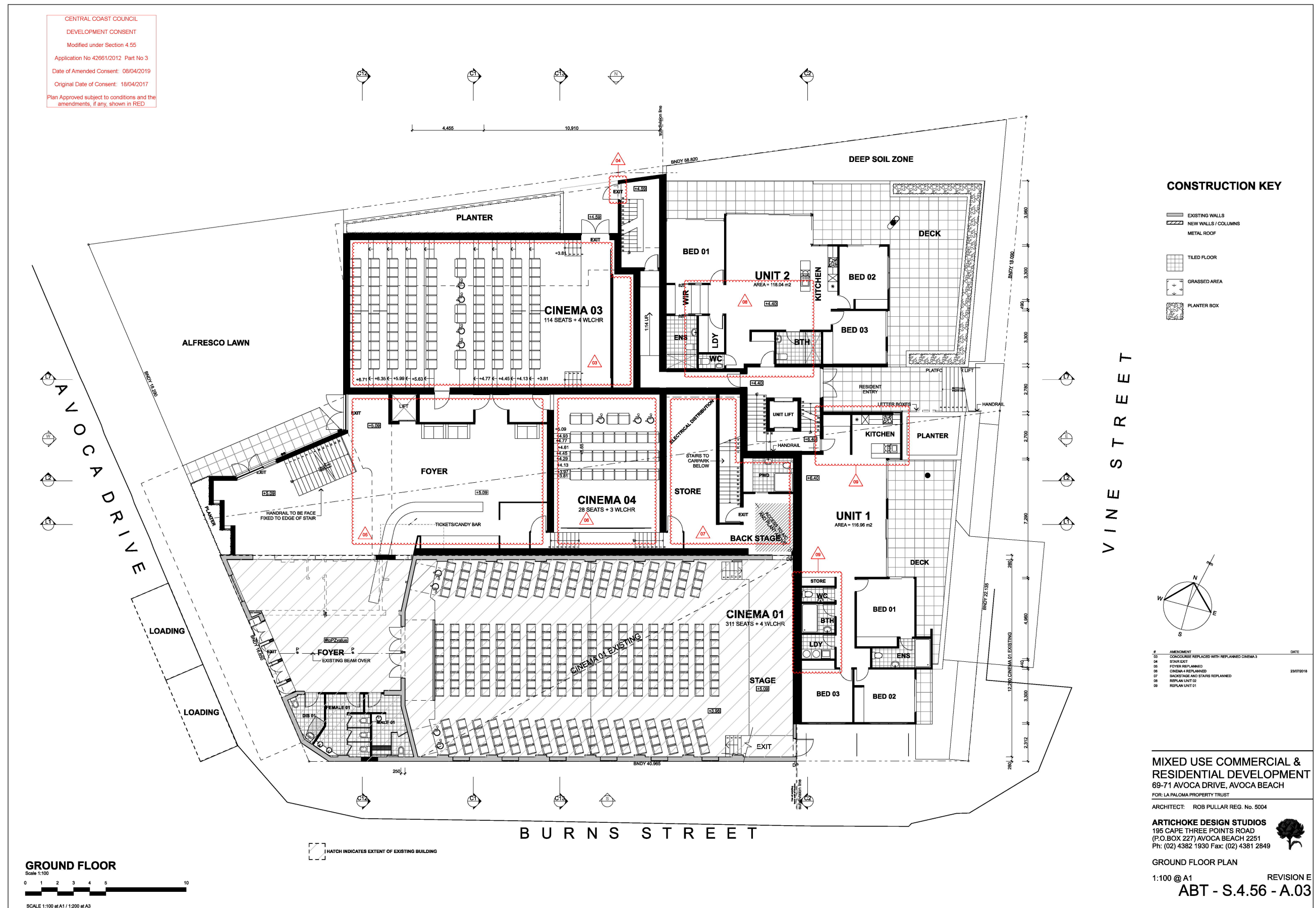
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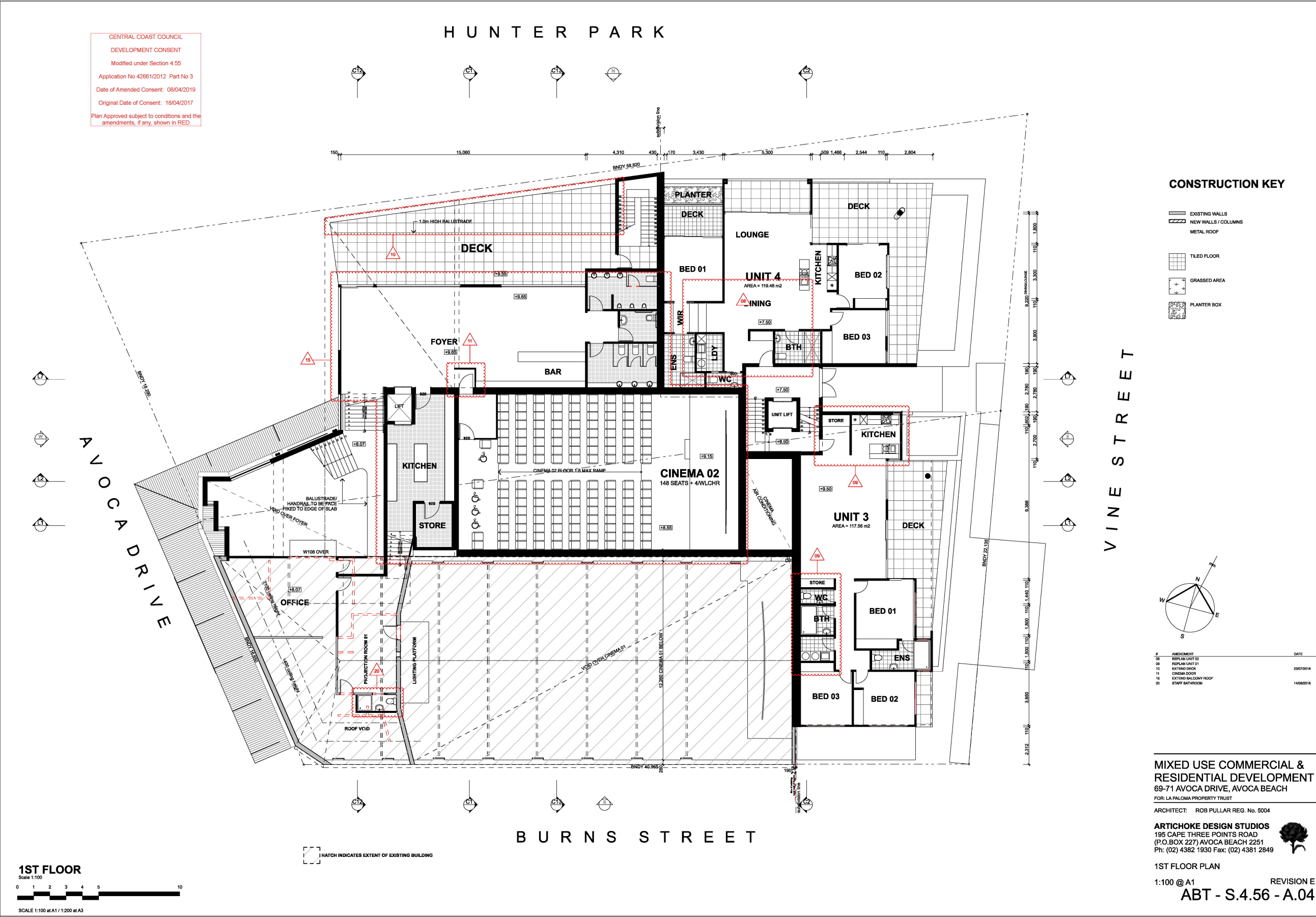


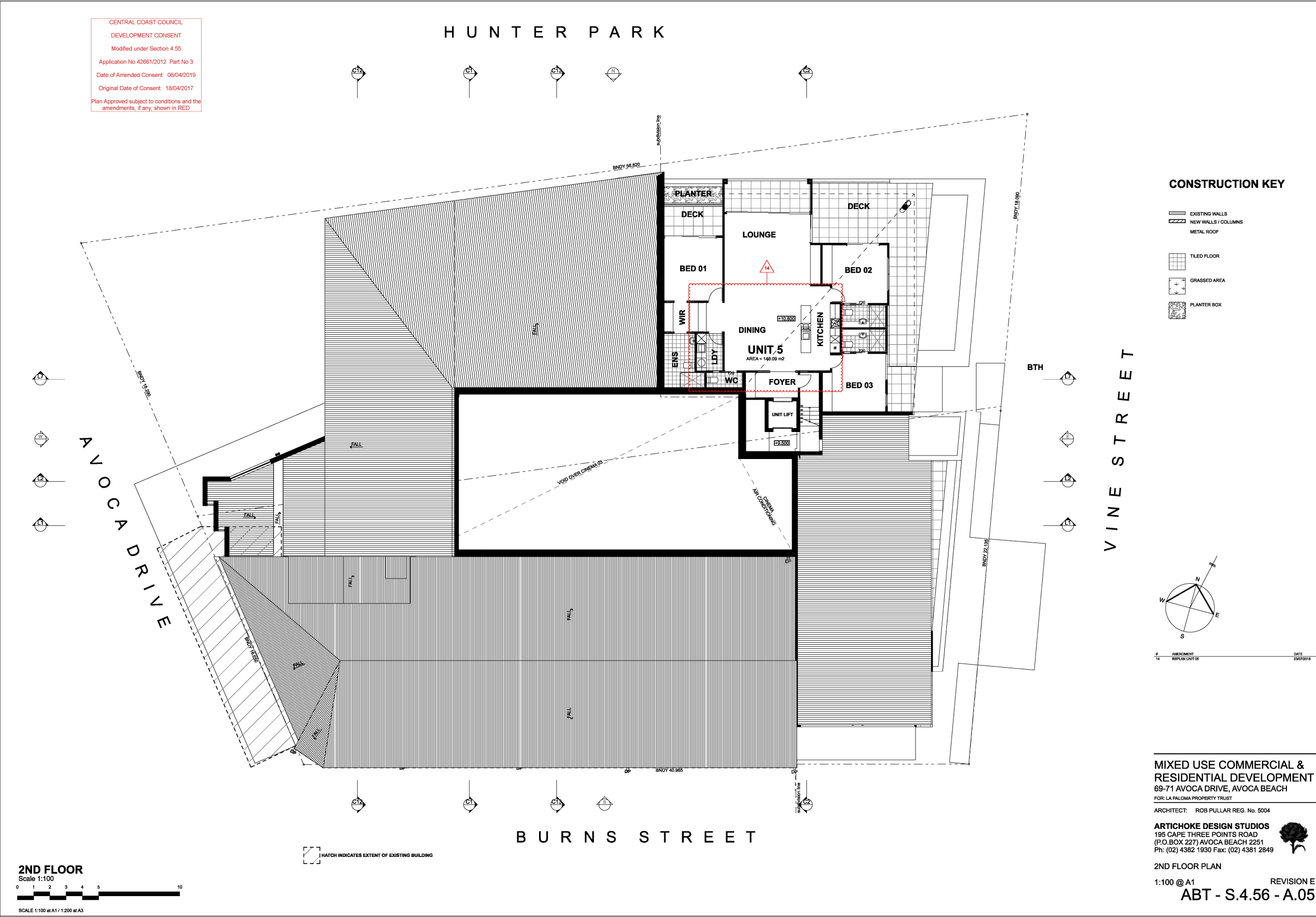
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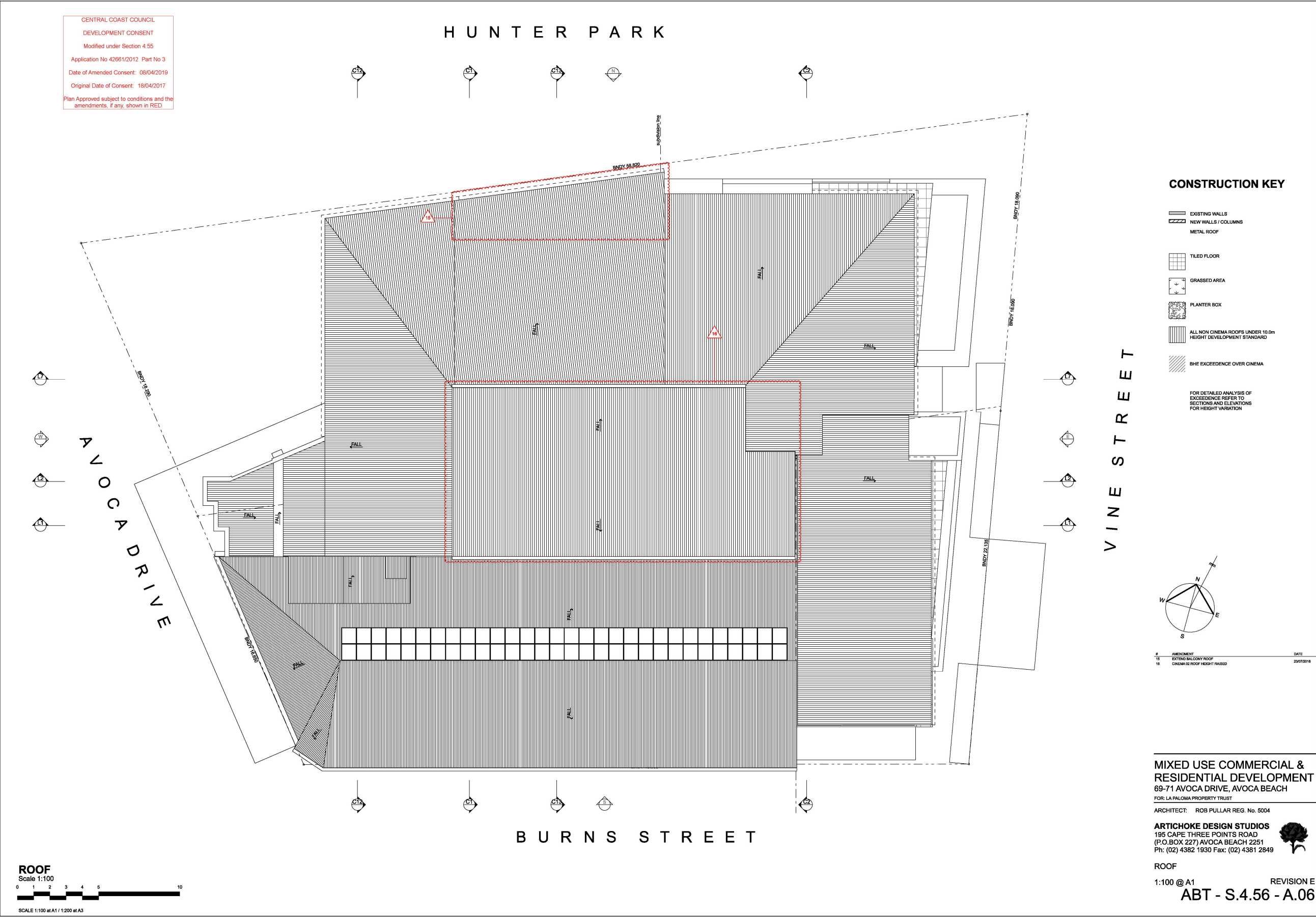
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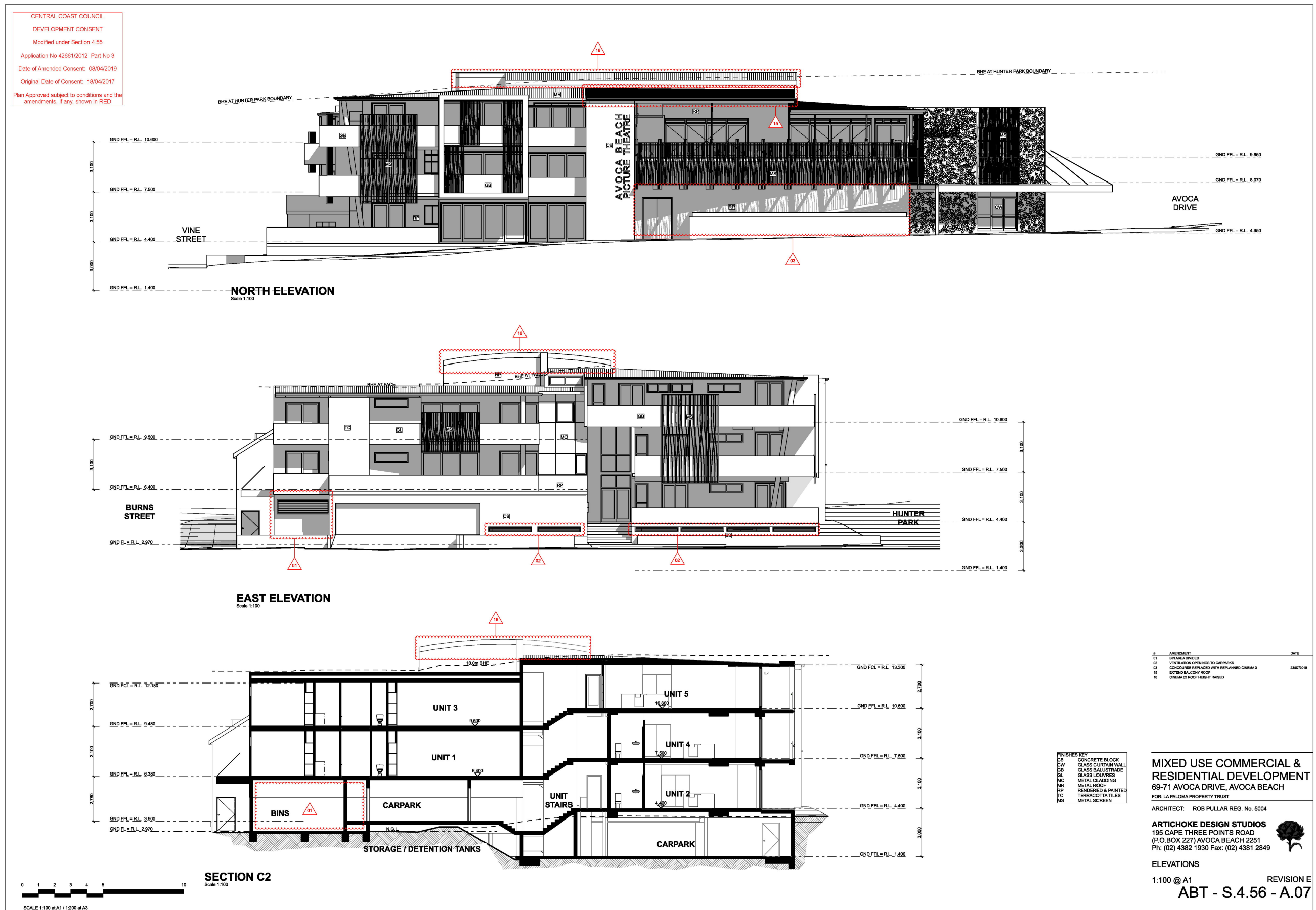


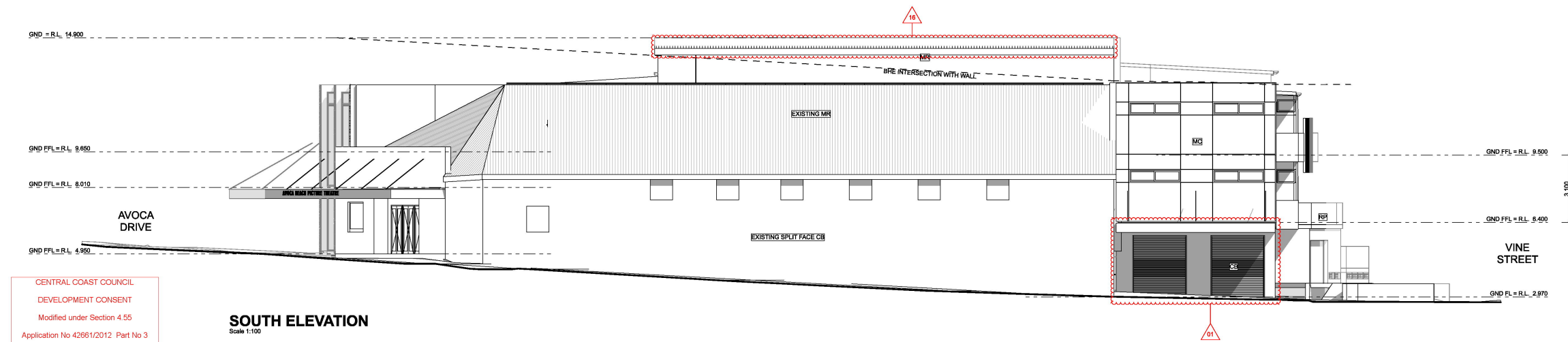






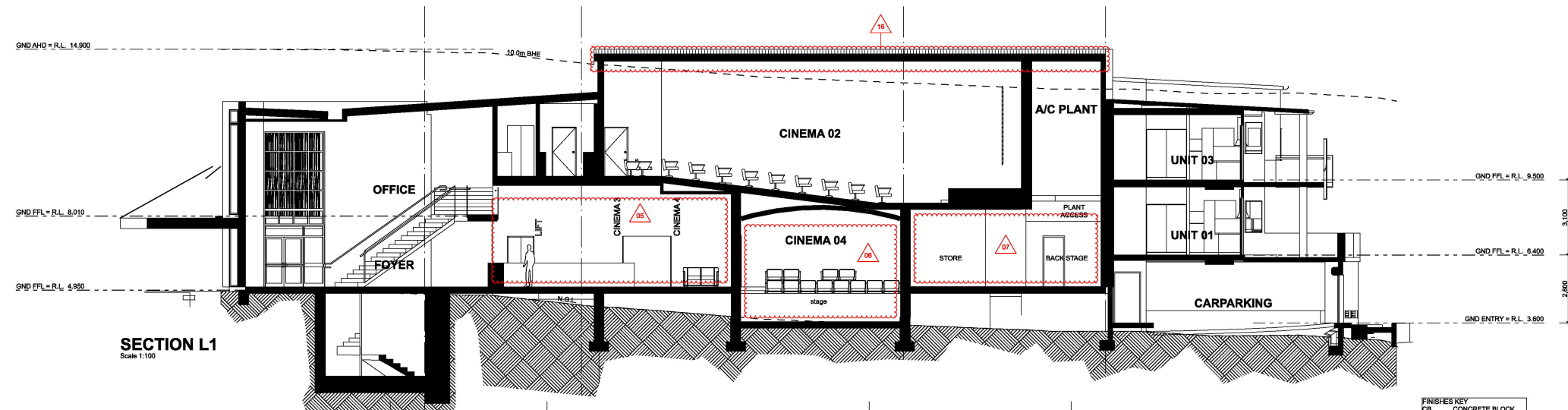




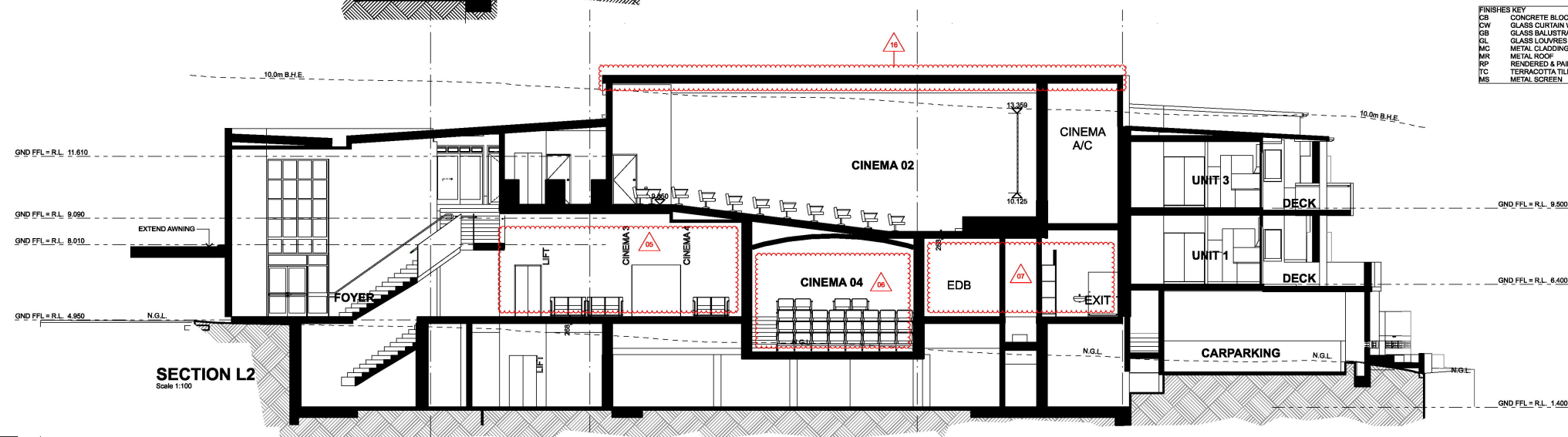


CENTRAL COAST COUNCIL
DEVELOPMENT CONSENT
Modified under Section 4.55
Application No 42661/2012 Part No 3
Date of Amended Consent: 08/04/2019
Original Date of Consent: 18/04/2017
Plan Approved subject to conditions and the
amendments, if any, shown in RED

SOUTH ELEVATION
Scale 1:100



SECTION L1
Scale 1:100



SECTION L2
Scale 1:100

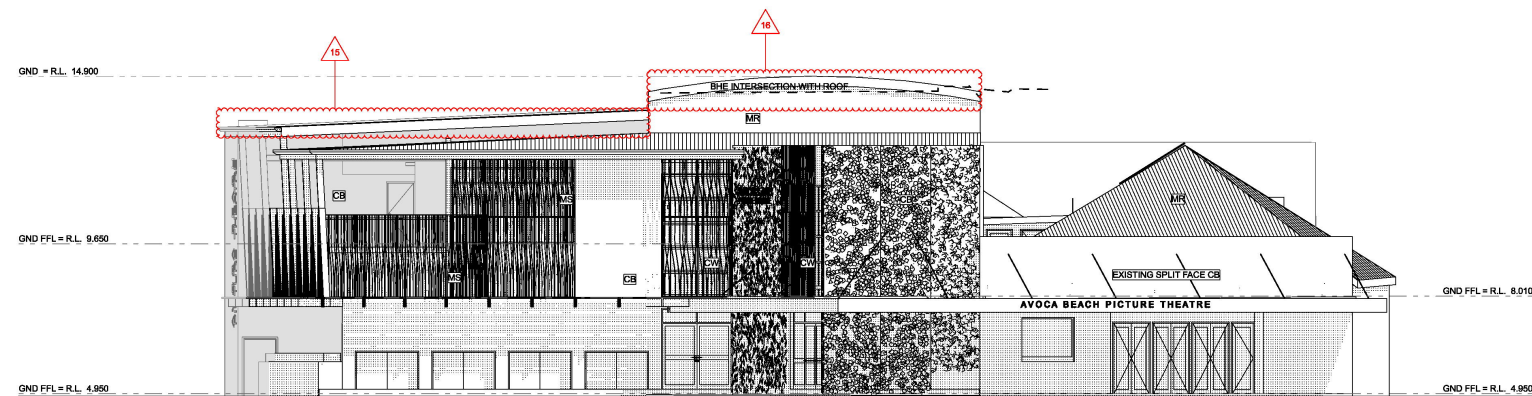
FINISHES KEY
CB CONCRETE BLOCK
CW GLASS CURTAIN WALL
GB GLASS BALUSTRADE
GL GLASS LOUVER
MC METAL CLADDING
MR METAL ROOF
RP RENDERED & PAINTED
ITC TERRAZZOTA TILES
MS METAL SCREEN

#	AMENDMENT	DATE
05	FOYER REPLANED	23/07/2018
06	CINEMA 4 REPLANED	
07	BACKSTAGE AND STAIRS REPLANED	
15	CINEMA 02 ROOF HEIGHT RAISED	
01	SW AREA DIVIDED	Work in Progress

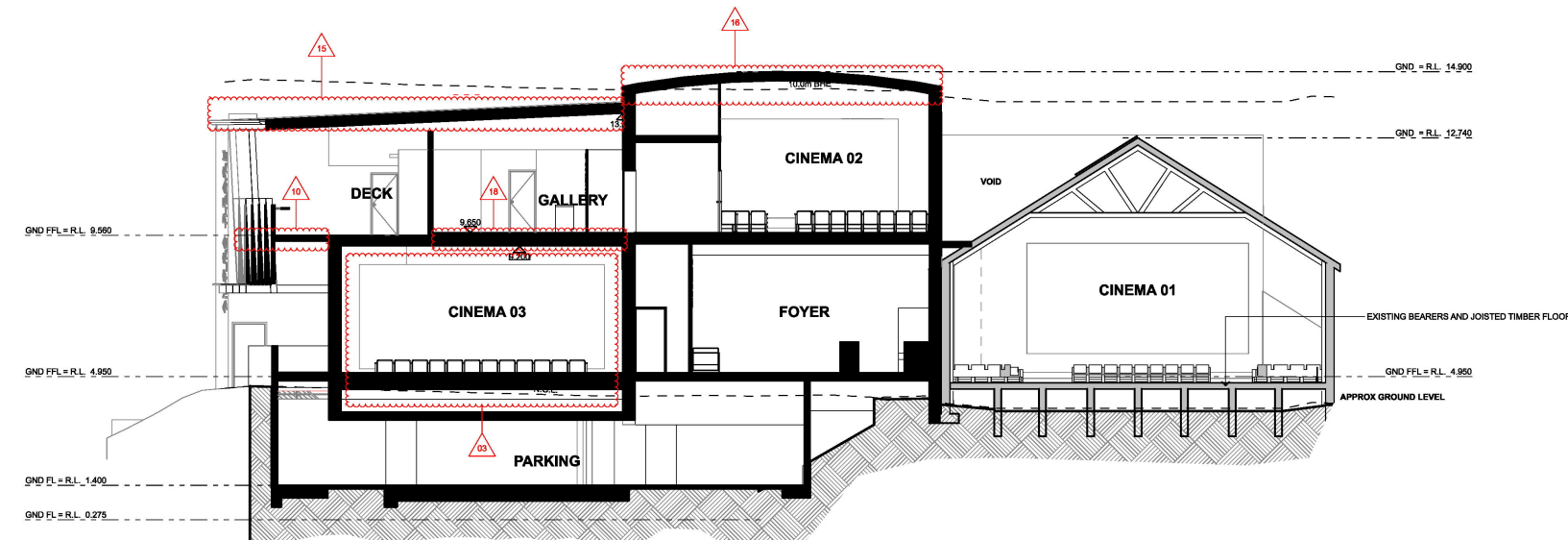
MIXED USE COMMERCIAL & RESIDENTIAL DEVELOPMENT
69-71 AVOCA DRIVE, AVOCA BEACH
FOR: LA PALOMA PROPERTY TRUST
ARCHITECT: ROB PULLAR REG. No. 5004
ARTICHOKE DESIGN STUDIOS
185 CAPE THREE POINTS ROAD
(P.O. BOX 227) AVOCA BEACH 2251
Ph: (02) 4382 1930 Fax: (02) 4381 2849

ELEVATIONS
1:100 @ A1
ABT - S.4.56 - A.08
REVISION E

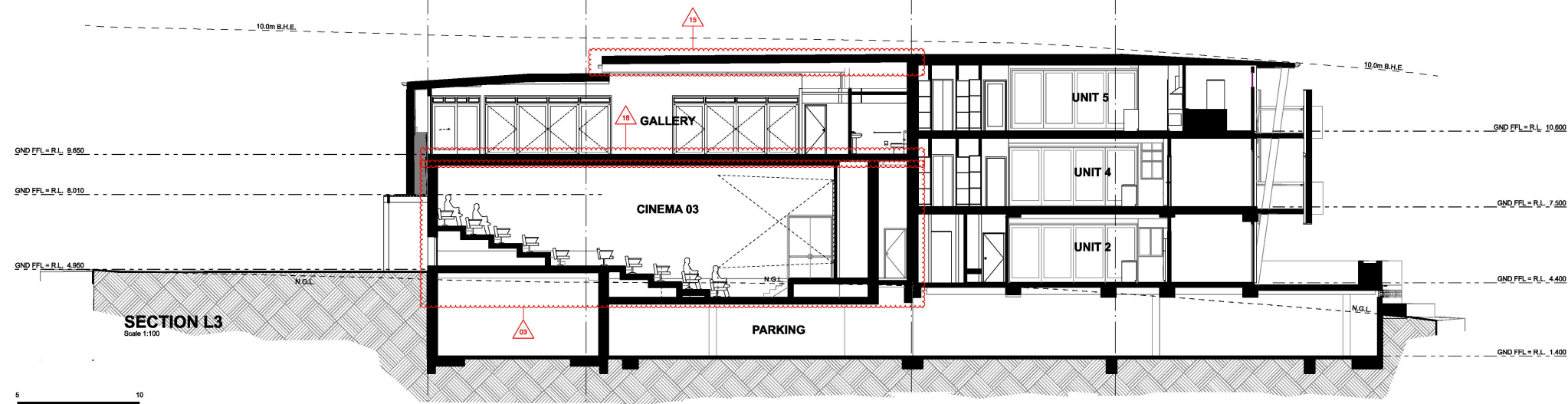
SCALE 1:100 at A1 / 1:200 at A3



WEST ELEVATION
Scale 1:100



SECTION C1
Scale 1:100



SECTION L3
Scale 1:100

CENTRAL COAST COUNCIL
DEVELOPMENT CONSENT
Modified under Section 4.55
Application No 42661/2012 Part No 3
Date of Amended Consent: 08/04/2019
Original Date of Consent: 18/04/2017
Plan Approved subject to conditions and the amendments, if any, shown in RED

FINISHES KEY
CB CONCRETE BLOCK
CW GLASS CURTAIN WALL
GB GLASS BALUSTRADE
CL GLASS LOUVRES
MC METAL CLADDING
MR METAL ROOF
RP RENOVATED & PAINTED
TC TERRACOTTA TILES
MS METAL SCREEN

#	AMENDMENT	DATE
03	CONCOURSE REPLACED WITH REPLANNED CINEMA 3	
10	EXTENDING ROOF	23/07/2019
15	EXTENDING BALCONY ROOF	
18	CINEMA 02 ROOF HEIGHT RAISED	
18	GALLERY FLOOR LEVEL RAISED	

MIXED USE COMMERCIAL & RESIDENTIAL DEVELOPMENT
69-71 AVOCA DRIVE, AVOCA BEACH

FOR: LA PALOMA PROPERTY TRUST
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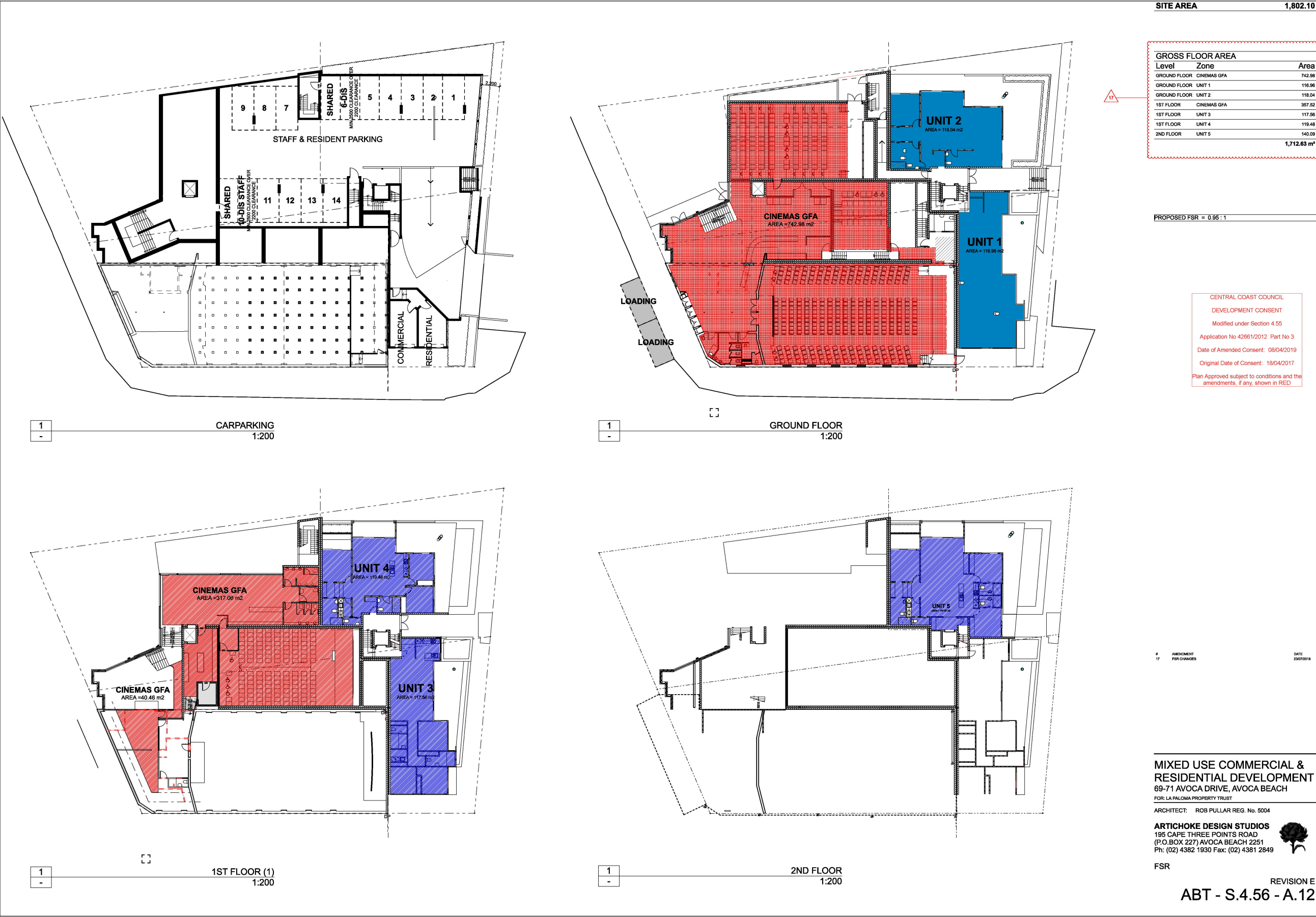
SECTIONS

1:100 @ A1

REVISION E

ABT - S.4.56 - A.09

0 1 2 3 4 5 10
SCALE 1:100 at A1 / 1:200 at A3



Telephone: (02) 4350 5555
 Please Quote: DA/42661/2012/D
 Responsible Officer: Robert Eyre

Johnson Projects
 55 Conelys Rd
 COORANBONG NSW 2265



15 September 2022

Application to Modify
Development Consent – Notice of Determination
 issued under the *Environmental Planning and Assessment Act 1979*
 Sections 4.56(1)

Development Application No: DA/42661/2012/D
Applicant: Johnson Projects
Property Address: Lot 651 DP 16791, Lot 140 DP 9359
 69 Avoca Dr, AVOCA BEACH NSW 2251
Proposal: Alterations and Additions to Existing Theatre -
 (Amended Application)
Modified On: **12 September 2022 (D)**
8 April 2019 (B)
24 November 2014 (A)

Original Determination: **Approved by the Land and Environment Court (LEC),**
Original Determination Date: **18 April 2017**

Date from which this consent operates

In accordance with Section 4.20 of the *Environmental Planning and Assessment Act 1979*, this consent becomes effective and operates from the date of this notice being 18 April 2017

Imposition of conditions

Subject to the provisions of Section 4.17 of the Act this Modification has been granted subject to conditions annexed to this consent.

Review of Determination

Subject to provisions of Sections 8.2 & 8.3 of the *Environmental Planning & Assessment Act 1979* the applicant may make an application seeking a review of this determination, providing it is lodged within 28 days of notification.

Right of Appeal

Section 8.9 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court within 28 days, from the date of determination.



On behalf of the consent authority

David Farmer

Chief Executive Officer

Per:



Robert Eyre

Principal Development Planner

DEVELOPMENT ASSESSMENT

Conditions

1.PARAMETERS OF THIS CONSENT

1.1A ~~Description of the Approved Development~~

~~Approval is granted to Development Application No. 42661/2012 for alterations and additions to the Avoca Beach Picture Theatre, to include demolition of an existing cottage and ancillary buildings, retention of the existing theatre/cinema (cinema 1 with a maximum of 311 seats plus 4 wheelchair), three additional cinemas (providing a total of 4 cinemas) (cinema 2 with a maximum of 194 seats plus 2 wheelchair, cinema 3 with a maximum of 29 seats plus 2 wheelchair, and cinema 4 with a maximum of 69 seats plus 2 wheelchair), café, five (5) residential units, basement car parking at Lot 140 DP 9359 and Lot 651 DP 16791 and known as 69 and 71 Avoca Drive, Avoca Beach.~~

1.1A Description of the Approved Development

Approval is granted to Development Application No. 42661/2012 for alterations and additions to the Avoca Beach Picture Theatre, to include demolition of an existing cottage and ancillary buildings, retention of the existing theatre/cinema (cinema 1 with a maximum of 311 seats plus 4 wheelchair), three additional cinemas (providing a total of 4 cinemas) (cinema 2 with a maximum of 148 seats plus 4 wheelchair, cinema 3 with a maximum of 149 seats plus 4 wheelchair, and cinema 4 with a maximum of 28 seats plus 3 wheelchair), café, five (5) residential units, basement car parking at Lot 140 DP 9359 and Lot 651 DP 16791 and known as 69 and 71 Avoca Drive, Avoca Beach.

1.1. Approved Plans and Supporting Documents

Implement the development in accordance with the approved plans and documents unless modified by any following condition of this consent.

~~Architectural Plans by Artichoke Design Studios & Landscape Plans by Nova Hortus Landscapes~~

Drawing	Description	Sheets	Issue	Date
A.01 to A.12	Plans of proposed Development, prepared by Artichoke Design Studios	A.01 to A.12	A	29/06/2017 Revision C

~~Supporting Documentation~~

Document	Title	Date
	Supplementary Statement of Environmental Effects – Doug Sneddon Planning Pty Ltd	Sept 2016
	Report of Drew Bewsher – Flooding and Stormwater	7 Sept 2016



	Issues	
	Draft Flood Emergency Response Plan for Theatre Avoca Beach by Dr Stephen Yeo, Flood Focus Consulting and Mr Drew Bewsher	7 Sept 2016
	Draft Flood Emergency Response Plan Residential Strata Development, Avoca Beach by Dr Stephen Yeo, Flood Focus Consulting and Mr Drew Bewsher	7 Sept 2016
	Traffic Report by Graham Pindar	13 Sept 2016
	Basix Certificate No 797799M	20/2/2017
	Stormwater Concept Management Plan by ADW Johnson	7 Sept 2016

Plans

Drawing	Description	Sheets	Issue	Date
A.01 – A.09 and A.12	Plans of proposed Development, prepared by Artichoke Design Studios	1-10	E	Revision E 23/07/2018

Supporting Documentation

Document	Title	Date
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4	Draft Flood Emergency Response Plan Residential Strata Development, Avoca Beach by Dr Stephen Yeo, Flood Focus Consulting and Mr Drew Bewsher	7 Sept 2016
5	Traffic Report by Graham Pindar	13 Sept 2016
6	Basix Certificate No 797799M	20/2/2017
7	Stormwater Concept Management Plan by ADW Johnson	7 Sept 2016
8	Colours & Materials, prepared by Artichoke Design Studios	Revision E
9	Shadow Diagrams, prepared by Artichoke Design Studios	Revision E
10	Landscape Specifications and Plans by Nova Hortus Landscapes	17 September 2012

1.2A Prior to the issue of a construction certificate, a BCA Report and a BCA Section J Compliance Assessment in relation to the development approved by this consent (which includes any changes to the development made by these conditions) is to be submitted to and approved by Council.

1.2. All building works are to be carried out in accordance with the Building Code of Australia.

1.3 **Operating Hours**

The Cinemas are to operate only within the following hours:

(a) 8.30am to midnight Sunday to Thursday, 8.30 am to 12:30am Friday and Saturday;

(b) The hours specified in (a) above do not preclude patrons leaving the premises after the times specified in (a) above if the film or performance or other event has finished by the time specified above, provided they leave within 30 minutes of the completion of the film, performance or other event;

(c) The hours specified in (a) above do not preclude attendance on the premises of staff outside the hours specified in (a) above;

(d) The hours specified in (a) above do not preclude special promotions or premiers of films or movie marathons being held outside those hours on a maximum of six occasions in any 12 month period in the existing Cinema 1, and on no more than 2 consecutive days and otherwise with at least 1 month between such promotions, premiers or marathons.

1.4 The applicant is to ensure that patrons leave the premises quietly after 10 pm on any day of the week. In the event that a substantiated noise complaint is received by Council, the applicant/business owner will seek the services of a suitably qualified person to undertake noise assessment of the activity, an acoustic report will be published from the assessment. The acoustic assessment is to be carried out as per procedures and guidelines of Australian Standard AS1055, "Acoustics - Description and Measurement of Environmental Noise, Part 1 General Procedures". A copy of the acoustic report will be provided to Council and noise mitigating measures are to be implemented. An Acoustic Validation Report may be requested by Council to demonstrate that mitigating measures have been effective.

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

All conditions under this section must be met prior to the issue of any Construction Certificate

- 2.1. No activity is to be carried out on site until any Construction Certificate required for that activity has been issued, other than:
 - a. Site investigation for the preparation of the construction, and / or
 - b. Implementation of environmental protection measures, such as erosion control etc that are required by this consent.
 - c. Demolition works as approved under this consent and in accordance with conditions relating to asbestos removal. (ADDED)
- 2.2. Prior to the issue of a Construction Certificate an application must be submitted to council under Section 138 of the *Roads Act, 1993*, for the approval of required works to be carried out within the road reserve.

Prior to the issue of a Construction Certificate, Engineering plans for the required works within a public road that have been designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation Control*, must be submitted to and approved by Council. The Engineering plans must be included with the Roads Act application for approval by council.

Design the required works as follows:

- a. Avoca Drive (majority of) & Burns Road - Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontages of the site.
- b. Avoca Drive – Full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath (or similar) across the full frontage of the site.
- c. Burns Street – 1.5 metre wide reinforced (SL72 steel fabric, 100mm thick) concrete path (or similar) and landscaping across the full frontage of the site.
- d. Vine Street - 1.5m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath across the full frontage of the site.
- e. Vine Street - Heavy-duty vehicle crossing / ramp constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- f. Avoca Drive - All redundant vehicular crossings are to be removed and the footway formation reinstated with a full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath.

- g. Vine Street - Minor upgrade of the stormwater drainage system if the stormwater drainage pit is required to be relocated due to a conflict with the location of the proposed driveway crossing. Currently, a stormwater drainage pit is located at the low point of the frontage adjacent to the proposed driveway crossing servicing the basement car park.
- h. Roadside furniture and safety devices as required e.g. fencing, signage, guide posts, chevrons, directional arrows, and/or guard rail in accordance with RMS and relevant Australian Standards.
- i. Signage and line marking, such as no stopping / parking signage at the intersection of Avoca Drive & Burns Street, loading zone and signage for the access driveway. The signage and line marking plan must be approved by Council's Traffic Committee.
- j. Pram ramps at the intersection of Avoca Drive & Burns Street and Burns Street & Vine Street.
- k. Relocation of the existing plaques and hand imprints to a suitable alternative location.
- l. All retaining walls shall be designed by a practicing Civil/Structural engineer and shall not conflict with services.

The Roads Act application must be approved by council prior to the issue of a Construction Certificate.

A fee for the approval of engineering plans under the *Roads Act 1993* applies. The amount of this fee can be obtained by contacting council's Customer Services on (02) 4325 8222.

All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

- 2.3. A dilapidation report must be submitted to Council with the Roads Act application and / or Construction Certificate application. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.4. A security deposit of \$50,000.00 must be paid into Council's trust fund prior to the issue of any Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.

- 2.5. Prior to the issue of a Construction Certificate, an application must be submitted to council, under Section 68 of the Local Government Act, for the approval of required drainage works associated with public stormwater / watercourse works.

Engineering plans for the works must be prepared and designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation Control*, and submitted to council for approval with the Local Government Act application.

The required works to be designed are as follows:

- a. Connection of all stormwater from impervious areas within the site via an on-site stormwater detention structure to council's drainage system located in Vine Street.

The Local Government Act application must be approved by council prior to the issue of a Construction Certificate.

A fee for the approval of engineering plans under the Local Government Act applies. The amount of this fee can be obtained by contacting council's Customer Services on (02) 4325 8222.

- 2.6. Prior to the issue of a Construction Certificate an application, with the relevant fee, must be submitted to council under Section 68 of the Local Government Act 1993 for an approval to discharge liquid trade waste to council's sewerage system. The Application to Discharge Liquid Trade Waste can be found on council's website: www.gosford.nsw.gov.au

- 2.7. Prior to the issue of a Construction Certificate the Applicant/developer must apply for and obtain from Council (Water Authority) a Section 307 Certificate of Compliance under the *Water Management Act 2000*. Conditions and contributions may apply to the Section 307 Certificate.

The 'Application for 307 Certificate under Section 305 *Water Management Act 2000*' form can be found on Council's website www.gosford.nsw.gov.au. Early application is recommended.

- 2.8. Prior to the issue of a Construction Certificate Engineering details prepared and certified by a practicing structural engineer must be submitted to the Council (Water Authority) for development constructed near or over the sewer main and / or adjacent to Council's water mains. The engineering details must comply with Council's guidelines for "Building Over or Near Council Sewer and Water Mains" and must be approved by Council prior to the issue of a Construction Certificate. A fee for engineering plan assessment must be paid when submitting the engineering details.

Additional fees for the submission of contractor's documentation and sewer inspection fees apply for the adjustment or encasement of Councils sewer main. Subject to

approval of the engineering plans, and payment of the prescribed fees, the developer must contact Council's Water and Sewer Quality Inspector on mobile phone 0419 412 725 a minimum of one week prior to commencement of any work involving building over and / or adjacent to sewer mains.

- 2.9. Design details of the following engineering works within private property must be submitted to and approved by Council prior to the issue of a Construction Certificate:
- a. Driveways / ramps and car parking areas must be designed according to the requirements of AS2890: Parking Facilities for the geometric designs, and industry Standards for pavement designs. A longitudinal driveway profile between the parking level and Vine Street centreline, along the eastern (shortest) edge, shall be prepared by a suitably qualified and experienced engineer demonstrating that the driveway grades comply with the above standard.
 - b. A stormwater detention system must be designed in accordance with the Gosford DCP 2013 Chapter 6.7 - Water Cycle Management and council's Civil Works Specification. The stormwater detention system must limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1% AEP storm event. A runoff routing method must be used. An on-site stormwater detention report including an operation and maintenance plan must accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.
 - c. On-site stormwater retention measures must be designed in accordance with council's DCP Chapter 6.7 - Water Cycle Management. A report detailing the method of stormwater harvesting, sizing of retention tanks for re-use on the site and an operation and maintenance plan must accompany the design.
 - d. Nutrient/pollution control measures must be designed in accordance with Gosford DCP 2013 Chapter 6.7 - Water Cycle Management. A nutrient / pollution control report including an operation and maintenance plan must accompany the design.
 - e. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to council's drainage system located in Vine Street. This shall include the provision of a flap valve on the outlet to prevent backwater entering into the basement.
 - f. Full details of the holding tank capacity, pump type and system, discharge rate and the delivery line size for the basement drainage.
 - g. The minimum floor level of all habitable rooms in the development must be RL 4.1m AHD.
 - h. All building materials used or located below RL 3.6m AHD must be of a type that is able to withstand the effects of immersion.

- i. The crest level to the basement carpark to be RL 3.6m AHD.
- j. Proposed structure certified to withstand the expected forces of floodwater.

These design details and any associated reports must be included in the construction certificate. The plans shall be generally in accordance (with required amendments) with the submitted stormwater concept management plan by ADW Johnson (refer Reference No. 238328 (1), dated 7/9/2016), which are to be advanced as necessary for Construction Certificate issue purposes.

- 2.10. A Road Safety Check prepared by a Road Safety Auditor recognised on the NSW Register of Road Safety Auditors must be submitted to the Council as the Roads Authority prior to the issue of a Construction Certificate. Any deficiencies identified within the audit must be resolved in consultation with Council prior to the approval of design drawings.
- 2.11. A "Flood Mitigation" report is to be submitted to and approved by Council prior to the issue of a Construction Certificate. The report is to detail industry best practice strategies and mitigation measures that will reduce the risk to life and property associated with the residential building's main access via a floodway (as detailed in Report of Drew Bewsher – Flooding and Stormwater Issues, Sept 2016).
- 2.12. The recommendations of the "Draft Emergency Response Plan for Residential and for the Theatre – Sept 2016" report are to be incorporated into the design of the development prior to the issue of a Construction Certificate.
- 2.13. Prior to the issue of a Construction Certificate, amended plans are to be submitted to and approved by Council which provide the following changes to the development to address waste management matters:
 - a. Submission of revised plans to indicate separate fully dimensioned Residential and Commercial waste storage enclosures.
 - b. The Residential waste storage enclosure is to be sized to accommodate a minimum of 5 x 120 litre mixed waste MGB's, 5 x 240 litre recyclable waste MGB's and a nominal number of 240 litre green waste MGB's should they be required for resident use only.
 - c. The Residential waste storage enclosure is to be located to provide internal resident access to the enclosure having a gradient not exceeding 10% alternatively an interim residential waste holding enclosure located adjacent to the resident lift may be considered with residential waste within the interim waste holding enclosure to be transferred by a caretaker or similar to a principal Residential waste enclosure located to facilitate roll out of MGB's to Burns St for kerbside collection.

- d. Suitable internal access to the Residential and Commercial waste enclosure/s is required to ensure transfer of waste can be undertaken without travel outside the boundaries of the property.
 - e. A 10.0m long kerbside presentation location is to be indicated on the revised plans within Burns St adjacent to the proposed waste storage enclosure.
 - f. The Commercial waste storage enclosure is to be sized consistent with the multiple uses within the proposed development in accordance with Chapter 7.2 - Waste Management of Gosford DCP 2013 and the Better Practice Guide for Waste Management in Multi-Unit Dwellings published by DECC.
 - g. Mixed and recyclable mobile garbage bins for kerbside collection by a Private waste contractor are to be indicated.
 - h. Note: Bulk waste bins are not supported for servicing off the street. Bulk waste bins require the servicing to be undertaken with the Private waste contractor vehicle entirely within the boundaries of the property. Mixed waste and recyclables mobile garbage bins for kerbside collection are to be wheeled out on arrival of the Private waste collection contractor and returned to the Commercial waste storage enclosure immediately after servicing.
 - i. Assessment of Dwg No ABTDA-A.02, Revision A dated August 2016 notes the waste storage area located to require residents and the Commercial operator to transport waste from the carpark level down a ramp with excessive gradient, cross fall and stairs to access the waste storage area. Re-assessment of waste storage is required to provide for a sustainable, safe waste storage outcome for the proposed development. The waste storage enclosure/s are to be located to be readily accessible to the occupants of the residential units, the Commercial operator and the Residential and Commercial waste collection contractors.
 - j. The Residential and Commercial waste enclosure/s are required to be in accordance with Chapter 7.2 - Waste Management of Gosford DCP 2013 to ensure waste is appropriately stored to minimise any potential odour/vermin issues within the proposed development and the public domain.
- 2.14 Prior to the issue of a Construction Certificate the revised signed and dated Waste Management Plan consistent with advice provided to address/clarify solid waste issues, and consistent with the amended plans approved pursuant to condition 2.13 of this consent, must be submitted to and approved by Council.
- 2.15 A Waste Management Strategy to detail responsibilities of transfer of Residential and Commercial waste, servicing frequencies and management of waste enclosure/s, consistent with the amended plans approved pursuant to condition 2.13 of this consent, must be submitted to and approved by Council prior to the issue of a Construction Certificate.

2.16 An Interpretation Plan shall be prepared by a suitably qualified heritage consultant to include appropriate measures to interpret the heritage significance of the original theatre to be retained and adaptively reused, including measures for ongoing maintenance. The Plan is to be submitted to Council for approval and approval obtained prior to the approval of the Construction Certificate and approved measures shall be detailed in the application for the Construction Certificate, and the following:

- a. A Photographic archival record of the Theatre is to be undertaken by a suitable qualified professional prior to commencement of construction works. The archival record and measured drawings should be undertaken in accordance with the Office of Environment and Heritage, Heritage Branch Guidelines *Photographic Recording of Heritage Items*. Two copies of the Record must be submitted to Council for approval and made available in the Library. Approval by Council must be confirmed in writing prior to construction.

A report is to be prepared by a practicing structural engineer by the applicant detailing the structural adequacy of the Theatre building to withstand the proposed excavation works. This report must include any measures required to be incorporated to ensure that no damage will occur during the course of works. The report must be submitted to Council and relevant adjoining property owners prior to the issue of any construction certificate.

- b. Submit an updated landscape plan is required. Approval by Council must be confirmed in writing prior to construction.

2.17 The fitout of the food premises is to comply with the Food Act, 2003, Food Regulation 2010, Food Standards Code and the Australian Standard AS4674 for the Design, Construction and Fitout of Food Premises. Details of compliance are to be included in the plans and specifications for the **Construction Certificate** to the satisfaction of the certifying authority

2.18 Details of any proposed mechanical ventilation systems, detailing compliance with the relevant requirements of Clause F4.12 of the Building Code of Australia (BCA) and Australian Standard AS1668 Parts 1 & 2 (including exhaust air quantities and discharge location points) are to be submitted to and approved by the PCA **prior to a Construction Certificate being issued** for the subject works.

A certificate is to be submitted at the completion of the installation and prior to the issue of a Occupation Certificate, from a practising Mechanical Engineer certifying that the construction, installation and operation of the exhaust hood ventilation system meets the requirements as AS 1668.1 and/or AS 1668.

2.19 Appropriate noise attenuation is to be incorporated into the design of the residential units to minimise the impacts of elevated noise in accordance with a specification to be provided by an appropriately qualified and experienced Acoustic Consultant.

2.20 In accordance with the Voluntary Planning Agreement (ECM Doc No 3080720 – incorporating the Voluntary Planning Agreement executed between the parties dated 15 September 2006) signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited dated 22 January 2007 (the terms of which are incorporated herein as if fully set out herein), compliance with the following:

- In accordance with Recital E and clause 4(a) of the 2006 Voluntary Planning Agreement, payment of the total sum of \$500,000 for the public purpose of the provision of public amenities, namely, the construction and enhancement of car parking facilities near the development in South End Park, Avoca and the embellishment and beautification of the adjoining public open space known as Hunter Park, Avoca all as depicted on the plan annexed to the 2006 Voluntary Planning Agreement and marked with the letter "B"; and
- In lieu of Section 94 Contributions, payment of an amount of \$10,296 for the provision of public amenities by Council ("the Contribution Amount"). The Contribution Amount will be increased on each of 1 January, 1 March, 1 July and 1 October in each year from the date of this Agreement [being the date of the 2006 Voluntary Planning Agreement] until the Contribution Amount is paid by the same percentage increase as the percentage change, if any, in the Consumer Price Index in the 3 months prior to the relevant review date.

The above contribution amounts are to be paid prior to the issue of any Construction Certificate.

Any Construction Certificate is not to be issued by a certifying authority until the developer has provided the certifying authority with a copy of a receipt issued by Council that verifies that the contributions have been paid in accordance with the wording of this condition. A copy of this receipt is to accompany the documents required to be submitted by the certifying authority to Council under Clause 104 of the Environmental Planning and Assessment Regulation 2000.

2.21 Prior to the issue of a Construction Certificate the development consent to DA 6344/1999 for the Outdoor Theatre is to be relinquished.

3. PRIOR TO COMMENCEMENT OF ANY WORKS

All conditions under this section must be met prior to the commencement of any works

3.1. A Principal Certifying Authority is to be appointed after the construction certificate for the building work has been issued and prior to the commencement of any works.

- a. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.

- b. Submit to Council a *Notice of Commencement of Building Works* or *Notice of Commencement of Subdivision Works* form giving at least two (2) days notice of the intention to commence building or subdivision work. The forms can be found on Council's website www.gosford.nsw.gov.au
 - 3.2. A copy of the stamped approved plans must be kept on site for the duration of site works and the plans must be made available upon request to either the Principal Certifying Authority or an officer of Council.
 - 3.3. Site works must not be commenced until the sediment control measures have been installed in accordance with the approved plans / Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation and Control*.
 - 3.4. Prior to the commencement of any works a sign is to be erected in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
 - a. The name, address and telephone number of the principal certifying authority for the work; and
 - b. The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c. That unauthorised entry to the work site is prohibited.

Remove the sign when the work has been completed.
 - 3.5. Both a Plumbing and Drainage Inspection Application must be submitted to Council prior to the commencement of any works, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the *Plumbing and Drainage Act 2011* (to be provided by licensed plumber). These documents can be found on Council's website at: www.gosford.nsw.gov.au.
- Contact Council prior to submitting these forms to confirm the relevant fees.
- 3.6. Prior to the commencement of any works, a Tree Protection Zone is to be established around the Eucalyptus tree located on the road reserve corner of Vine and Burns Street. Due to the limited area available, the distance from the tree to a protective fence should be no less than 2m. The protective fence is to consist of a 1.8 metre high chain mesh fence erected around the tree and must remain intact until construction is completed. The fence is to be sign posted to warn of its purpose.
 - 3.7. Prior to the commencement of any works a Construction Traffic Management Plan is to be prepared for the relevant works ~~development~~ and submitted to and approved by Council. The Plan shall include Traffic Control Plans prepared by a suitably qualified and experienced consultant with necessary construction management measures

identified during demolition, excavation, delivery and construction phases. All works must ensure the safety of all vehicles and pedestrians. (AMENDED)

- 3.8. Demolition involving asbestos must be undertaken in accordance with the *Work Health and Safety Act 2011*.

The person having the benefit of this consent must ensure that the removal of:

- a. more than 10m² of non-friable asbestos or asbestos containing material is carried out by a licensed non-friable (Class B) or a friable (Class A) asbestos removalist, and
- b. friable asbestos of any quantity is removed by a licensed removalist with a friable (Class A) asbestos removal licence.

The licensed asbestos removalist must give notice to the regulator before work commences in accordance with Clause 466 of the *Work Health and Safety Regulation 2011*.

4. DURING WORKS

All conditions under this section must be met during works

- 4.1. Clearing of land, excavation, and / or earthworks, building works, and the delivery of building materials must only be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

- a. No work is permitted on Sundays and Public Holidays
- b. No work is permitted on:
 - Saturdays when a public holiday is adjacent to that weekend.
 - Construction industry awarded rostered days off.
 - Construction industry shutdown long weekends.

Clause b does not apply to works of a domestic residential nature as below:

- i Minor renovation or refurbishments to single dwelling construction.
- ii Owner occupied renovations or refurbishments to single dwelling construction.
- iii Owner builder construction of single dwelling construction; and / or
- iv Any cottage constructions, single dwellings or housing estates consisting of predominantly unoccupied single dwellings.

- 4.2. Erosion and Siltation control measures must be undertaken and maintained during the carrying out of all works, in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls must comply with Gosford DCP 2013 Chapter 6.3 - *Erosion and Sedimentation Control*.

- 4.3. A copy of the stamped approved plans must be kept on site for the duration of site works and the plans made available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.4. Council must be notified when plumbing and drainage work will be ready for inspection(s) and the work must be made accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.
- 4.5. The following Crime Prevention Through Environmental Design (CPTED) principles and strategies must be incorporated into the development during the carrying out of "works" to minimize the opportunity for crime:
 - a. Provide adequate lighting to common areas as required under *AS1158: Lighting for roads and public spaces*.
 - b. Paint the ceiling of the car park white.
 - c. Design of landscaping, adjacent to mailboxes and footpaths, must not provide concealment opportunities for criminal activity.
 - d. Design the development to avoid foot holes or natural ladders so as to minimise unlawful access to the premises.
 - e. Provide signage within the development to identify all facilities, entry/exit points and direct movement within the development.
- 4.6. The works within the road reserve that required approval under the Roads Act must be constructed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - Erosion Sedimentation Control.
- 4.7. The location of all electrical fixtures and/or gas outlets are to be at a minimum height of RL 3.6m AHD.
- 4.8. All Site Preparation, Demolition and Construction commitments as detailed within the required revised signed and dated Waste Management Plan in accordance with the Gosford City Council Development Application Guide and Chapter 7.2 – Waste Management of Gosford DCP 2013 must be complied with during the carrying out of works.
- 4.9. During construction, the Applicant/developer must arrange with the relevant service provider / Authority (e.g. Ausgrid, Jemena, communications provider) for the supply of services concurrent with the engineering work. Arrangements must include where required any relocation of existing mains and services and dedication of easements for mains and services.
- 4.10. Filling or debris must not be placed within any watercourse or drain.

- 4.11 Should any Aboriginal objects or artefacts be uncovered during works on the site, all works shall cease. The Office of Environment and Heritage shall be contacted immediately and any directions or requirements complied with.

5. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

All conditions under this section must be met prior to the issue of any Occupation Certificate

- 5.1. An application for the Occupation Certificate is to be submitted to the Principal Certifying Authority for approval.
- 5.2. The premises must not be occupied until the Occupation Certificate has been issued.
- 5.3. A Certificate of Compliance for all plumbing and drainage work and a Sewer Service Diagram showing sanitary drainage work (to be provided by licensed plumber) in accordance with the *Plumbing and Drainage Act 2011* must be submitted prior to the issue of an Occupation Certificate.
- 5.4. Lot 140 DP 9359 and Lot 651 DP 16791 must be consolidated into a single allotment under one Certificate of Title prior to the issue of any Occupation Certificate.
- 5.5. Prior to the issue of an Occupation Certificate, the Applicant must construct, grade, drain, seal and line mark including directional arrows with impervious paving material the driveway, vehicle manoeuvring area and 14 car parking spaces as shown on the approved plan, in accordance with *AS2890.1-2004: Parking facilities - Off-street parking*.
- 5.6. Prior to the issue of an Occupation Certificate, mail receptacles appropriately numbered for each dwelling unit in the development, as well as for the managing body, in consultation with Australia Post, must be provided.
- 5.7. Prior to the issue of an Occupation Certificate, works within the road reserve that required approval under the Roads Act are to be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'. Documentary evidence for the acceptance of such works obtained from the Roads Authority must be provided prior to the issue of any Occupation Certificate.

Note 1: A maintenance bond shall be paid on completion of the works in accordance with Section 1.07 Maintenance of the 'Civil Construction Specification'.

- 5.8. Any damage not shown in the dilapidation report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of any Occupation Certificate.



5.9. Prior to the issue of an Occupation Certificate the internal engineering works within private property must be completed in accordance with the plans and details approved with the construction certificate.

5.10. Prior to the issue of any Occupation Certificate the Deposited Plan (DP) must be amended to:

- Include an Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan.
 - a To create a 'Restriction as to User' over all lots containing an on-site stormwater detention system and/or a nutrient/pollution facility restricting any alteration to such facility or the erection of any structure over the facility or the placement of any obstruction over the facility.

And,

- Include an instrument under the Conveyancing Act 1919 for the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).
 - a To ensure on any lot containing an on-site stormwater detention system and/or a nutrient/pollution facility that:
 - (i) The facility will remain in place and fully operational.
 - (ii) The facility is maintained in accordance with the operational and maintenance plan so that it operates in a safe and efficient manner
 - (iii) Council's officers are permitted to enter the land to inspect and repair the facility at the owners cost.
 - (iv) Council is indemnified against all claims of compensation caused by the facility.

Registered title documents showing the restrictive and positive covenants must be submitted to and approved by the Principal Certifying Authority prior to the issue of any occupation certificate.

5.11. Prior to the issue of an Occupation Certificate, a registered surveyor is to confirm that the finished floor level of the car park and the finished crest level to the car park are in accordance with the design levels.

5.12A. Prior to the issue of an Occupation Certificate, a suitably qualified engineer is to certify that the automatic flood gates have been installed in accordance with the manufacturer's instructions, and that they are operating as designed.

- 5.12. Flood mitigation strategies, in accordance with the "Flood Mitigation" report, are to be installed and/or constructed.
- 5.13. Prior to the issue of an Occupation Certificate the Applicant/developer must arrange with the relevant service provider / Authority (e.g. Ausgrid, Jemena, communications provider) for the supply of services concurrent with the engineering work. Arrangements must include where required any relocation of existing mains and services and dedication of easements for mains and services.
- 5.14. Prior to the issue of an Occupation Certificate all existing buildings and structures must be connected to the stormwater systems.
- 5.15. Prior to the issue of an Occupation Certificate all existing buildings with plumbing fixtures must be connected to the sewer systems.
- 5.16. Pursuant to clause 4(c) of the Voluntary Planning Agreement (ECM Doc No 3080720 - incorporating the Voluntary Planning Agreement executed between the parties dated 15 September 2006) signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited dated 22 January 2007 (the terms of which are incorporated herein as if fully set out herein), the Applicant will, on registration of a strata plan of subdivision for the Land [as defined in the Voluntary Planning Agreement] or the issue of an occupation certificate for the development of the Land, whichever occurs first, dedicate to the Council without costs to the Council the strip of land 1.2 metres wide along Vine Street frontage (Vale Street) depicted on the plan annexed to the Voluntary Planning Agreement and marked with the letter "D".
- 5.17. Certification from a suitably qualified and experienced flooding consultant demonstrating that the recommendations within the Report of Drew Bewsher dated 7 September 2016 have been fully implemented for the development, including the Flood Emergency Response Plans (FERP's) must be submitted to Council prior to the issue of an Occupation Certificate.
- 5.18. Prior to the issue of an Occupation Certificate the refrigerated/cooling/freezing chamber, which is of sufficient size for a person to enter must have-
- (a) a door which is capable of being opened by hand from inside without a key; and
 - (b) internal lighting controlled only by a switch is located adjacent to the entrance doorway inside the chamber; and
 - (c) an indicator lamp positioned outside the chamber which is illuminated when the interior light is switched on; and
 - (d) An alarm that is-
 - a. located outside but controllable only from within the chamber; and
 - b. able to achieve a sound pressure level outside the chamber of 90dB(A) when measured 3m from the sounding device.

The door required by (a) above must have a doorway with a clear width of not less than 600mm and a clear height of not less than 1.5m.

Reason: to ensure compliance with the Building Code of Australia (BCA).

- 5.19. Council is to be notified upon completion of work and following the issue of the occupation certificate, prior to trading commencing to enable the premises to be inspected by Council's Environmental Health Officer and for the premises to be registered with the Council as a food premises.

Reason: to ensure that the fit out of the food premises complies with relevant standards and to enable registration of the food premises.

- 5.22. A Liquid Trade Waste Approval must be obtained from council prior to the issue of an Occupation Certificate.

6. ONGOING OPERATION

- 6.1. The on-site stormwater detention facility is to be maintained in accordance with the operation and maintenance plan.
- 6.2. The nutrient / pollution control facilities are to be maintained in accordance with the operation and maintenance plan.
- 6.3. No obstructions to the wheel out of the waste bins are permitted including grills, speed humps, barrier kerbs etc.
- 6.4. All Use of Premises and On-Going Management of waste requirements as detailed within the required revised signed and dated (and approved) Waste Management Plan in accordance with the Gosford City Development Application Guide and Chapter 7.2 – Waste Management of Gosford DCP 2013 must be complied with.
- 6.5. Comply with all commitments as detailed within the approved, required Waste Management Strategy.
- 6.6. The Residential mobile garbage/recycling/green waste containers must be placed at the approved location at the kerbside no earlier than the evening prior to the collection day and return to the approved Residential waste storage enclosure as soon as possible after service, no later than the evening on collection day. The residents, caretaker and Body Corporate are responsible for the placement and return of the mobile waste containers.
- 6.7. Commercial waste mixed and recyclable mobile garbage bins to be wheeled out on arrival of the private Commercial waste collection contractor and immediately returned to the approved Commercial waste storage enclosure.
- 6.8. Commercial waste to be serviced at such times to not conflict with Residential waste services.



- 6.9. Commercial waste to be serviced at a suitable frequency to ensure adequate storage capacity is available within the sealed mixed and recyclable waste MGB's at all times and to minimise potential odour issues.
- 6.10. Food waste to be serviced at maximum 3 day intervals. Alternatively, food waste may be stored within a dedicated food waste refrigerator/chiller and placed in waste MGB's on arrival of the Commercial waste collection contractor for immediate servicing.
- 6.11. No waste material, waste packaging or waste product to be placed or stored outside of the approved, sealed mixed and recyclable waste storage containers within the approved waste storage enclosures.
- 6.12. The waste storage enclosure must be constructed and managed in accordance with the provisions of Gosford DCP 2013, Part 7: Chapter 7.2 - *Waste Management, Appendix D* and *Appendix G*, as applicable.
- 6.13. The conditions of the Liquid Trade Waste Approval must be complied with at all times.
- 6.14. The cinemas are limited to 75% of their seating capacity prior to 4pm on Sundays during the summer public school holiday period in December/January. The Applicant will restrict seat availability in the cinemas through the cinema Point of Sale ticket system by 25% for screenings or other performances or events which commences before 4.00 pm. Records of daily ticket sales for these specified days will be kept and will be made available for inspection by Council or will be produced to Council on request.

(reason: to limit parking impacts of the proposed development)
- 6.15. The area identified on the approved plans as "Foyer" (previously noted as "gallery") is an ancillary use to the cinema and is not permitted to be leased separately or operated as a separate entity.

7. GENERAL

- 7.1. Public authorities who may have separate requirements in the following aspects are to be consulted:
 - a. *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b. *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c. *Ausgrid* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d. *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.



- e. *Central Coast Council* in respect to the location of water, sewerage and drainage services.
- 7.2. All work under this Consent is to be carried out in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011 No 10* and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 7.3. Dial Before You Dig
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.
- Telecommunications Act 1997 (Commonwealth)
Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.
- 7.4. Separate application is required should the applicant require a new or upsized water supply connection to Council's water supply system.
- 7.5. Backflow prevention device(s) must be installed and maintained in accordance with Council's *WS4.0 Backflow Prevention Containment Policy*. This policy can be found on Council's website at: www.gosford.nsw.gov.au
- 7.6. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with council's current fees and charges policy.
- 7.7. Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with council's fees and charges.
- 7.8. The inspection fee for works associated with approvals under the Local Government Act is calculated in accordance with council's current fees and charges policy.

8. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Avoca Beach Theatre Mixed Use

69–71 AVOCA DRIVE, AVOCA BEACH 2251 NSW



Location Map



Avoca Drive View

Drawing List

DRAWING No.	DESCRIPTION	SCALE	REV
A-0001	Cover sheet		10
A-0002	S4.56 Comparison		08
A-0003	S4.56 Comparison		08
A-0004	S4.56 Comparison		08
A-0005	GFA Comparison	1:200	04
A-0006	GFA Comparison	1:200	04
A-1001	Site Plan	1:200	10
A-1101	Carpark Level	1:100	12
A-1102	Ground Floor Plan	1:100	11
A-1103	First Floor Plan	1:100	11
A-1104	Unit 5	1:100	10
A-1105	Roof Plan	1:100	11
A-2001	North & South elevation	1:100	10
A-2002	West & East Elevation	1:100	10
A-3001	Sections 1 & 2	1:100	08
A-3002	Sections 3 & 4	1:100	10
A-3003	Section 5	1:100	07
A-5001	Residential Materials		10
A-5002	Cinema Materials		10
A-5004	3D Perspectives	1:2.32, 1:2...	07
A-7001	Avoca Drive Perspective - AM		04
A-7002	Avoca Drive Perspective - PM		04
A-7003	Hunter Park Perspective - AM		03
A-7004	Hunter Park Perspective - PM		03
A-7005	Avoca Drive Perspective 02 - AM		02
A-7006	Avoca Drive Perspective 02 - PM		02

General Notes

ALL DIMENSIONS TO BE CHECKED AND CONFIRMED ON SITE.

ALL BUILDING WORK IS TO BE CARRIED OUT IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS, THE BUILDING CODE OF AUSTRALIA, AND APPROVED PLANS.

BUILDER SHALL MAKE GOOD ALL DISTURBED AREAS ADJACENT TO THE WORKS ON COUNCIL PROPERTY.

ALL CONCRETE FOOTINGS, FLOOR SLABS, COLUMNS, AND ROOF FRAMING TO STRUCTURAL ENGINEER'S DETAIL.

ALL STORMWATER REQUIREMENTS, EXTERNAL RL'S AND DRIVEWAY LEVELS TO CIVIL ENGINEER'S DETAILS IF REQUIRED.

ALL LANDSCAPE AREAS, EXISTING TREES, AND DRIVEWAY TO LANDSCAPE PLANS IF REQUIRED.

Site Constraints

Land Zoning	R2 Low Density Residential
Maximum FSR	1:1
Maximum Building Height	10.0m
Heritage	N/A
Bushfire Prone Land	Vegetation Buffer
Acid Sulfate Soils	Class 5

Proposed GFA

PROPOSED AREA	1,874.40 m ²
SITE AREA	1,802.10 m ²
DA APPROVED FSR	0.95:1
PROPOSED FSR	1.04:1
MAX FSR LEP	1:1

GFA REVISED TO EXCLUDE THE EXISTING THEATRE OFFICES, AS THEY WERE NOT INCLUDED IN THE PREVIOUSLY APPROVED SCHEME

S4.56 Application



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1/28 Adelaide St (PO Box 4400) East Gosford NSW 2250
P 0243 21 0503 E admin@ckds.com.au
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Avoca Beach Theatre Mixed Use
project #
21031
69 Avoca Dr,
Avoca Beach, NSW 2251

A-0001
Cover sheet
10
14/9/2023
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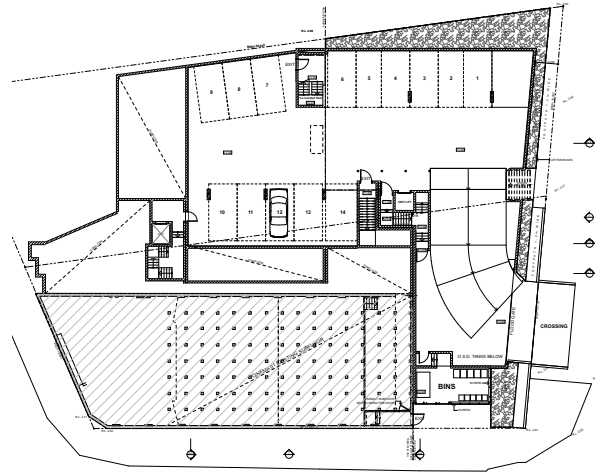
S4.56 AMEDMENT NOTES:

CARPARK LEVEL

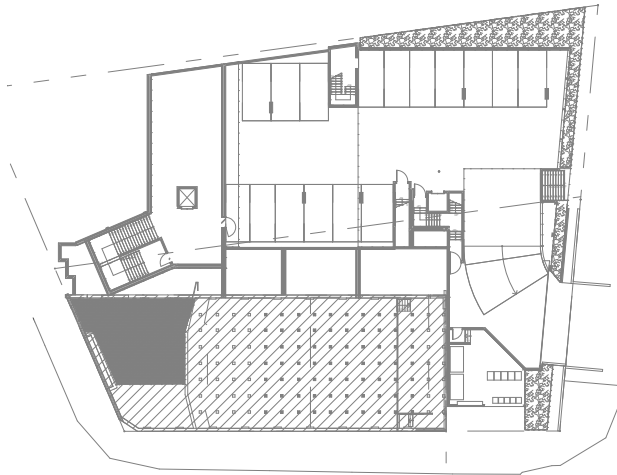
- A. PLANT ROOM ADDED.
- B. DISABLE PARKING SPACE RELOCATED.
- C. VERTICAL CIRCULATION (STAIRS, LIFTS) POSITIONS AMENDED..
- D. CARPARK LAYOUT AND ENTRY AMENDED AS PER CIVIL REPORT.
- E. WASTE AREA AMENDED TO REFLECT CURRENT CENTRAL COAST COUNCIL REQUIREMENTS, AND WASTE MANAGEMENT REPORT.

GROUND FLOOR

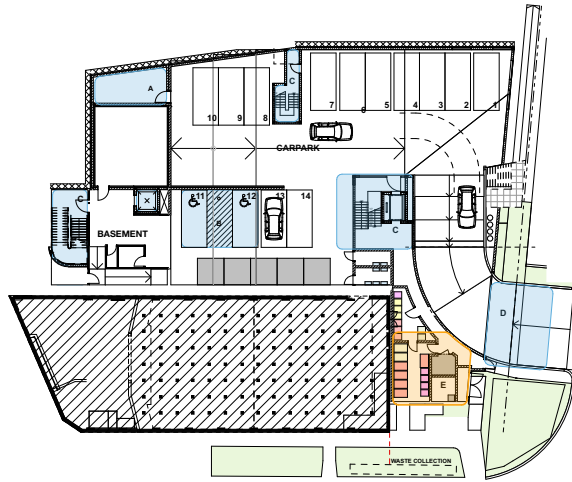
- F. STAIRS TO THE FOYER AMENDED
- G. STEPPING WALL ADJACENT THE ENTRY REPLACED WITH GLAZED CONNECTION BETWEEN EXISTING THEATRE AND THE NEW ENTRY.
- H. CINEMA 3 LAYOUT AMENDED, STAGE ADJUSTED FOR EGRESS
- I. CINEMA 4 LAYOUT ROTATED TO ACHIEVE LEVEL ACCESS TO THE BACK OF HOUSE AREA
- J. CINEMA ENTRIES AMENDED.
- K. TICKET AND CANDY BAR LAYOUT AMENDED TO PROVIDE BACK OF HOUSE STORAGE AREA.
- L. RESIDENTIAL ENTRY AND VERTICAL CIRCULATION AMENDED
- M. UNIT 1 AND 3 LAYOUT AMENDED, BALCONY EXTEND ADJUSTED, AND GLAZING LINE AMENDED
- N. UNIT 2 AND 4 LAYOUT AMENDED, BALCONY EXTEND ADJUSTED, AND GLAZING LINE AMENDED



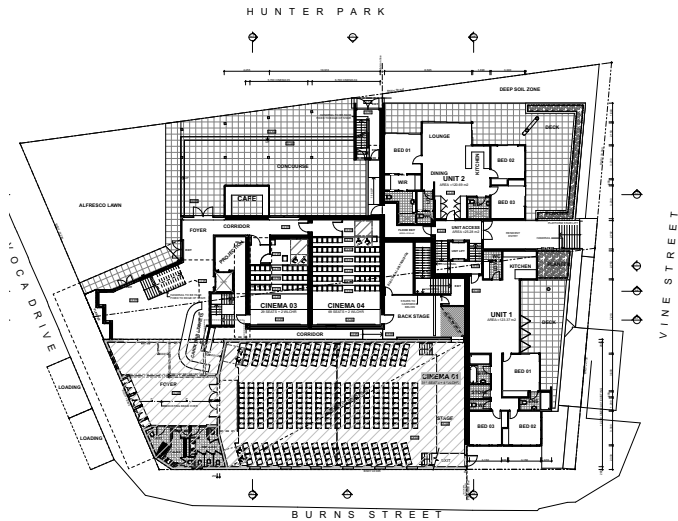
1 ORIGINAL CARPARK
SCALE @A1



2 4.55 CARPARK
SCALE @A1

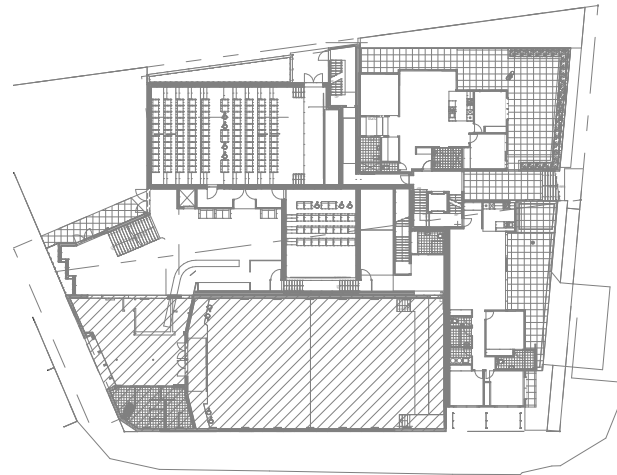


3 PROPOSED CARPARK
SCALE @A1



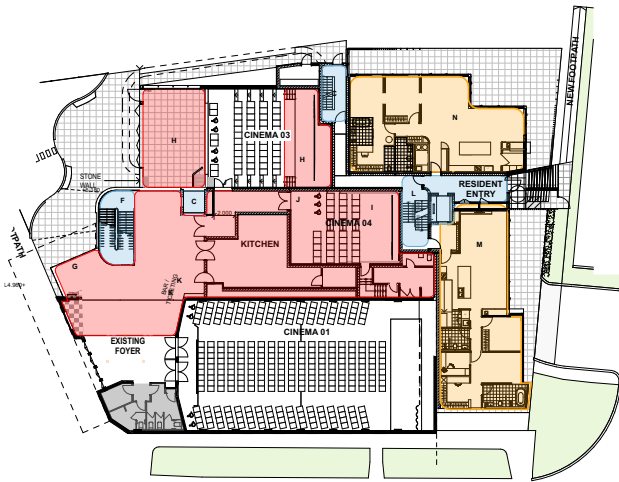
4 ORIGINAL GROUND FLOOR
SCALE @A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



5 4.55 GROUND FLOOR
SCALE @A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



6 PROPOSED GROUND FLOOR
SCALE @A1

NOTE:
DESIGN BY CKDS

CKDS

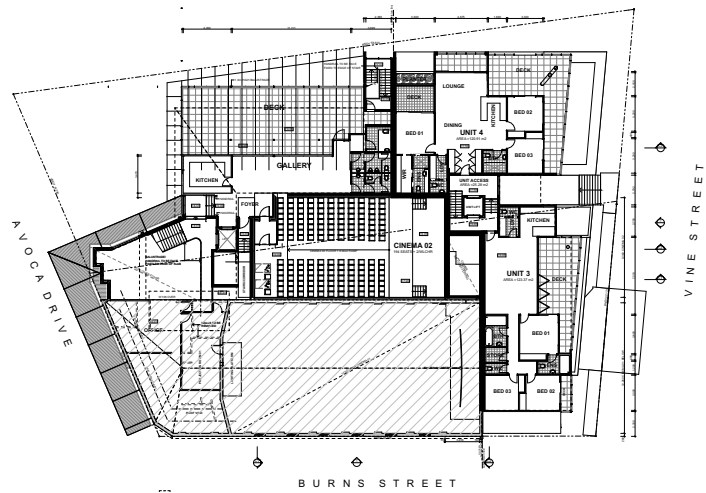
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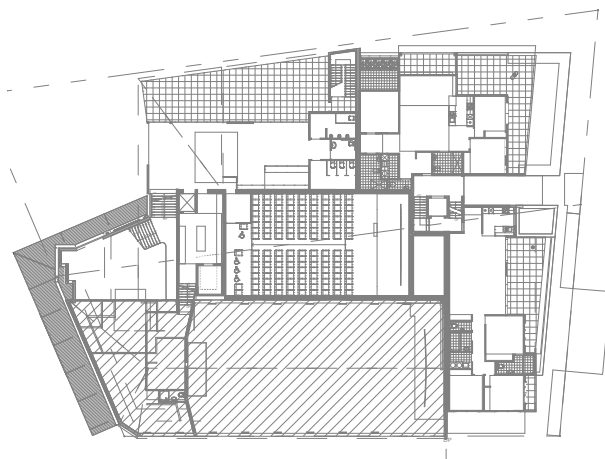
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A-0002
S4.56 Comparison 08
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S4.56 Application



1 ORIGINAL 1ST FLOOR
SCALE @ A1



2 4.55 1ST FLOOR
SCALE @ A1



3 PROPOSED 1ST FLOOR
SCALE @ A1

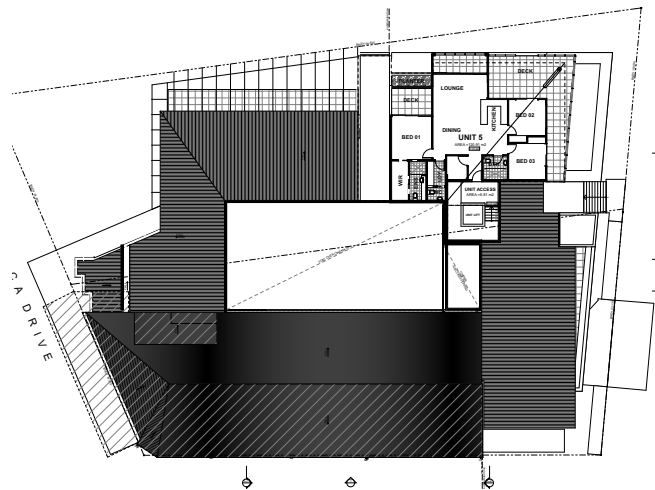
S4.56 AMEDMENT NOTES:

1ST FLOOR

- M. UNIT 1 AND 3 LAYOUT AMENDED, BALCONY EXTEND ADJUSTED, AND GLAZING LINE AMENDED
- N. UNIT 2 AND 4 LAYOUT AMENDED, BALCONY EXTEND ADJUSTED, AND GLAZING LINE AMENDED
- O. FIRST FLOOR AMENITIES RELOCATED.
- P. STAIR TO OFFICES RELOCATED
- Q. CINEMA 2 SEATING LAYOUT ADJUSTED
- R. KITCHEN, AND BAR RELOCATED
- S. TERRACE SCREENING ADDED FOR WEATHER PROTECTION
- T. RESIDENTIAL FOYER AND VERTICAL CIRCULATION AMENDED

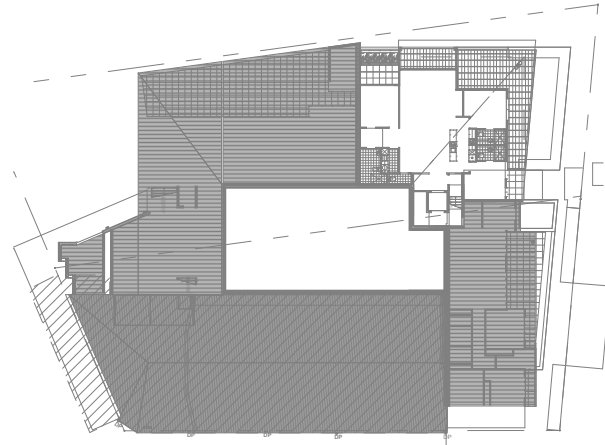
2ND FLOOR

- T. RESIDENTIAL FOYER AND VERTICAL CIRCULATION AMENDED
- U. UNIT 5 LAYOUT AMENDED, BALCONY EXTEND ADJUSTED, AND GLAZING LINE AMENDED



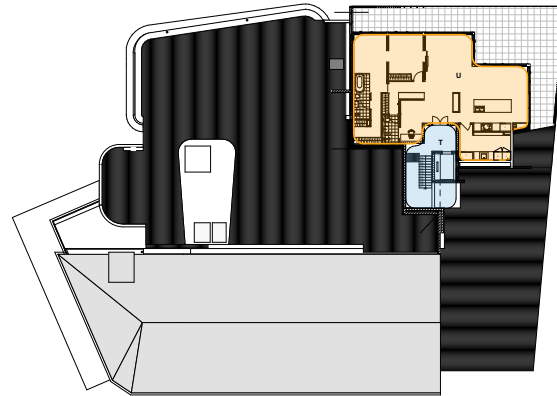
4 ORIGINAL 2ND FLOOR
SCALE @ A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



5 4.55 2ND FLOOR
SCALE @ A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



6 PROPOSED 2ND FLOOR
SCALE @ A1

NOTE:
DESIGN BY CKDS

S4.56 Application

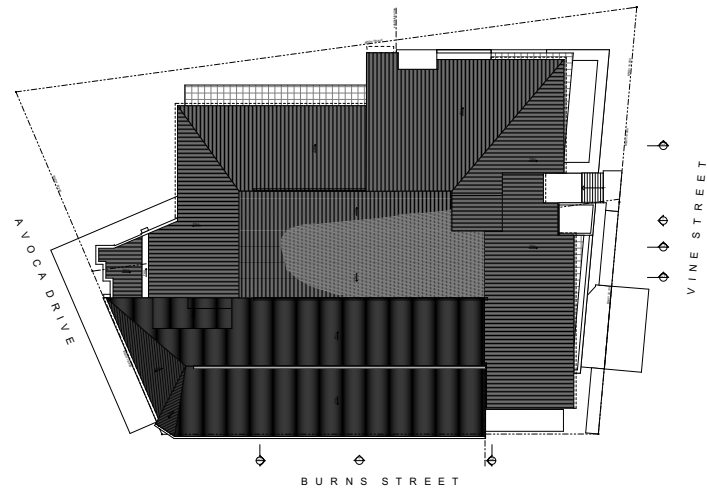
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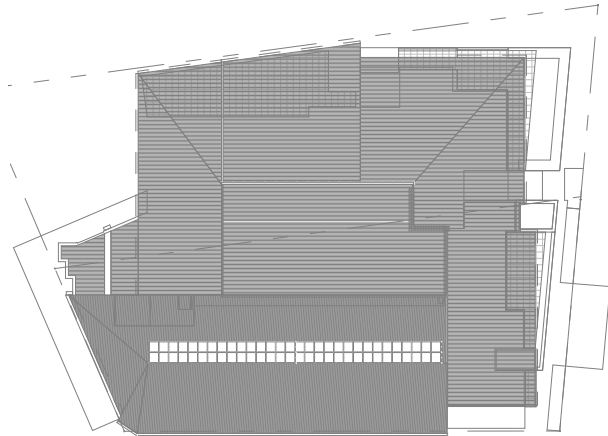
Avoca Beach Theatre Mixed Use
project #
21031
69 Avoca Dr,
Avoca Beach , NSW 2251

A-0003
S4.56 Comparison 08
14/9/2023
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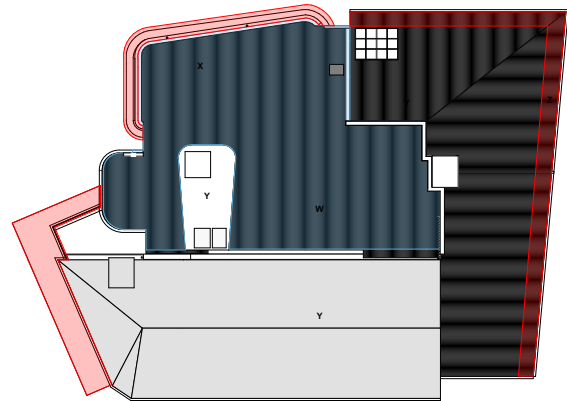
1 ORIGINAL ROOF PLAN
SCALE @A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



2 4.55 ROOF PLAN
SCALE @A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



3 PROPOSED ROOF PLAN
SCALE @A1

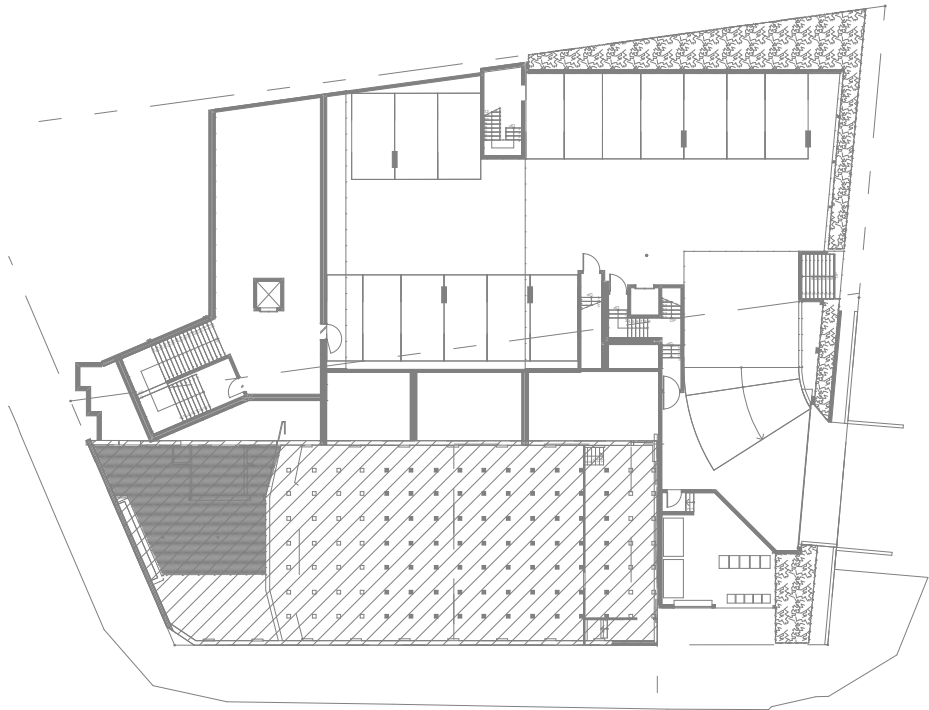
NOTE:
DESIGN BY CKDS

S4.56 AMEDMENT NOTES:

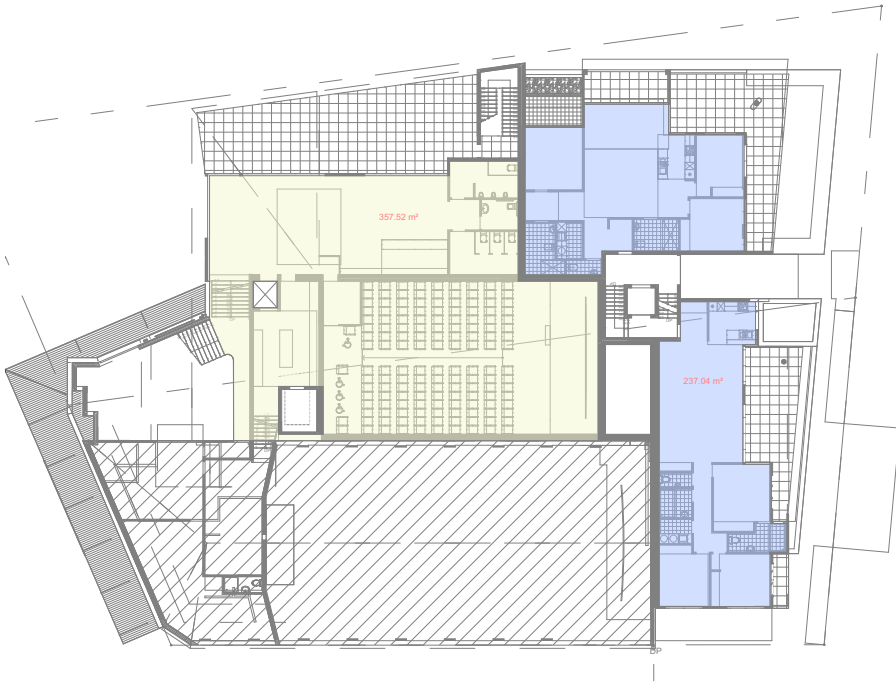
ROOF

- W. CURVED ROOF OVER CINEMA 2 REPLACED WITH SINGLE FALL SKILLION ROOF.
- X. ROOF TO THEATRE TERRACE AMENDED.
- Y. PLANT AND SOLAR ARRAY REMOVED FROM EXISTING THEATRE ROOF. RELOCATED TO NEW ROOF AREA.
- Z. RESIDENTIAL ROOF EXTENT AMENDED TO REFLECT BALCONY EDGE BELOW.

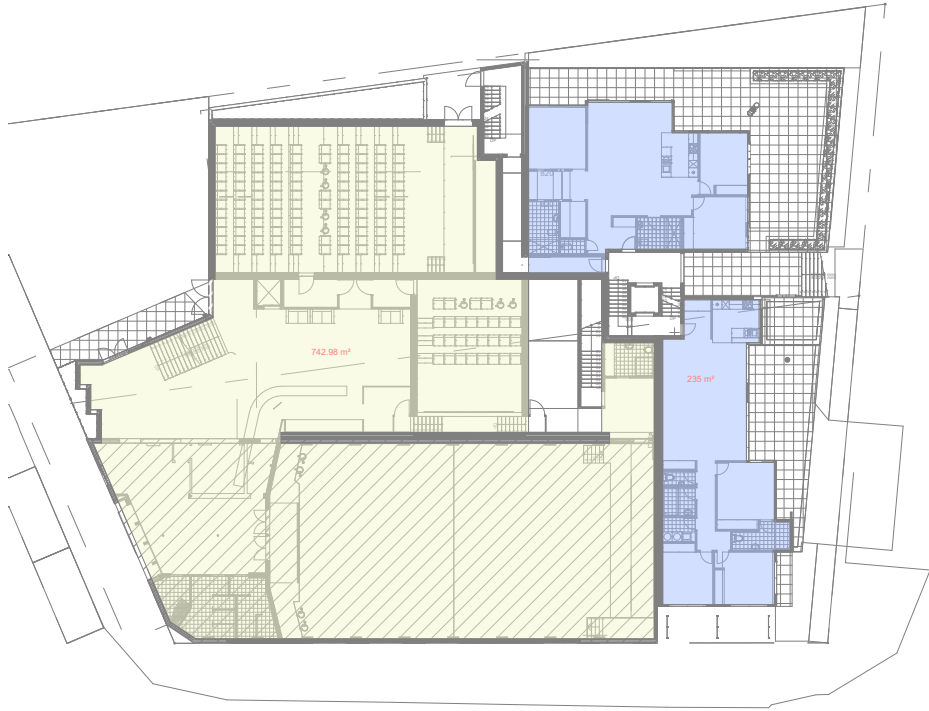
S4.56 Application



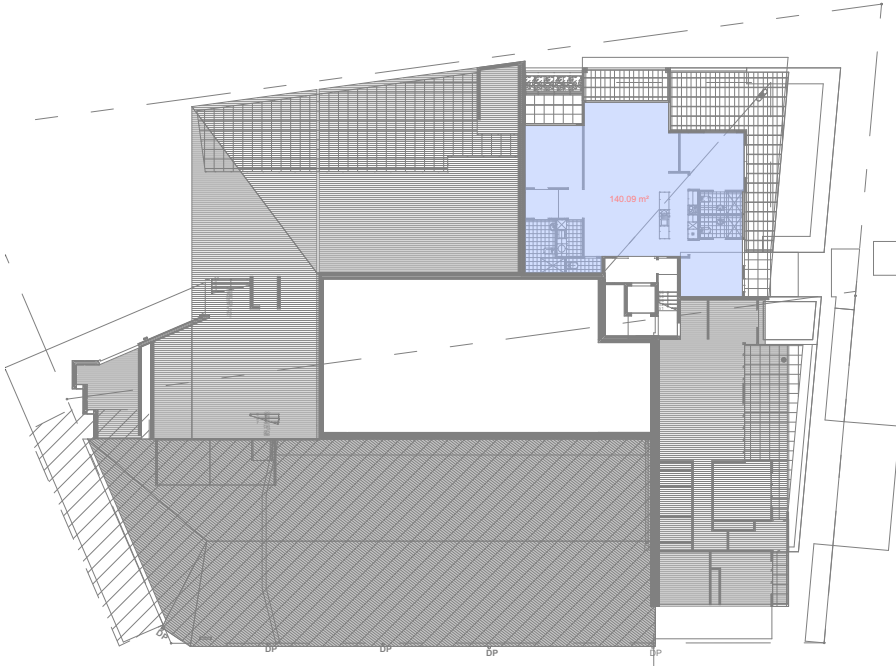
1 CARPARK APPROVED GFA
SCALE 1:200 @ A1



3 1ST FLOOR APPROVED GFA
SCALE 1:200 @ A1



2 GROUND FLOOR APPROVED GFA
SCALE 1:200 @ A1



4 2ND FLOOR APPROVED GFA
SCALE 1:200 @ A1

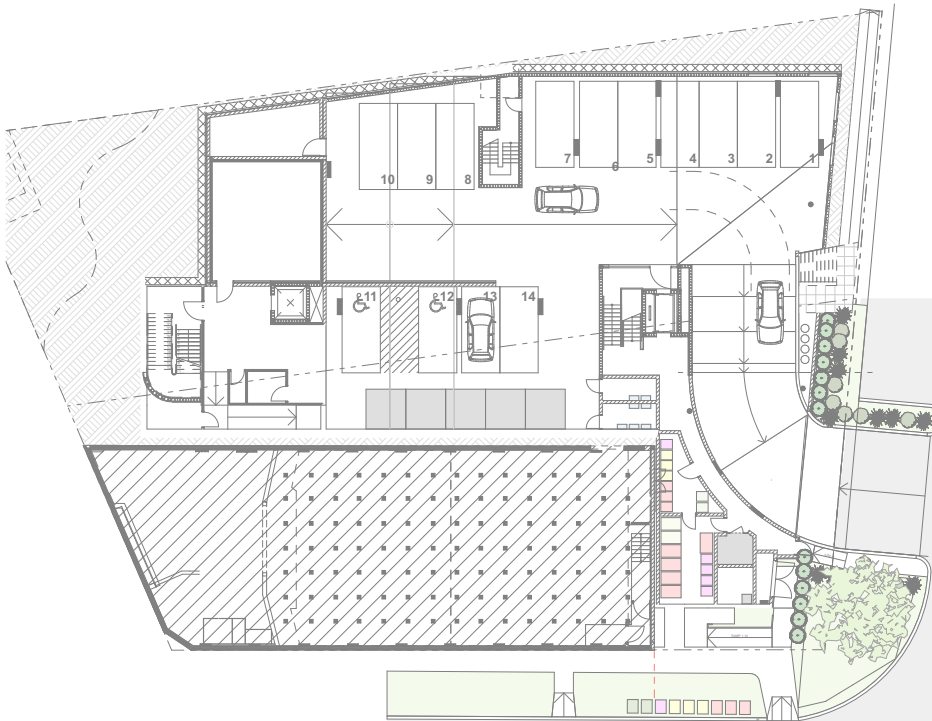
APPROVED GFA NOTES:

CARPARK RESIDENTIAL GFA -	0	sqm
CARPARK COMMERCIAL GFA -	0	sqm
GROUND RESIDENTIAL GFA -	235.00	sqm
GROUND COMMERCIAL GFA -	742.98	sqm
FLOOR 01 RESIDENTIAL GFA -	237.04	sqm
FLOOR 01 COMMERCIAL GFA -	357.52	sqm
FLOOR 02 RESIDENTIAL GFA -	140.09	sqm
FLOOR 02 COMMERCIAL GFA -	0	sqm
TOTAL	1712.63	sqm
FSR	0.95:1	

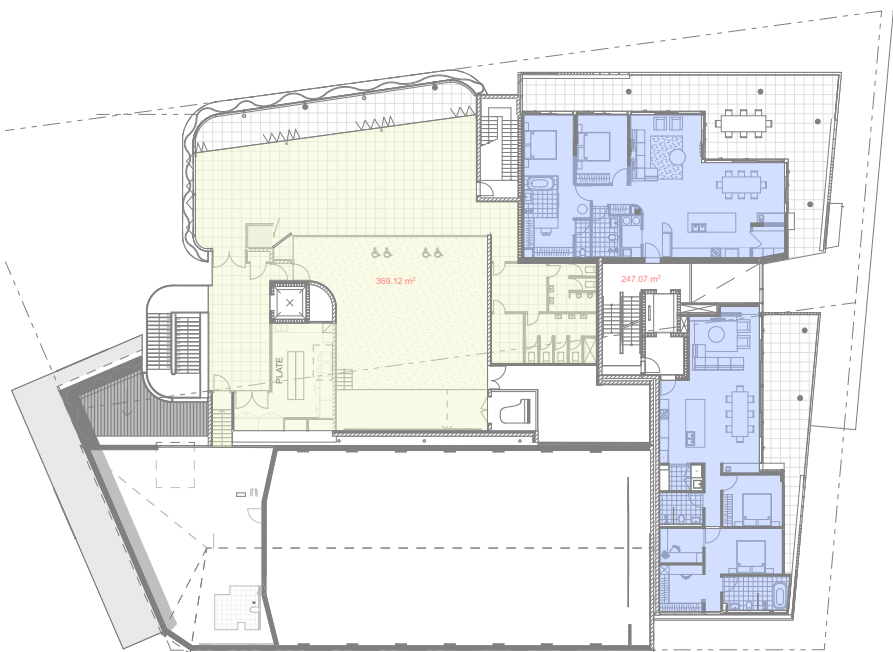
[As per approved DA Drawings -
Artichoke Design Studios - ABT - S.4.56 - A.01 - Revision E]

LEGEND:

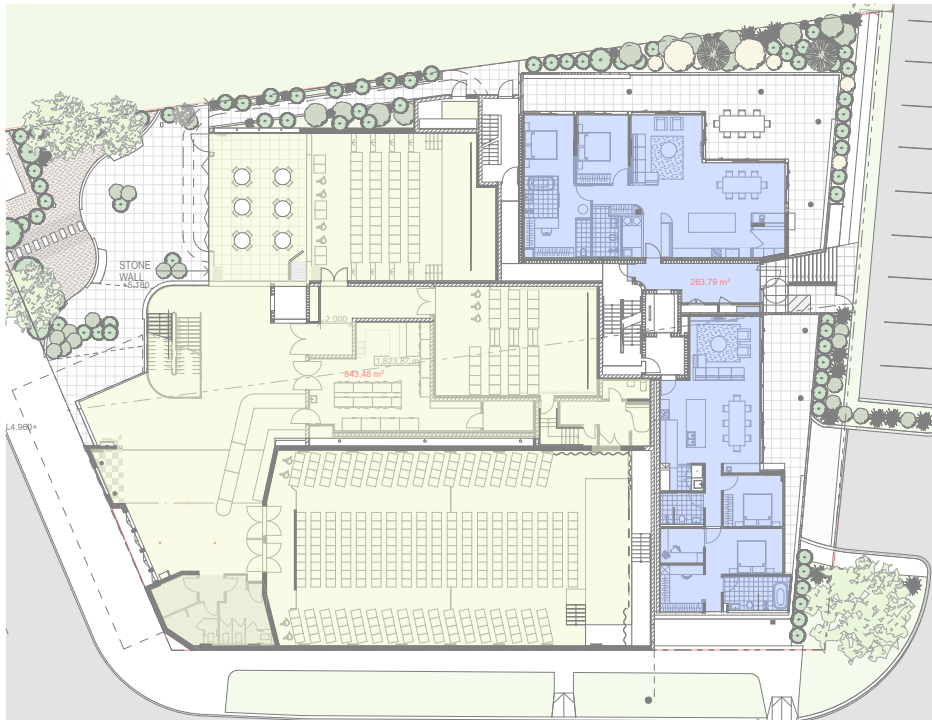
	COMMERCIAL GFA
	RESIDENTIAL GFA



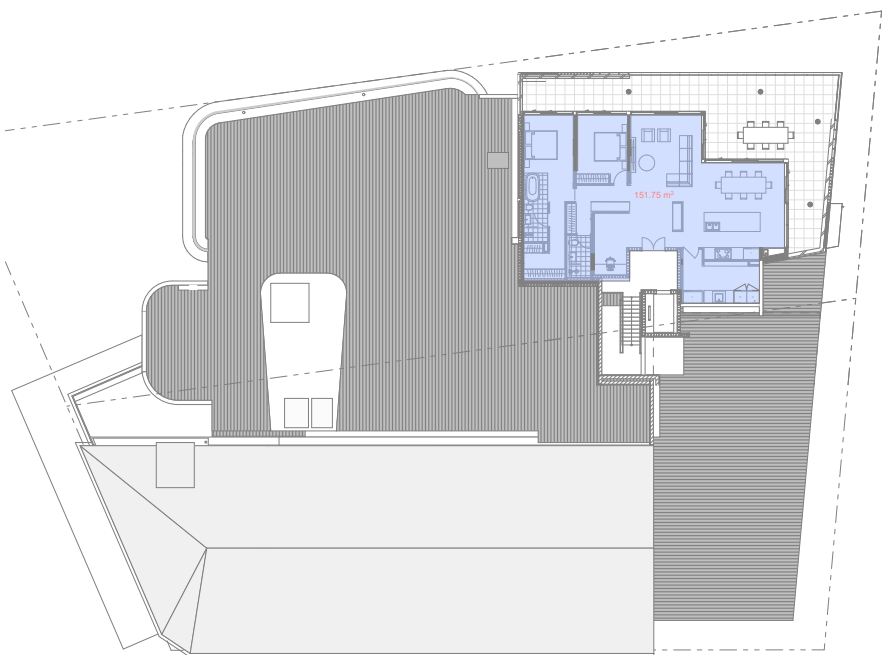
1 CARPARK PROPOSED GFA
SCALE 1:200 @ A1



3 1ST FLOOR PROPOSED GFA
SCALE 1:200 @ A1



2 GROUND FLOOR PROPOSED GFA
SCALE 1:200 @ A1



4 2ND FLOOR PROPOSED GFA
SCALE 1:200 @ A1

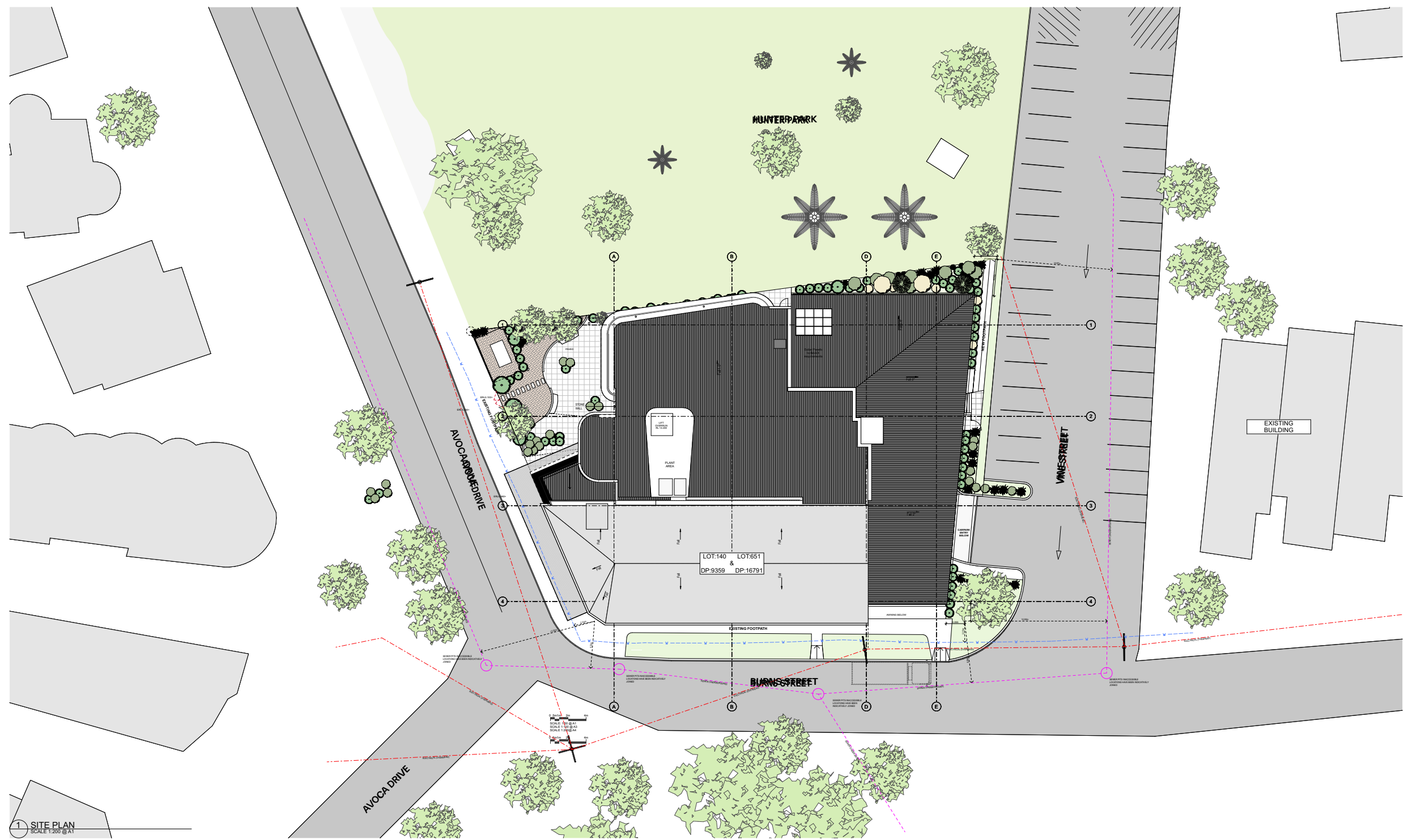
PROPOSED GFA NOTES:

CARPARK RESIDENTIAL GFA -	0	sqm
CARPARK COMMERCIAL GFA -	0	sqm
GROUND RESIDENTIAL GFA -	263.79	sqm
GROUND COMMERCIAL GFA -	843.48	sqm
FLOOR 01 RESIDENTIAL GFA -	247.07	sqm
FLOOR 01 COMMERCIAL GFA -	369.12	sqm
FLOOR 02 RESIDENTIAL GFA -	151.75	sqm
FLOOR 02 COMMERCIAL GFA -	0	sqm
TOTAL	1874.4	sqm
FSR	1.04:1	

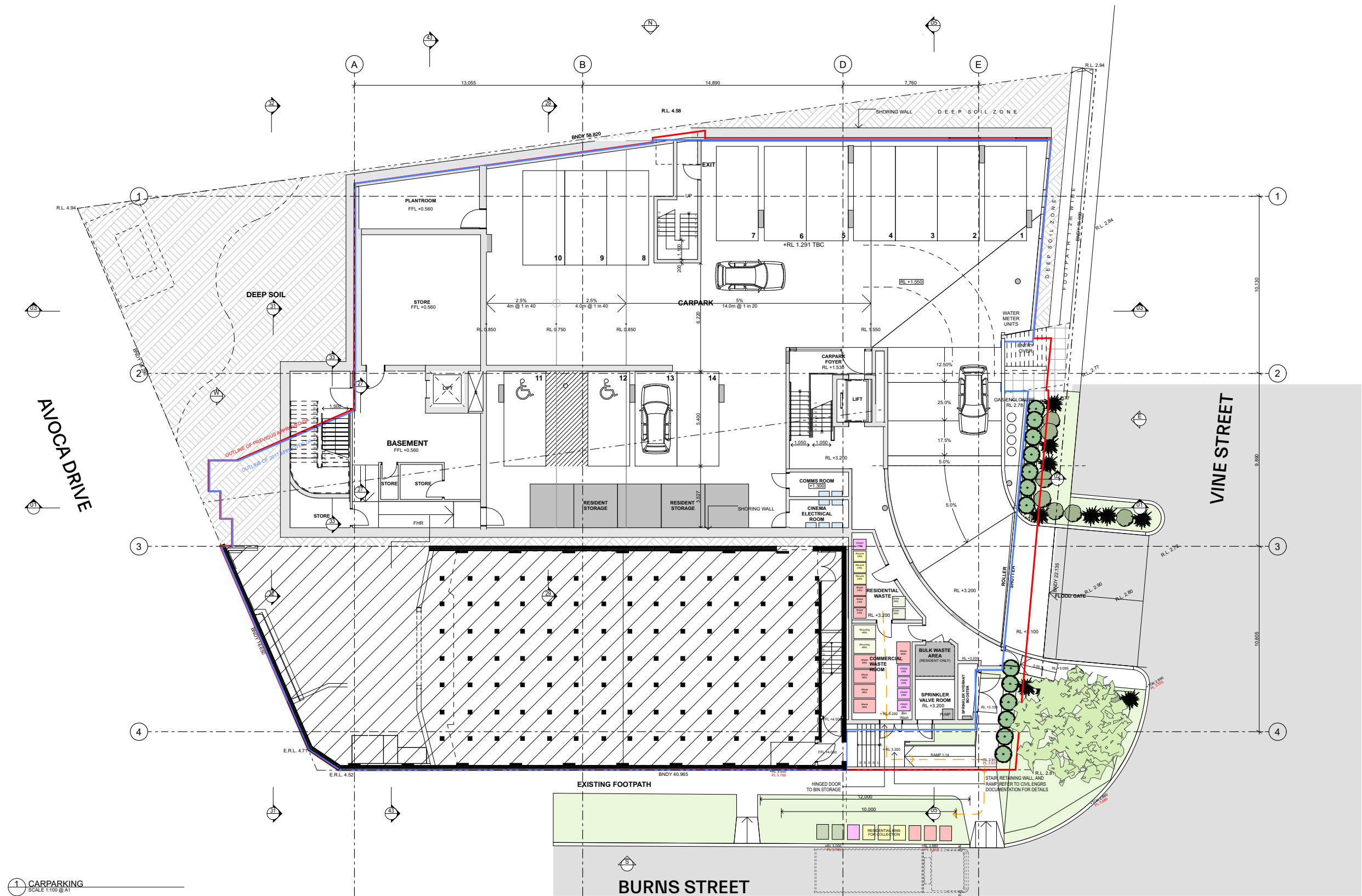
GFA REVISED TO EXCLUDE THE EXISTING THEATRE OFFICES, AS THEY WERE NOT INCLUDED IN THE PREVIOUSLY APPROVED SCHEME

LEGEND:

	COMMERCIAL GFA
	RESIDENTIAL GFA



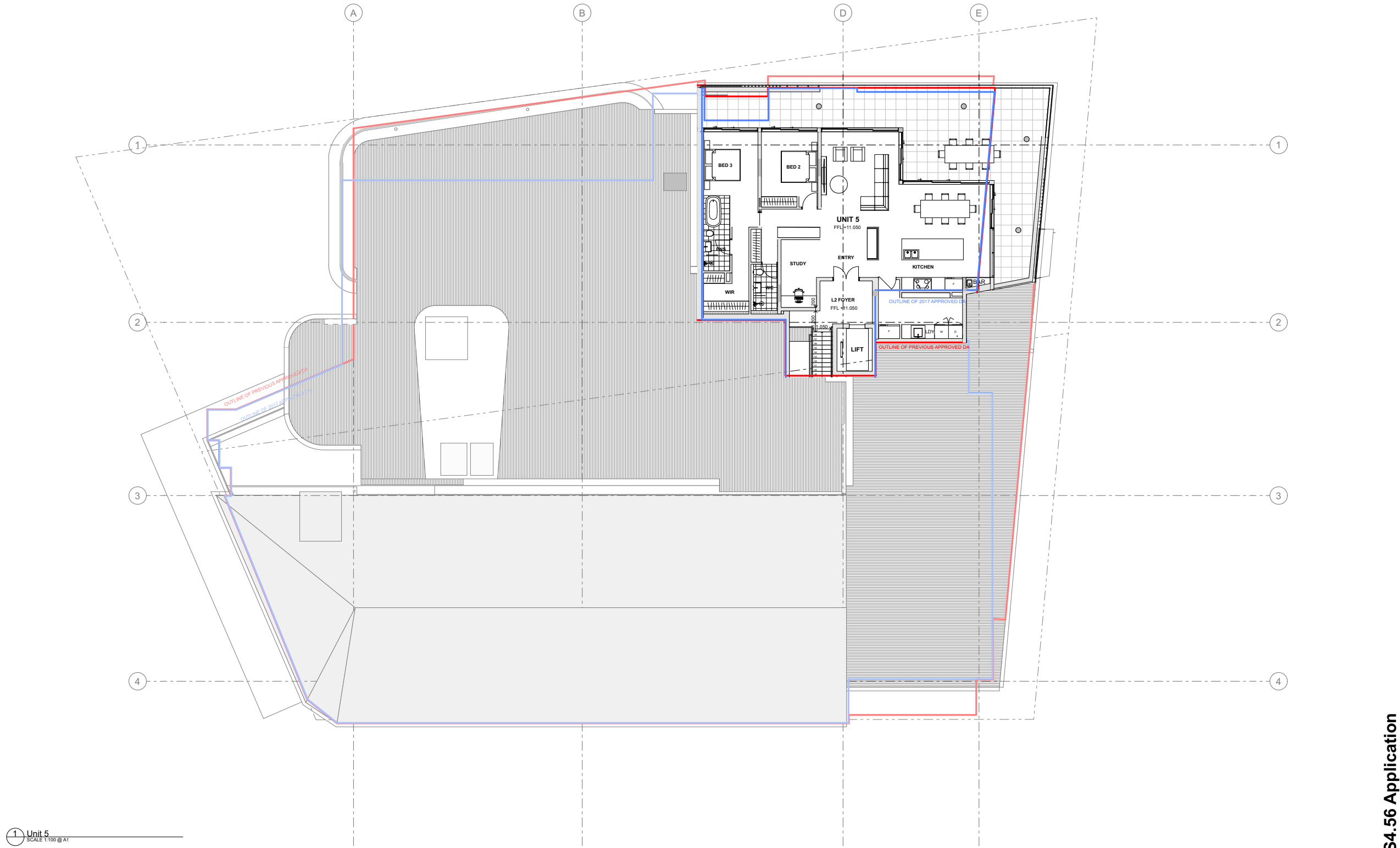
S4.56 Application



S4.56 Application



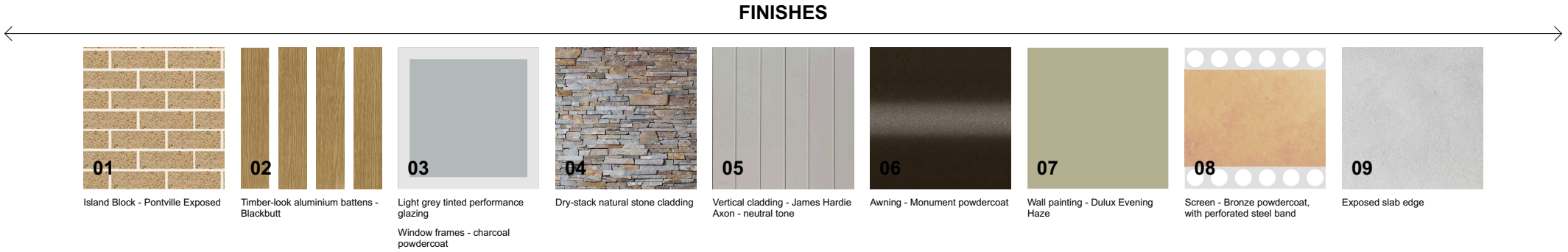
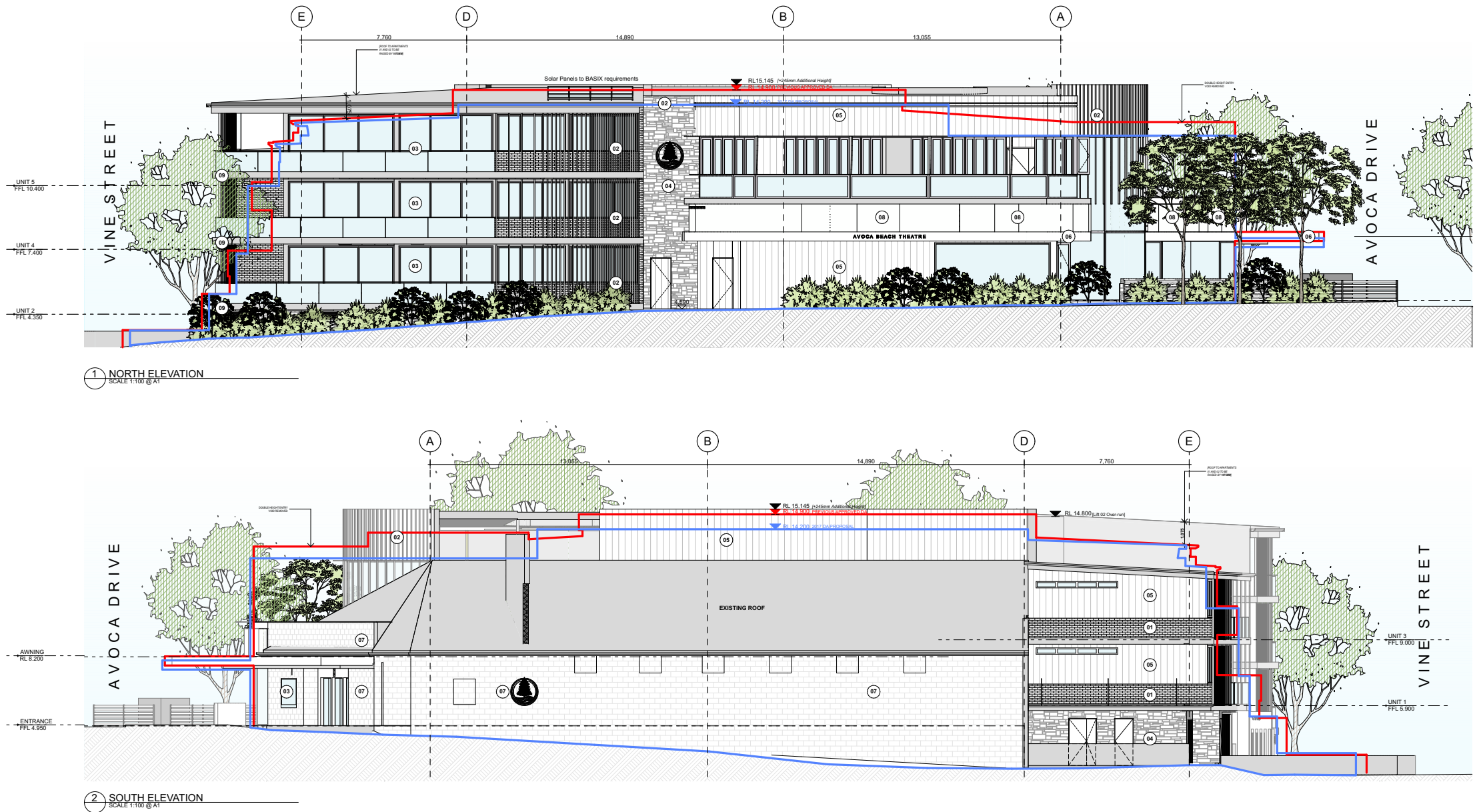




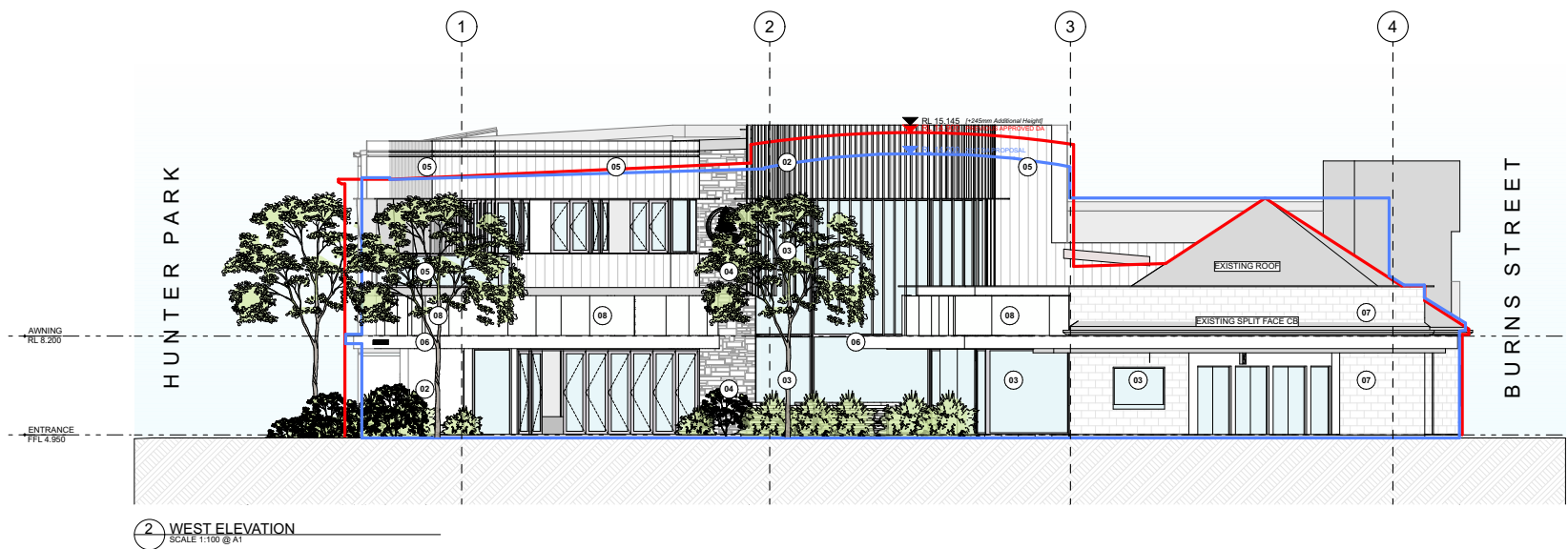
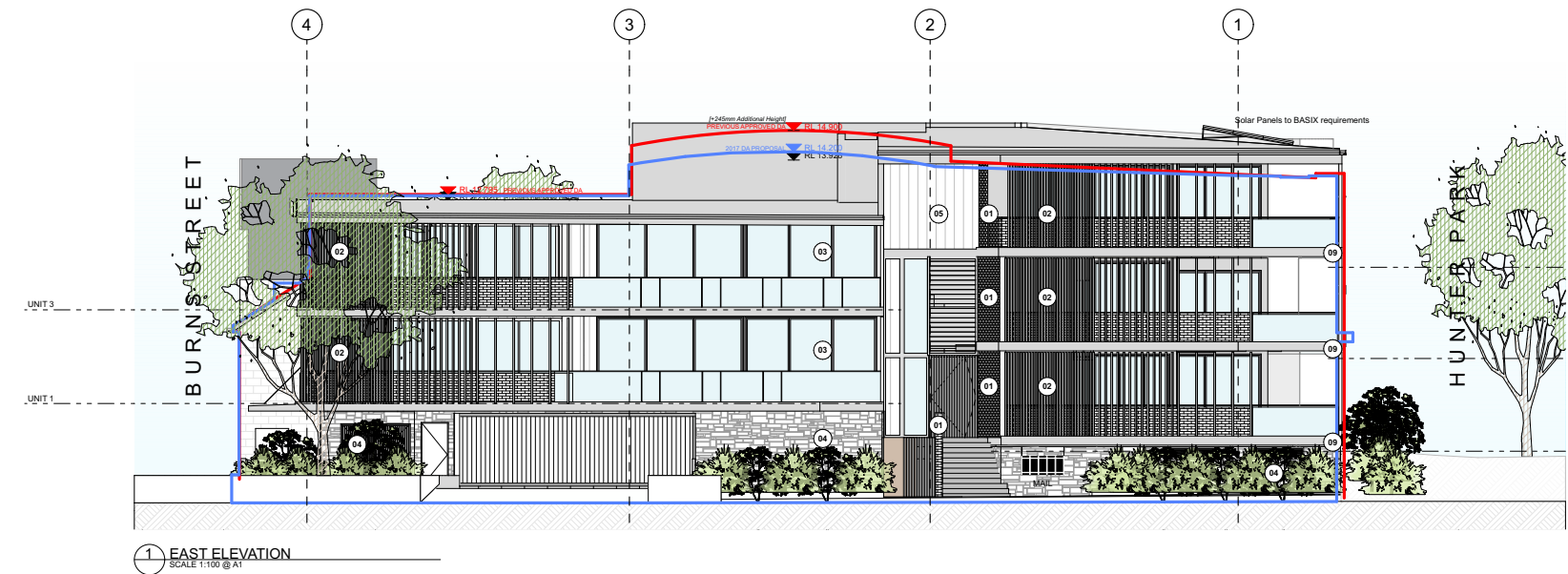
1 Unit 5
SCALE 1:100 @ A1

S4.56 Application

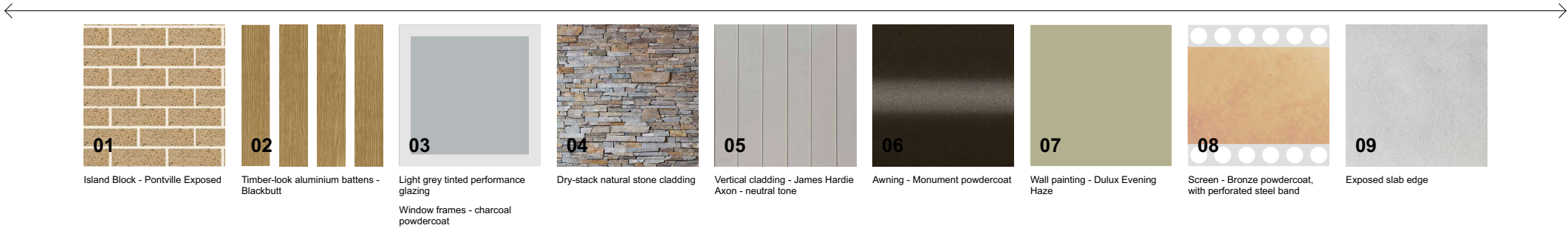




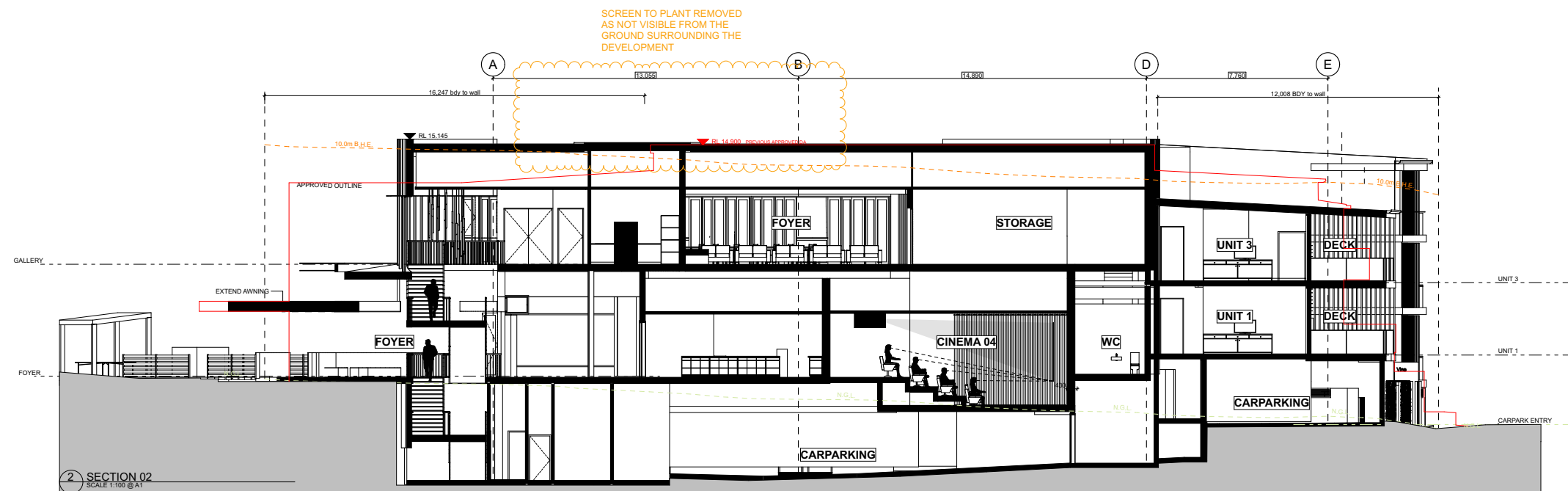
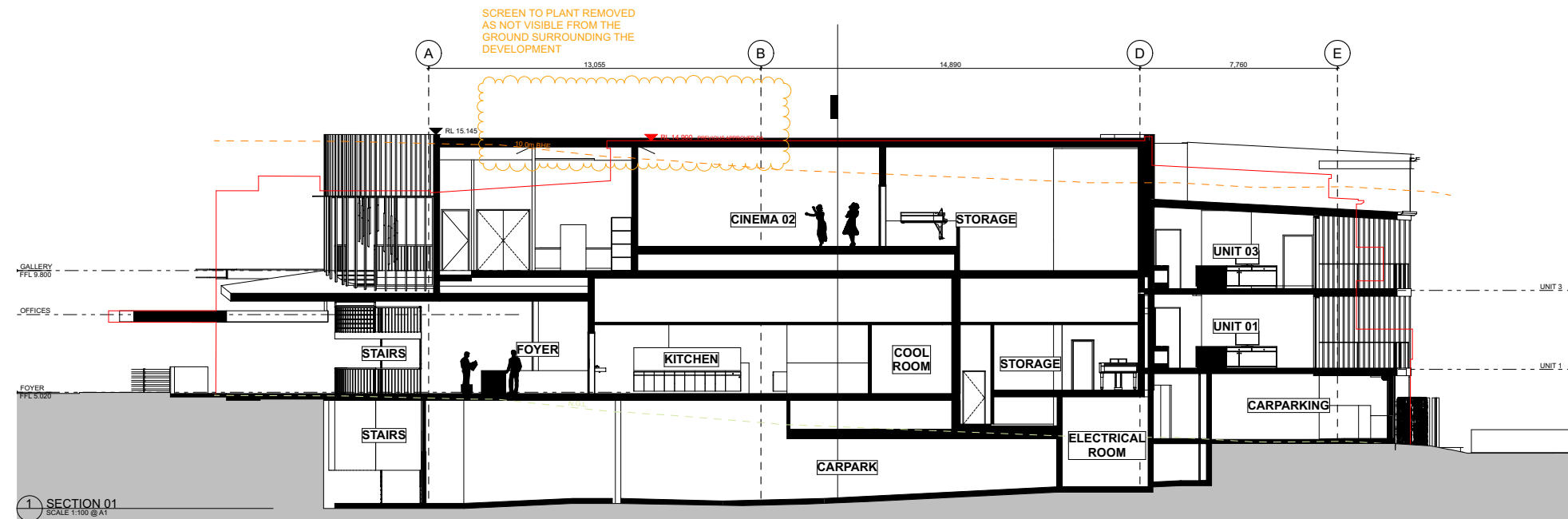
S4.56 Application



FINISHES



S4.56 Application



S4.56 Application

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Avoca Beach Theatre Mixed Use

project #
21031

69 Avoca Dr,
Avoca Beach, NSW 2251

A-3001

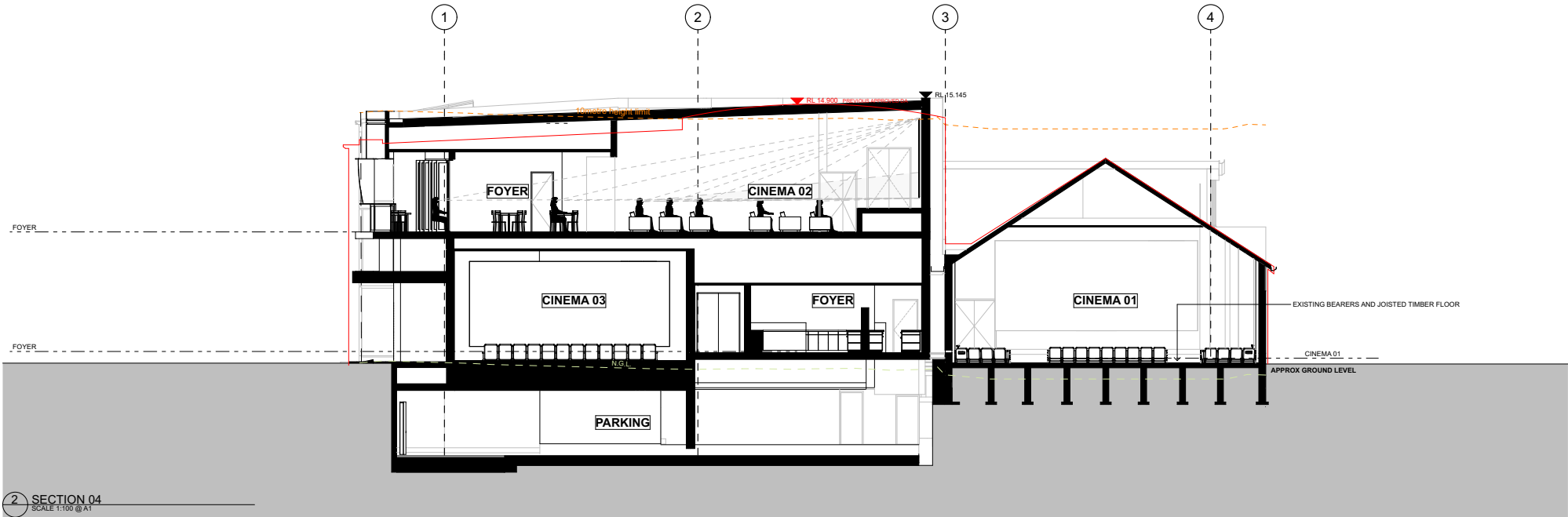
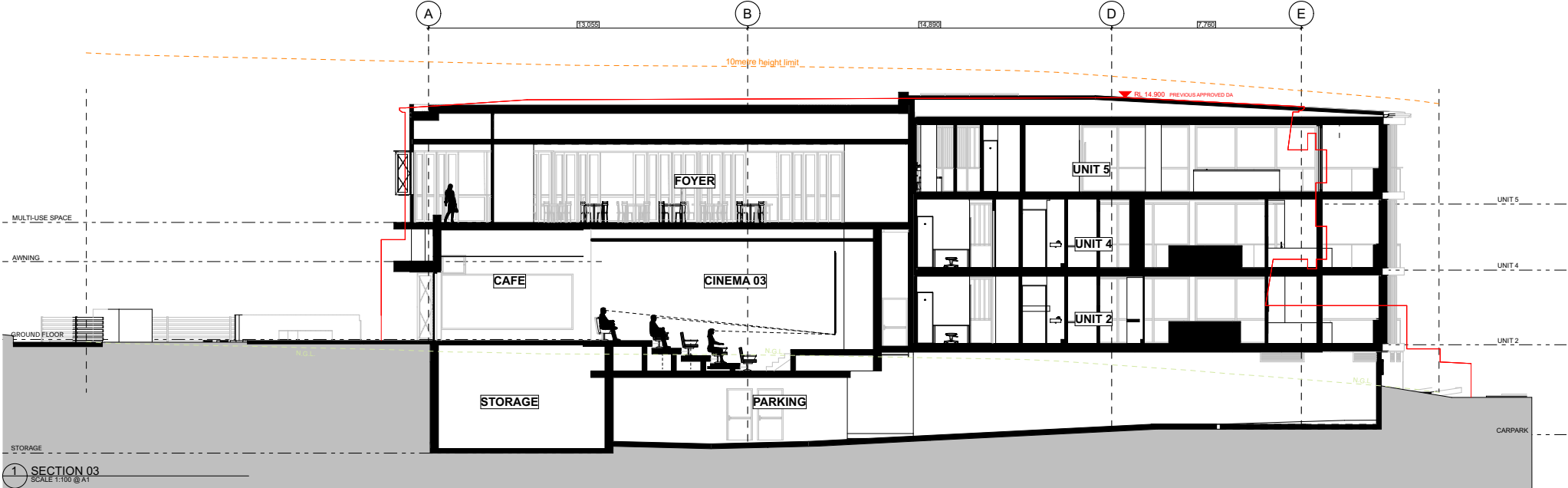
Sections 1 & 2

Issue

08

14/9/2023

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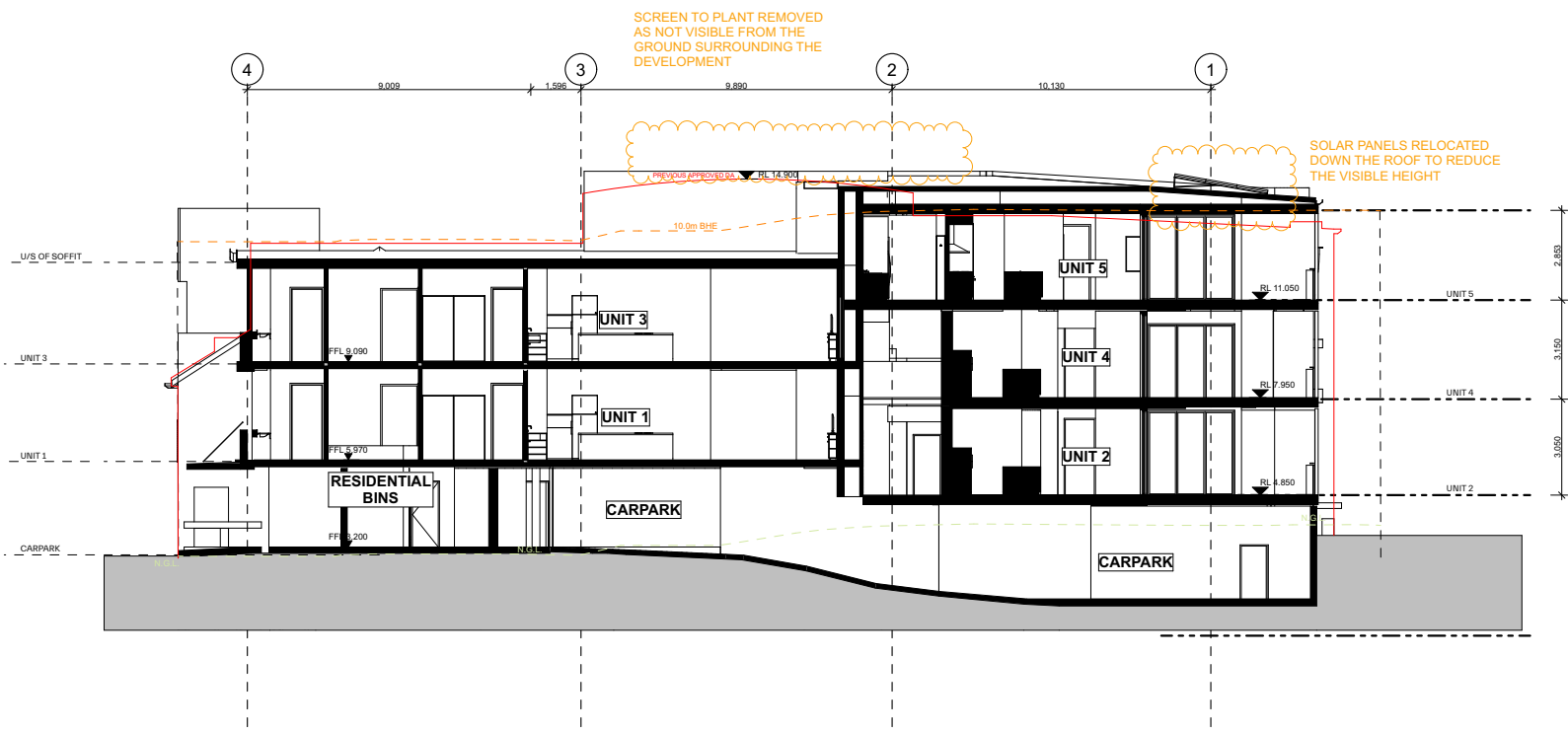
S4.56 Application

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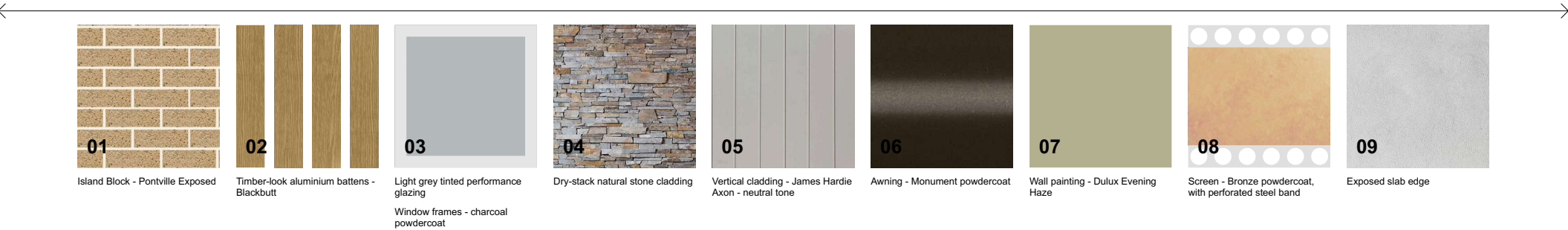
Avoca Beach Theatre Mixed Use
project #
21031
69 Avoca Dr,
Avoca Beach, NSW 2251

A-3002
Sections 3 & 4
10
14/9/2023
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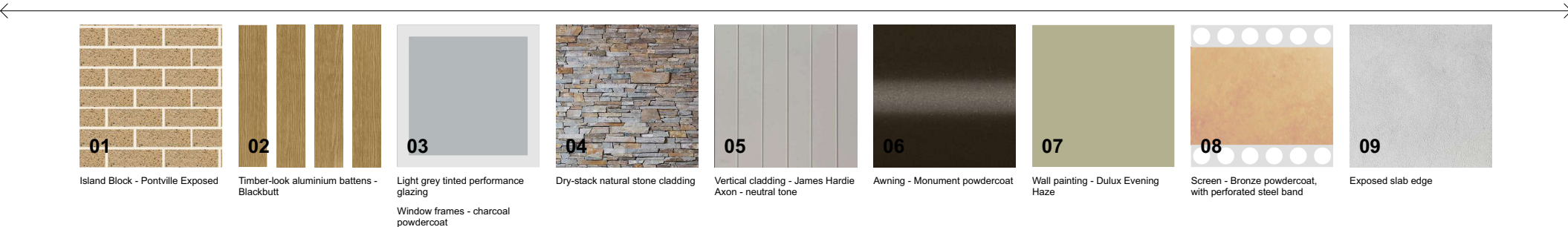
FINISHES



S4.56 Application



FINISHES



S4.56 Application



S4.56 Application

Avoca Beach Theatre Mixed Use

69–71 AVOCA DRIVE, AVOCA BEACH 2251 NSW



Location Map



Avoca Drive View

Drawing List

DRAWING No.	DESCRIPTION	SCALE	REV
A-0001	Cover sheet		10
A-0002	S4.56 Comparison		08
A-0003	S4.56 Comparison		08
A-0004	S4.56 Comparison		08
A-0005	GFA Comparison	1:200	04
A-0006	GFA Comparison	1:200	04
A-1001	Site Plan	1:200	10
A-1101	Carpark Level	1:100	12
A-1102	Ground Floor Plan	1:100	11
A-1103	First Floor Plan	1:100	11
A-1104	Unit 5	1:100	10
A-1105	Roof Plan	1:100	11
A-2001	North & South elevation	1:100	10
A-2002	West & East Elevation	1:100	10
A-3001	Sections 1 & 2	1:100	08
A-3002	Sections 3 & 4	1:100	10
A-3003	Section 5	1:100	07
A-5001	Residential Materials		10
A-5002	Cinema Materials		10
A-5004	3D Perspectives	1:2.32, 1:2...	07
A-7001	Avoca Drive Perspective - AM		04
A-7002	Avoca Drive Perspective - PM		04
A-7003	Hunter Park Perspective - AM		03
A-7004	Hunter Park Perspective - PM		03
A-7005	Avoca Drive Perspective 02 - AM		02
A-7006	Avoca Drive Perspective 02 - PM		02

General Notes

ALL DIMENSIONS TO BE CHECKED AND CONFIRMED ON SITE.

ALL BUILDING WORK IS TO BE CARRIED OUT IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS, THE BUILDING CODE OF AUSTRALIA, AND APPROVED PLANS.

BUILDER SHALL MAKE GOOD ALL DISTURBED AREAS ADJACENT TO THE WORKS ON COUNCIL PROPERTY.

ALL CONCRETE FOOTINGS, FLOOR SLABS, COLUMNS, AND ROOF FRAMING TO STRUCTURAL ENGINEER'S DETAIL.

ALL STORMWATER REQUIREMENTS, EXTERNAL RL'S AND DRIVEWAY LEVELS TO CIVIL ENGINEER'S DETAILS IF REQUIRED.

ALL LANDSCAPE AREAS, EXISTING TREES, AND DRIVEWAY TO LANDSCAPE PLANS IF REQUIRED.

Site Constraints

Land Zoning	R2 Low Density Residential
Maximum FSR	1:1
Maximum Building Height	10.0m
Heritage	N/A
Bushfire Prone Land	Vegetation Buffer
Acid Sulfate Soils	Class 5

Proposed GFA

PROPOSED AREA	1,874.40 m ²
SITE AREA	1,802.10 m ²
DA APPROVED FSR	0.95:1
PROPOSED FSR	1.04:1
MAX FSR LEP	1:1

GFA REVISED TO EXCLUDE THE EXISTING THEATRE OFFICES, AS THEY WERE NOT INCLUDED IN THE PREVIOUSLY APPROVED SCHEME

S4.56 Application

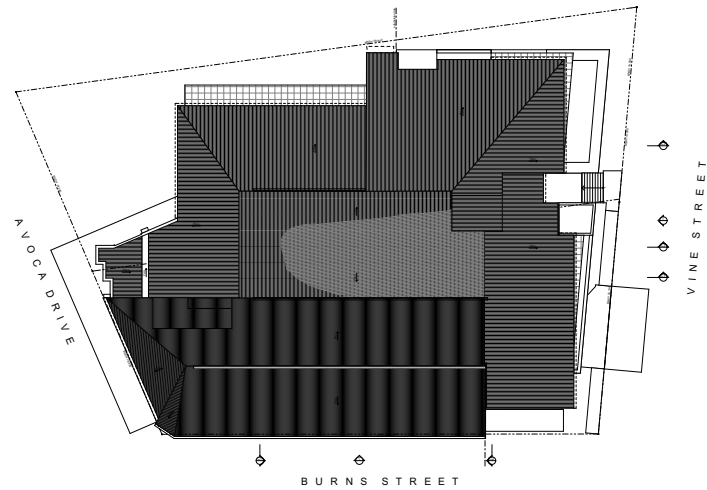


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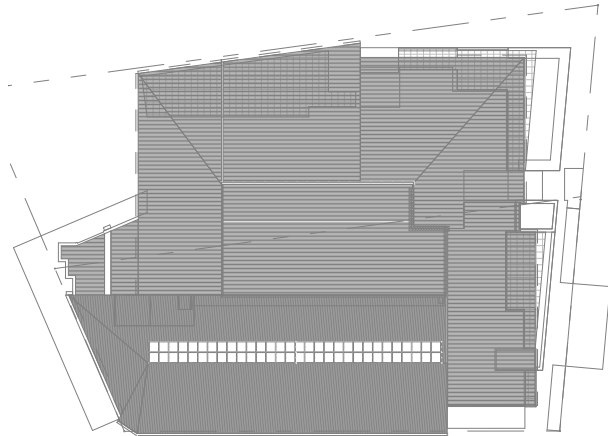
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project #
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A-0001
Cover sheet
10
14/9/2023
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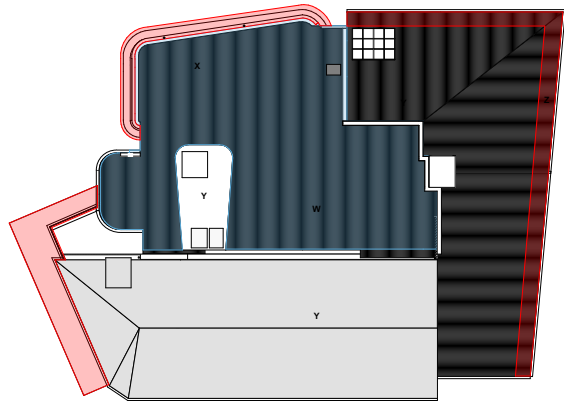
1 ORIGINAL ROOF PLAN
SCALE @A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



2 4.55 ROOF PLAN
SCALE @A1

NOTE:
APPROVED DESIGN BY ARTICHOKE DESIGN STUDIOS
ARCHITECT: ROB PULLAR



3 PROPOSED ROOF PLAN
SCALE @A1

NOTE:
DESIGN BY CKDS

S4.56 AMEDMENT NOTES:

ROOF

- W. CURVED ROOF OVER CINEMA 2 REPLACED WITH SINGLE FALL SKILLION ROOF.
- X. ROOF TO THEATRE TERRACE AMENDED.
- Y. PLANT AND SOLAR ARRAY REMOVED FROM EXISTING THEATRE ROOF. RELOCATED TO NEW ROOF AREA.
- Z. RESIDENTIAL ROOF EXTENT AMENDED TO REFLECT BALCONY EDGE BELOW.

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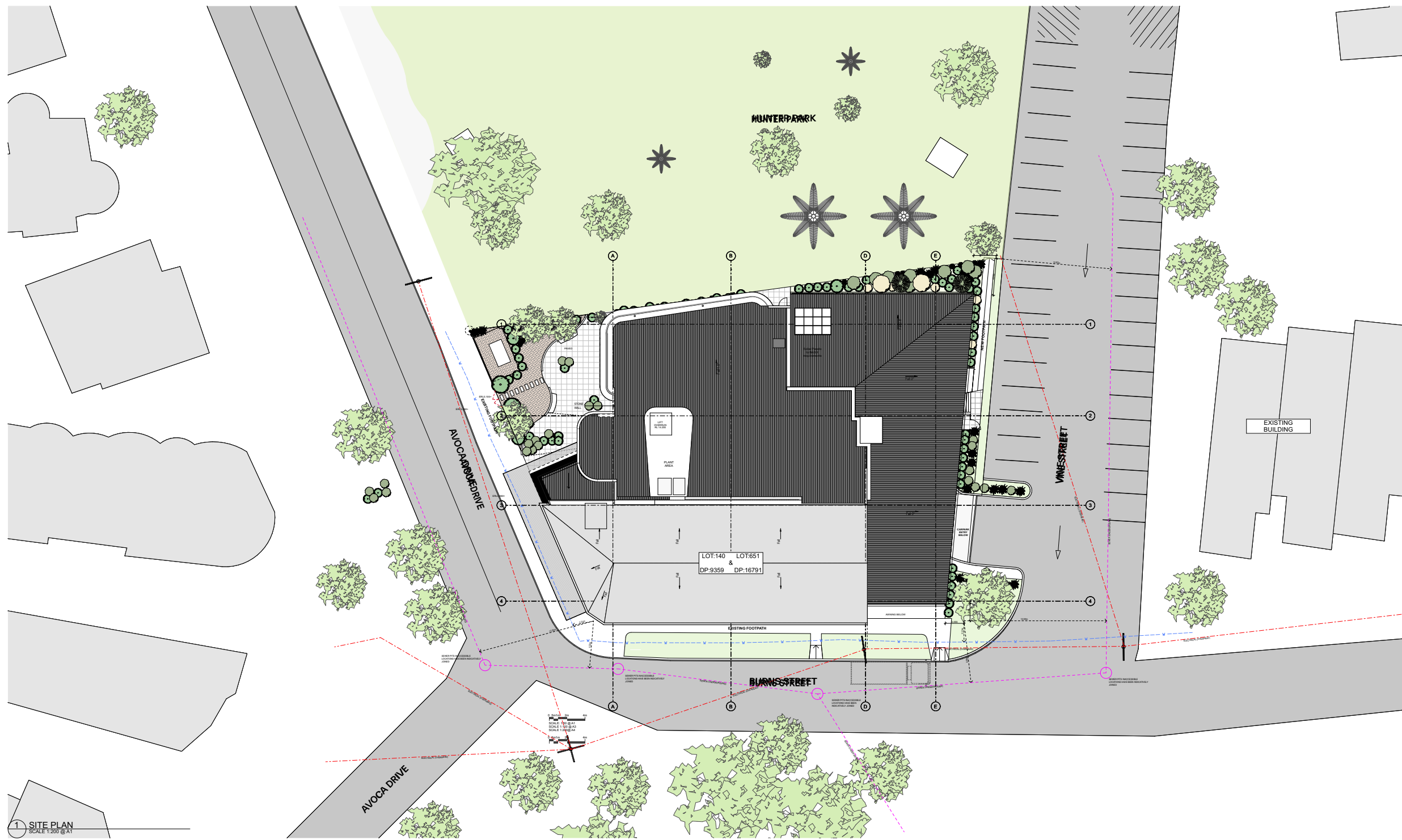
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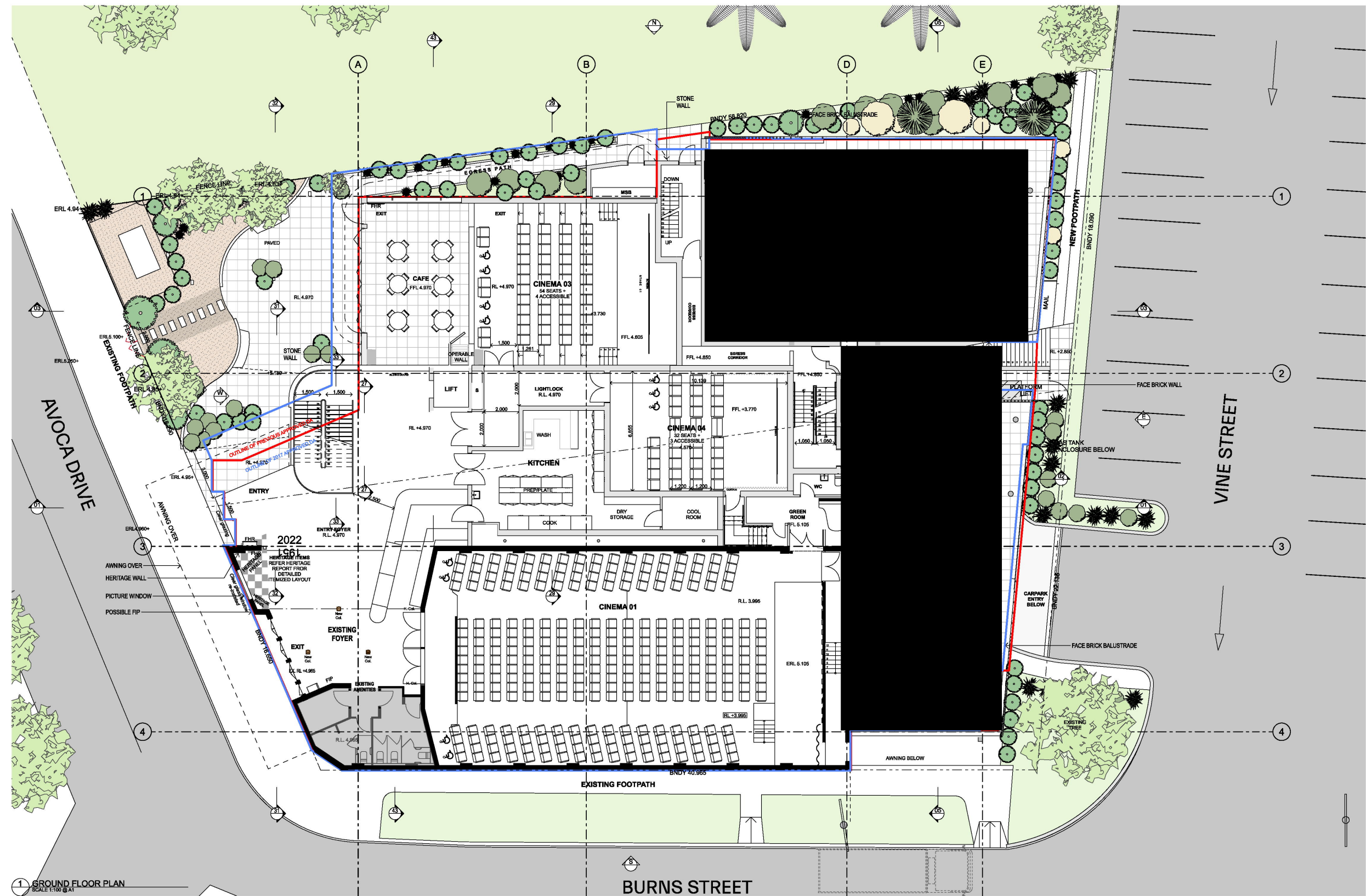
A-0004
S4.56 Comparison 08
14/9/2023
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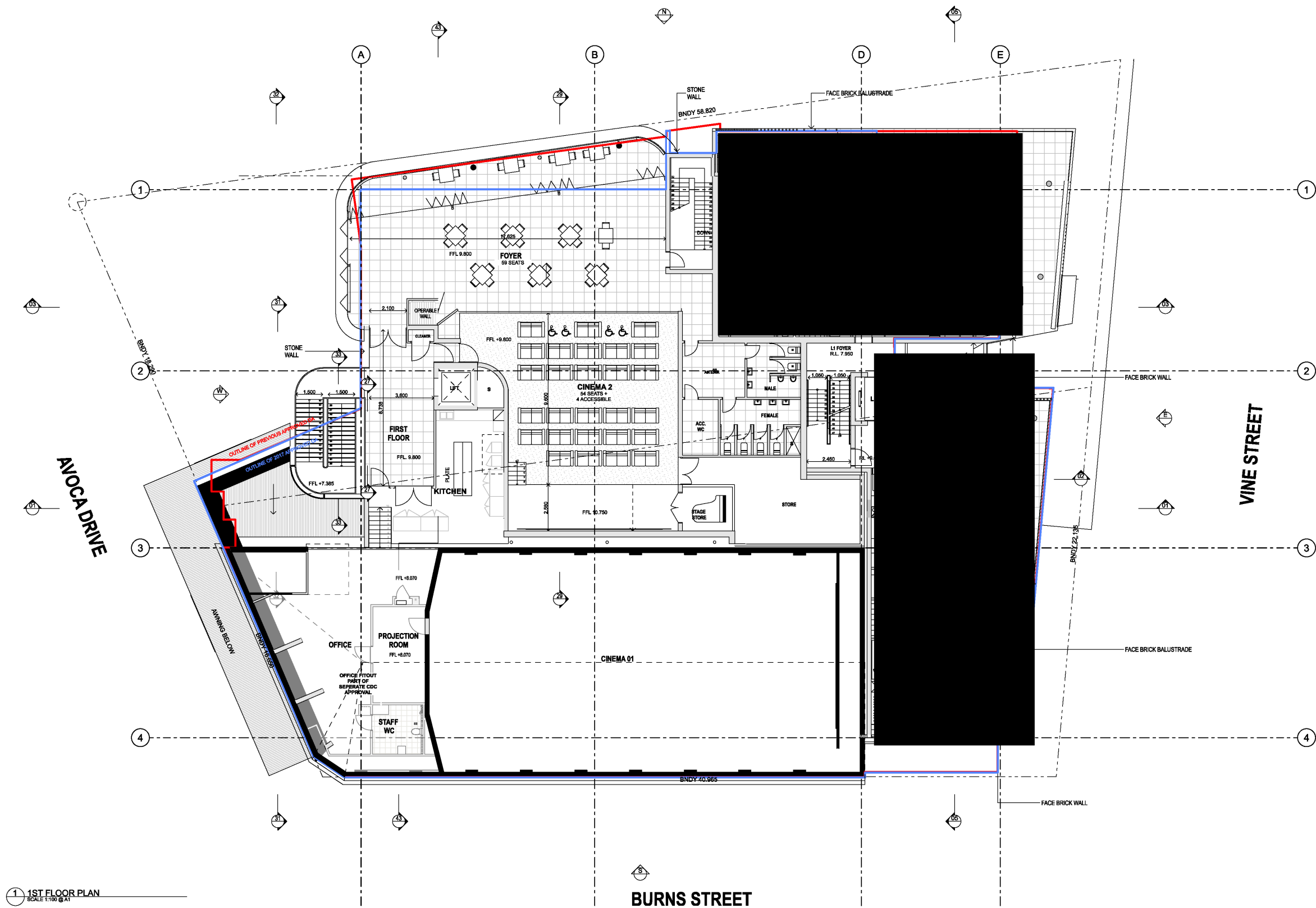
S4.56 Application



S4.56 Application

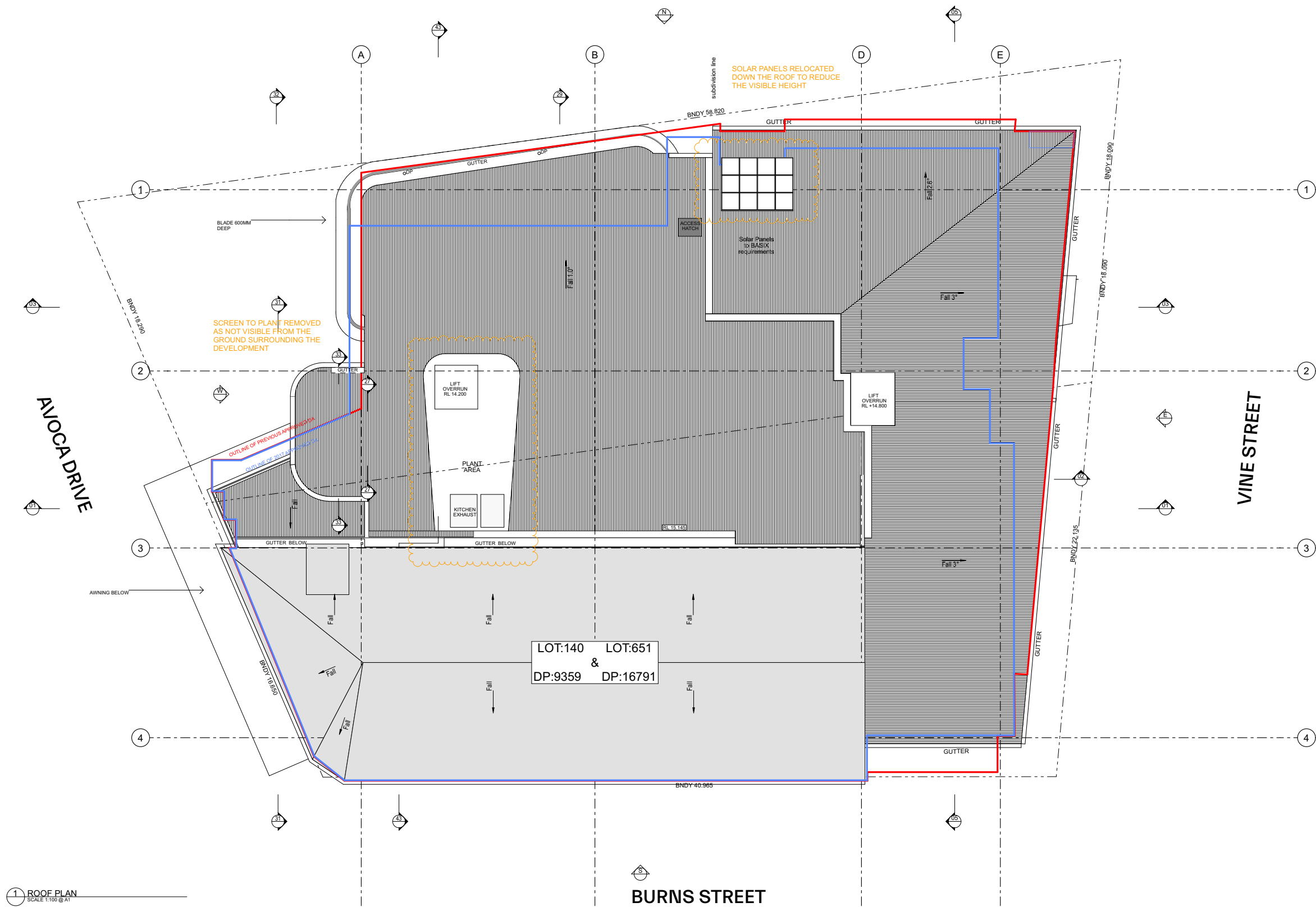






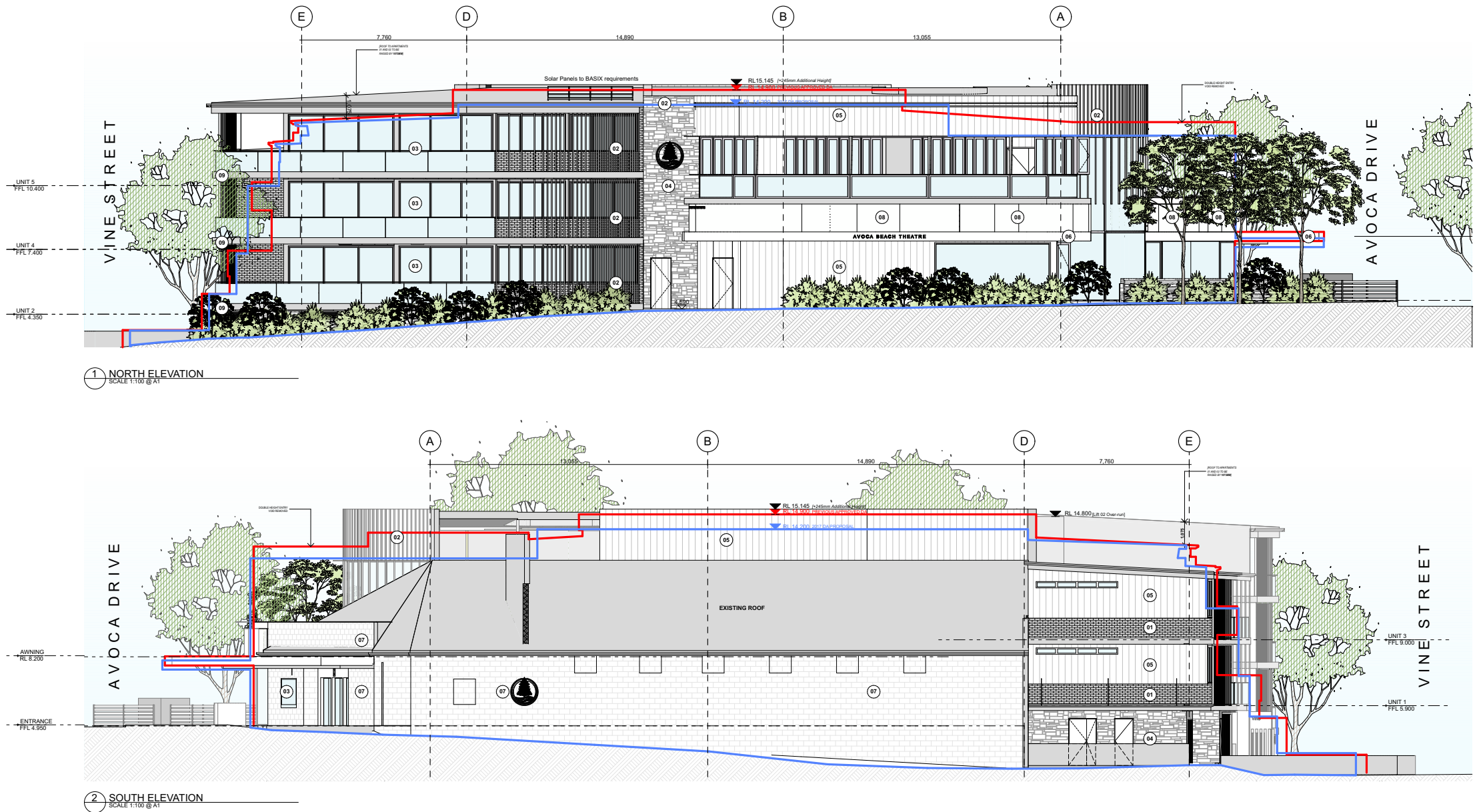
1 1ST FLOOR PLAN
SCALE 1:100 @ A1

S4.56 Application

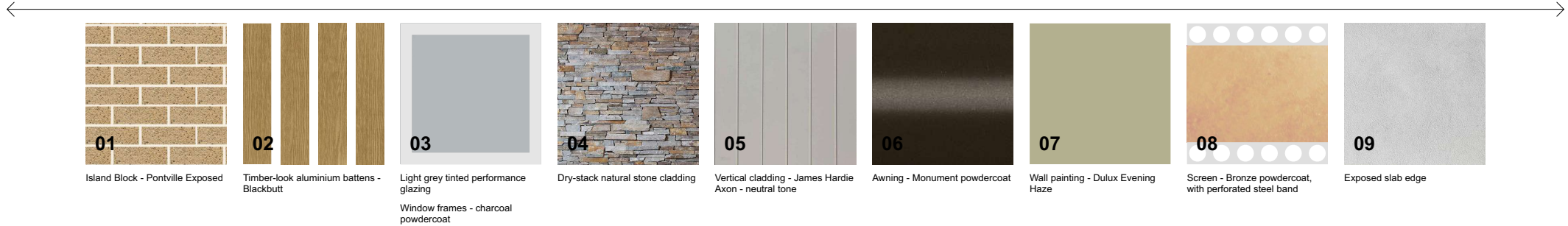


1 ROOF PLAN
SCALE 1:100 @ AT

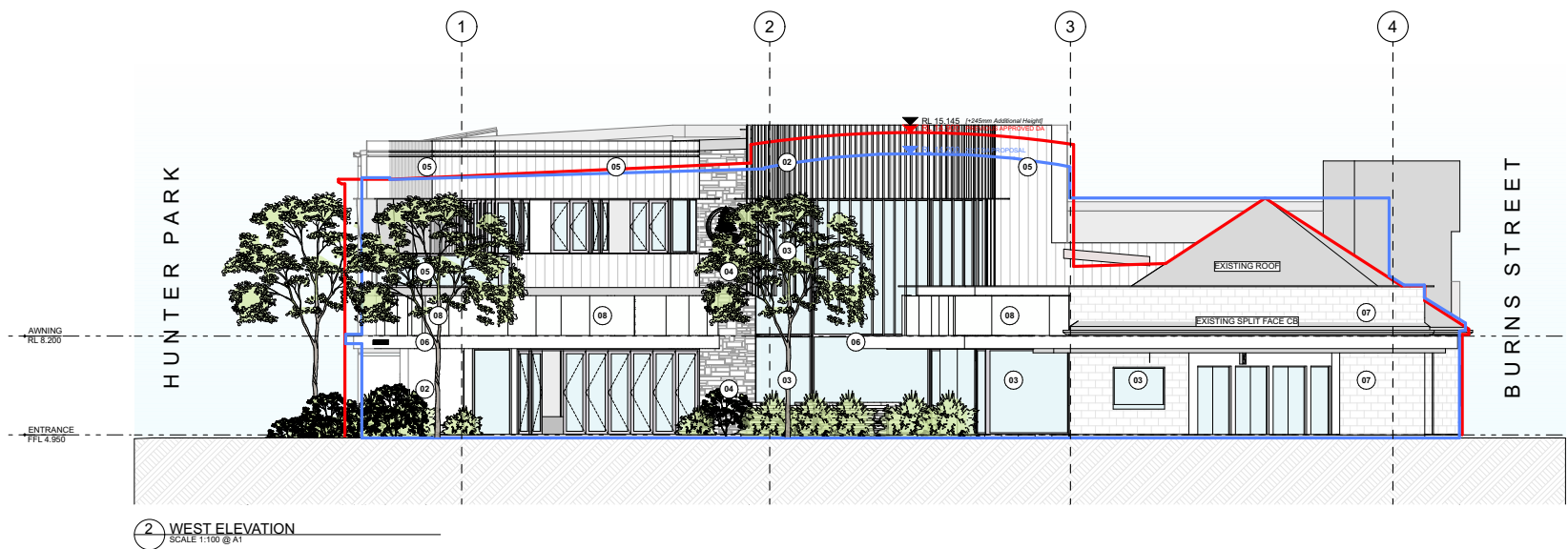
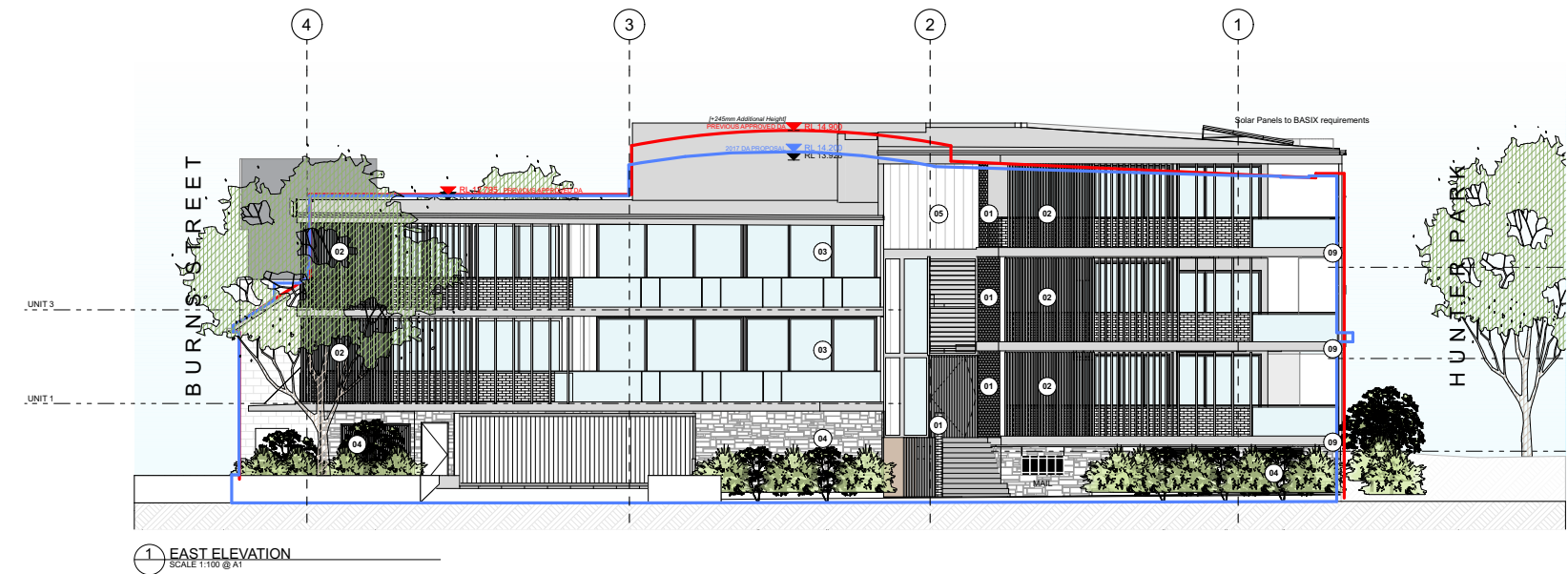
S4.56 Application



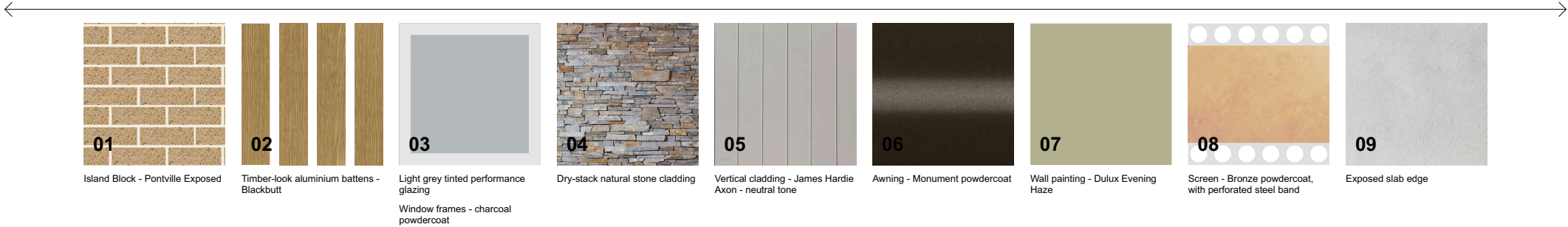
FINISHES



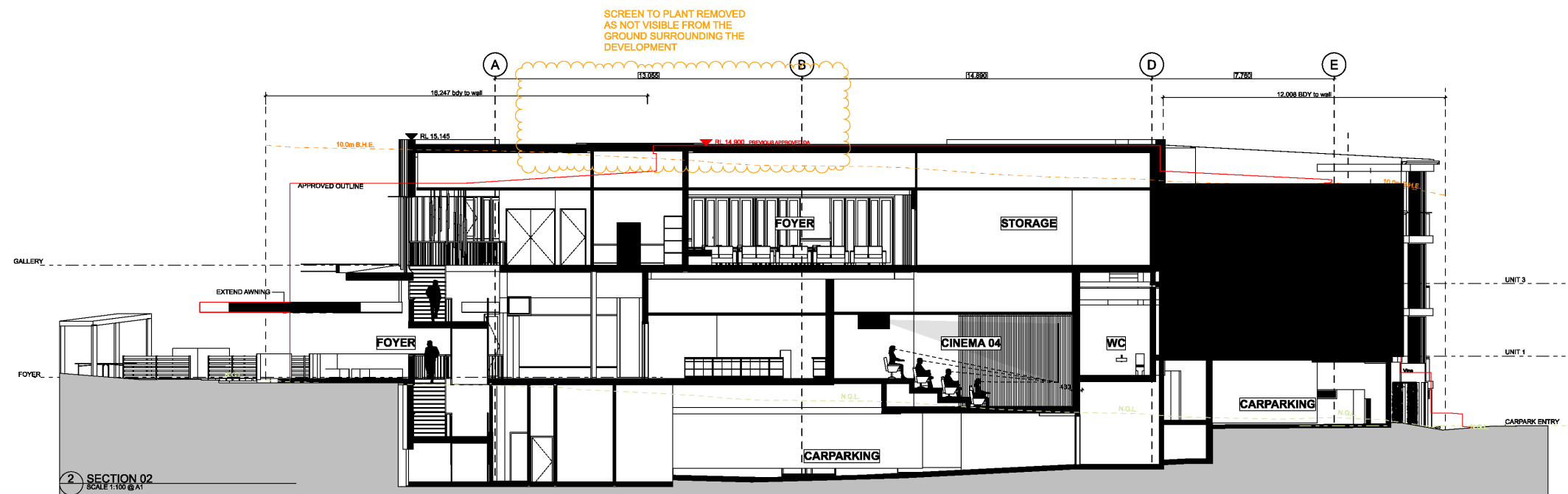
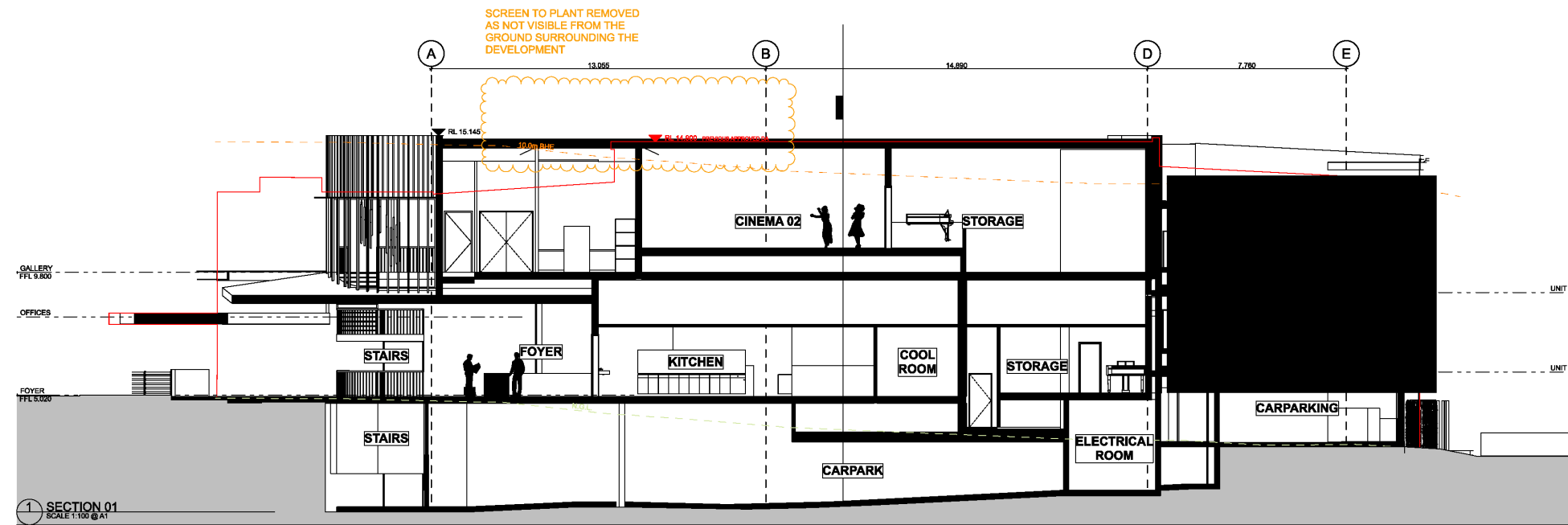
S4.56 Application



FINISHES



S4.56 Application



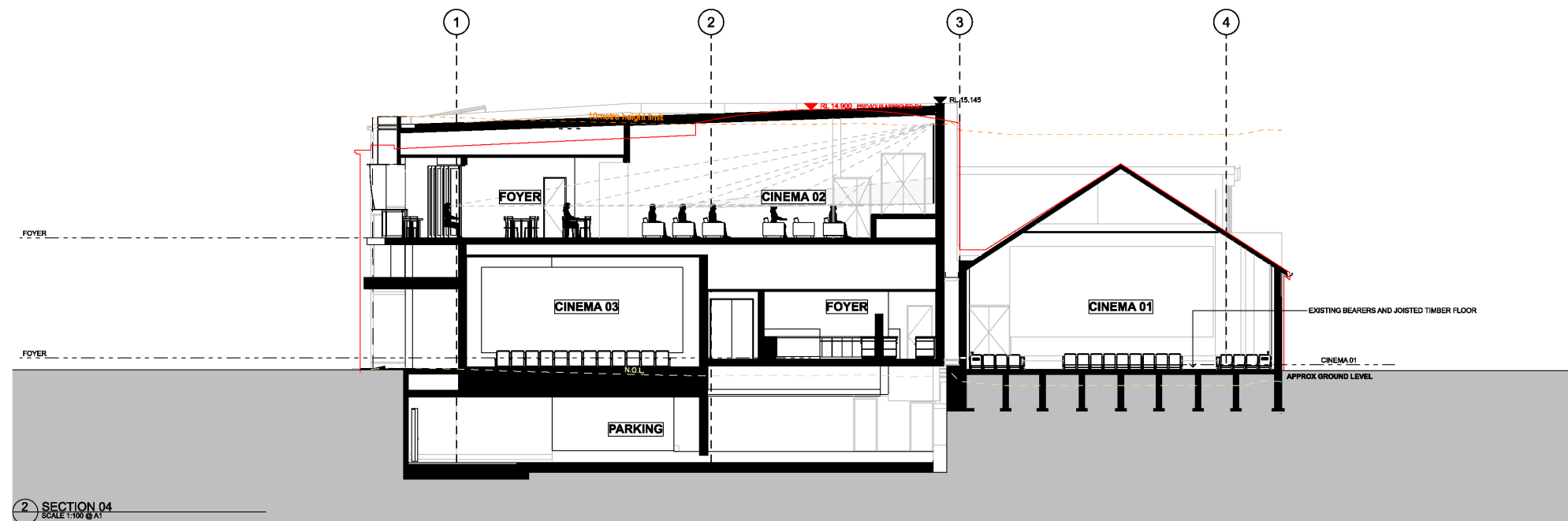
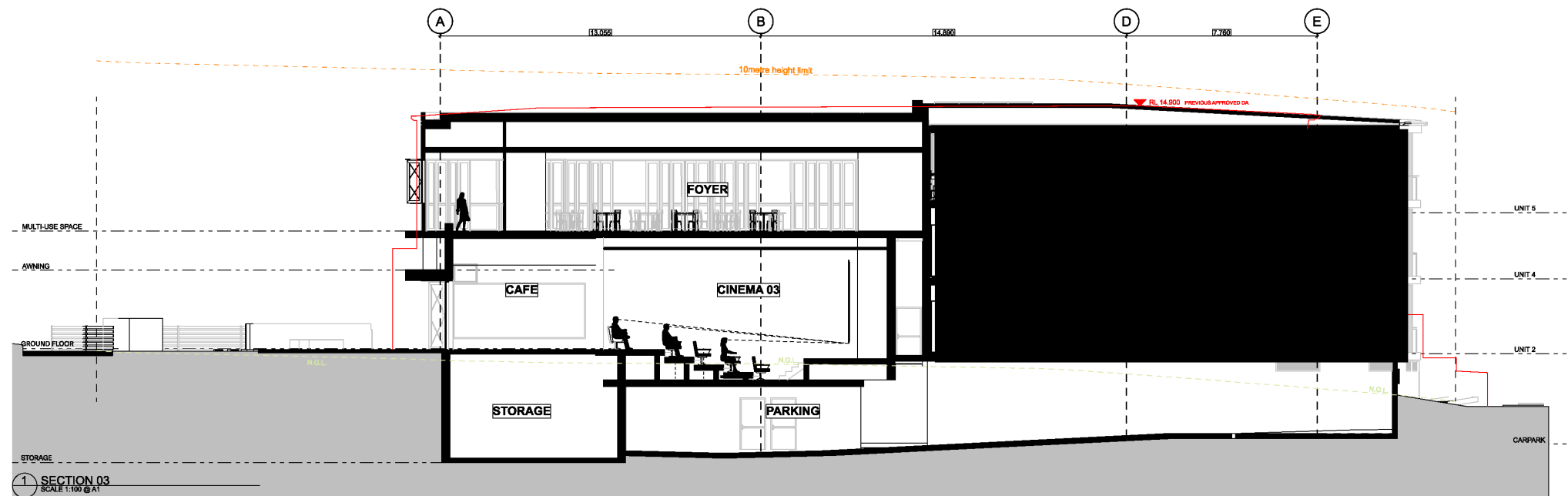
S4.56 Application

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Avoca Beach Theatre Mixed Use
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A-3001
Sections 1 & 2
08
14/9/2023
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S4.56 Application

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Avoca Beach Theatre Mixed Use
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A-3002
Sections 3 & 4

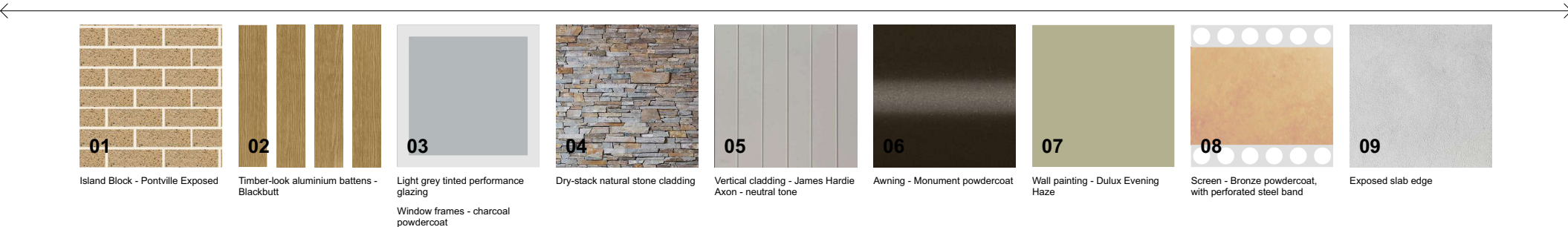
Issue
10

14/9/2023

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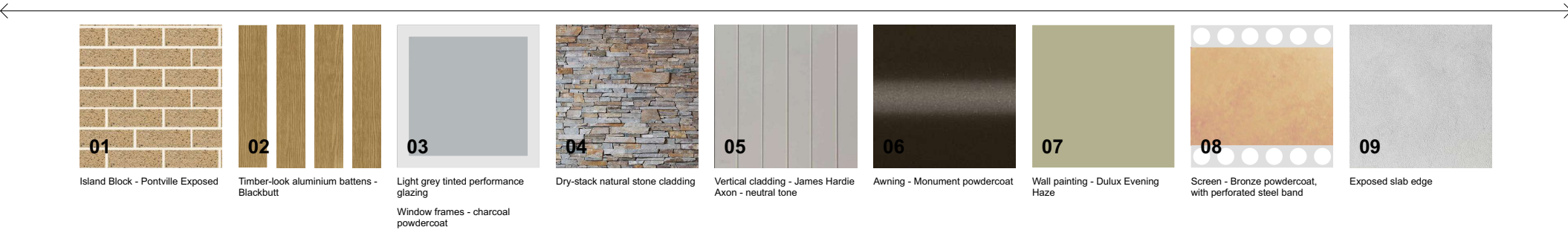
FINISHES



S4.56 Application



FINISHES



S4.56 Application



S4.56 Application

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Avoca Beach Theatre Mixed Use
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A-5004
3D Perspectives
14/9/2023
07
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Date: 8 April 2024
Responsible Officer: Robert Eyre
Location: Avoca Beach Theatre 69 & 71 Avoca Drive, AVOCA BEACH
 Lot 651 DP 16791, Lot 140 DP 9359
Owner: N A M Hunter and Norbet Enterprises Pty Ltd
Applicant: Johnson Projects
Date of Application: 4 October 2022
Application No: DA/42661/2012/E
Proposed Development: Alterations and Additions to Existing Theatre - (Amended Application) S4.56 Modification - (Notification period extended until 18/11/2022)
Land Area: 1802.15
Existing Use: XXXX

PROPOSED CONDITIONS

The development taking place in accordance with the approved development plans reference number DA/42661/2012/E except as modified by any conditions of this consent, and any amendments in red.

1.PARAMETERS OF THIS CONSENT

1.1A Description of the Approved Development (Amended)

Approval is granted to Development Application No. 42661/2012 for alterations and additions to the Avoca Beach Picture Theatre, to include demolition of an existing cottage and ancillary buildings, retention of the existing theatre/cinema (cinema 1 with a maximum of 307 seats plus 4 wheelchair), three additional cinemas (providing a total of 4 cinemas) (cinema 2 with a maximum of 54 seats plus 4 wheelchair, cinema 3 with a maximum of 54 seats plus 4 wheelchair, and cinema 4 with a maximum of 32 seats plus 3 wheelchair), café, five (5) residential units, basement car parking at Lot 140 DP 9359 and Lot 651 DP 16791 and known as 69 and 71 Avoca Drive, Avoca Beach.

1.1. Approved Plans and Supporting Documents (Amended)

Implement the development in accordance with the approved plans and documents unless modified by any following condition of this consent.

Plans Prepared by CKDS Architecture

Drawing	Description	Sheets	Issue	Date
A-0001	Cover Sheet	1	10	14/09/2023
A-0002	S4.56 Comparison	1	08	14/09/2023
A-0003	S4.56 Comparison	1	08	14/09/2023

A-0004	S4.56 Comparison	1	08	14/09/2023
A-0005	GFA Comparison	1	04	14/09/2023
A-0006	GFA Comparison	1	04	14/09/2023
A-1001	Site Plan	1	10	14/09/2023
A-1101	Carpark Level	1	12	14/09/2023
A-1102	Ground Floor Plan	1	11	14/09/2023
A-1103	First Floor Plan	1	11	14/09/2023
A-1104	Unit 5	1	10	14/09/2023
A-1105	Roof Plan	1	11	14/09/2023
A-2001	North & South Elevation	1	10	14/09/2023
A-2002	West & East Elevation	1	10	14/09/2023
A-3001	Sections 1 & 2	1	08	14/09/2023
A-3002	Sections 3 & 4	1	10	14/09/2023
A-3003	Section 5	1	07	14/09/2023
A-5001	Residential Materials	1	10	14/09/2023
A-5002	Cinema Materials	1	10	14/09/2023
A-5004	3D Perspectives	1	07	14/09/2023

Supporting Documentation

Document	Title	Date
1	Supplementary Statement of Environmental Effects – Doug Sneddon Planning Pty Ltd	Sept 2016
2	Report of Drew Bewsher – Flooding and Stormwater Issues	7 Sept 2016
3	Draft Flood Emergency Response Plan for Theatre Avoca Beach by Dr Stephen Yeo, Flood Focus Consulting and Mr Drew Bewsher	7 Sept 2016
4	Draft Flood Emergency Response Plan Residential Strata Development, Avoca Beach by Dr Stephen Yeo, Flood Focus Consulting and Mr Drew Bewsher	7 Sept 2016
5	Traffic Report by Graham Pindar	13 Sept 2016
6	Basix Certificate No 1314580m	26/06/2022
7	Stormwater Concept Management Plan by ADW Johnson	7 Sept 2016
8	Colours & Materials, prepared by Artichoke Design Studios	Revision E
9	Shadow Diagrams, prepared by Artichoke Design Studios	Revision E
10	Landscape plans by Meraki Green Landscape Architecture Rev B	19/05/2022
11	S4.56 Modification Application-ADW Johnson Pty Ltd	Sept. 2022
12	Waste Management Plan-Barker Ryan Stewart	Sept. 2023
13	BCA Report-Blackett Maguire +Goldsmith Rev 2	16/05/2022
14	Interpretation Plan Heritage Significance-Placemark	04/04/2022

	Architecture and Cultural Heritage Issue C	
15	ADG Report-CKDS Architecture	30/03/2022
16	NaTHERS Certificate No 0007642051-Thermal Performance	25/04/2022
17	Architectural Design Statement- CKDS Architecture	05/04/2022
18	SEPP 65 Design Statement-CKDS Architecture Rev A	Undated

1.2A Prior to the issue of a construction certificate, a BCA Report and a BCA Section J Compliance Assessment in relation to the development approved by this consent (which includes any changes to the development made by these conditions) is to be submitted to and approved by Council.

1.2. All building works are to be carried out in accordance with the Building Code of Australia.

1.3 **Operating Hours**

The Cinemas are to operate only within the following hours:

(a) 8.30am to midnight Sunday to Thursday, 8.30 am to 12:30am Friday and Saturday;

(b) The hours specified in (a) above do not preclude patrons leaving the premises after the times specified in (a) above if the film or performance or other event has finished by the time specified above, provided they leave within 30 minutes of the completion of the film, performance or other event;

(c) The hours specified in (a) above do not preclude attendance on the premises of staff outside the hours specified in (a) above;

(d) The hours specified in (a) above do not preclude special promotions or premiers of films or movie marathons being held outside those hours on a maximum of six occasions in any 12 month period in the existing Cinema 1, and on no more than 2 consecutive days and otherwise with at least 1 month between such promotions, premiers or marathons.

1.4 The applicant is to ensure that patrons leave the premises quietly after 10 pm on any day of the week. In the event that a substantiated noise complaint is received by Council, the applicant/business owner will seek the services of a suitably qualified person to undertake noise assessment of the activity, an acoustic report will be published from the assessment. The acoustic assessment is to be carried out as per procedures and guidelines of Australian Standard AS1055, "Acoustics - Description and Measurement of Environmental Noise, Part 1 General Procedures". A copy of the acoustic report will be provided to Council and noise mitigating measures are to be implemented. An Acoustic Validation Report may be requested by Council to demonstrate that mitigating measures have been effective.

1.5 The proposed development has been identified to be within the zone of influence of the Council sewer pipeline. More detail about requirements and procedures can be found on the Council's website. (Added)
<https://cdn.centralcoast.nsw.gov.au/sites/default/files/Council/Policies/d14133224buildinginproximitytowaterandsewerpipelinespolicy2.PDF>

<https://cdn.centralcoast.nsw.gov.au/sites/default/files/Council/Policies/d14133228buildinginproximitytowaterandsewerpipelinesprocedure.PDF>

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

All conditions under this section must be met prior to the issue of any Construction Certificate

- 2.1. No activity is to be carried out on site until any Construction Certificate required for that activity has been issued, other than:
 - a. Site investigation for the preparation of the construction, and / or
 - b. Implementation of environmental protection measures, such as erosion control etc that are required by this consent.
 - c. Demolition works as approved under this consent and in accordance with conditions relating to asbestos removal. (ADDED)
- 2.2. Prior to the issue of a Construction Certificate an application must be submitted to council under Section 138 of the *Roads Act, 1993*, for the approval of required works to be carried out within the road reserve.

Prior to the issue of a Construction Certificate, Engineering plans for the required works within a public road that have been designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation Control*, must be submitted to and approved by Council. The Engineering plans must be included with the Roads Act application for approval by council.

Design the required works as follows:

- a. The construction of new kerb and gutter, road formation, waste ramp, pavement and associated works within Burns Street and extending into the Avoca Drive kerb to create a kerb blister. The re-alignment of the kerb shall include the provision of a time limited "Loading Zone", pavement widening to the Burns Street southern carriageway, utility adjustments, stormwater drainage works, adjustment to the bus stop and shelter, bollards, regulatory signage, and line marking. Note: The works are to be generally in accordance with Northrop Engineers Avoca Beach Theatre-Road Blister-C103.1 Rev 2 dated 28/11/2023 (Council Ref: D15976391 4/12/23) (Amended)
- b. Avoca Drive – Full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath (or similar) across the full frontage of the site.
- c. Burns Street – 1.5 metre wide reinforced (SL72 steel fabric, 100mm thick) concrete path (or similar) and landscaping across the full frontage of the site.
- d. Vine Street - 1.5m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath across the full frontage of the site.

- e. Vine Street - (for existing Vine St pavement levels) – 6.5m wide Heavy-duty vehicle crossing / ramp constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom generally in accordance with Northrop Engineers driveway to basement Civil Engineering Plans C3.1 & C3.2 Rev E job No NL210853 29/5/23 (Council Ref D15713987 29/5/23). Driveway long sections MC01 (north) and MC02 (south) with driveway design crest levels RL 3.137 & 3.109m AHD at site boundary for existing Vine St. pavement levels, OR

If Vine St pavement levels have been upgraded in accordance with Council plans Cardno Final Avoca Bowl Drainage Design Plans 38 Drawings Number 80514616- Rev C 8/9/2015 (Council Ref ECMD20035396) the driveway construction from upgraded gutter levels to site boundary are to include crest levels RL 3.400 (north) & 3.418m (south) AHD generally in accordance with Northrop Engineers driveway to basement Civil Engineering Plans C3.1 & C3.2 Rev E job No NL210853 29/5/23 (Council Ref D15713987 29/5/23) and retaining walls with approximately 180mm rise to prevent stormwater entering the basement and retain road gutter stormwater flows in minor/moderate storms. (Amended)

- f. Avoca Drive - All redundant vehicular crossings are to be removed and the footway formation reinstated with a full width reinforced (SL72 steel fabric, 100mm thick) concrete footpath.
- g. Vine Street - Minor upgrade of the stormwater drainage system if the stormwater drainage pit is required to be relocated due to a conflict with the location of the proposed driveway crossing. Currently, a stormwater drainage pit is located at the low point of the frontage adjacent to the proposed driveway crossing servicing the basement car park.
- h. Roadside furniture and safety devices as required e.g. fencing, signage, guide posts, chevrons, directional arrows, and/or guard rail in accordance with RMS and relevant Australian Standards.
- i. Signage and line marking, such as no stopping / parking signage at the intersection of Avoca Drive & Burns Street, loading zone and signage for the access driveway. The signage and line marking plan must be approved by Council's Traffic Committee prior to the issue of the Roads Act Application. (Amended)
- j. Pram ramps at the intersection of Avoca Drive & Burns Street and Burns Street & Vine Street.
- k. Relocation of the existing plaques and hand imprints to a suitable alternative location.

- I. All retaining walls shall be designed by a practicing Civil/Structural engineer and shall not conflict with services.

The Roads Act application must be approved by council prior to the issue of a Construction Certificate.

A fee for the approval of engineering plans under the *Roads Act 1993* applies. The amount of this fee can be obtained by contacting council's Customer Services on (02) 4325 8222.

All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993. (Amended)

- 2.3. A dilapidation report must be submitted to Council with the Roads Act application and / or Construction Certificate application. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.4. A security deposit of \$50,000.00 must be paid into Council's trust fund prior to the issue of any Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.5. Prior to the issue of a Construction Certificate, an application must be submitted to council, under Section 68 of the Local Government Act, for the approval of required drainage works associated with public stormwater / watercourse works.

Engineering plans for the works must be prepared and designed by a suitably qualified professional in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation Control*, and submitted to council for approval with the Local Government Act application.

The required works to be designed are as follows:

- a. Connection of all stormwater from impervious areas within the site via an on-site stormwater detention structure to council's drainage system located in Vine Street.

The Local Government Act application must be approved by council prior to the issue of a Construction Certificate.

A fee for the approval of engineering plans under the Local Government Act applies. The amount of this fee can be obtained by contacting council's Customer Services on (02) 4325 8222.

- 2.6. Prior to the issue of a Construction Certificate an application, with the relevant fee, must be submitted to council under Section 68 of the Local Government Act 1993 for an approval to discharge liquid trade waste to council's sewerage system. The Application to Discharge Liquid Trade Waste can be found on council's website: www.gosford.nsw.gov.au

- 2.7. Submit an application to Council under section 305 of the Water Management Act 2000 for a section 306 Requirements Letter. The Application form can be found on Council's website centralcoast.nsw.gov.au. Early application is recommended.

The section 305 application will result in a section 306 letter of requirements which must be obtained prior to the issue of any Construction Certificate. The requirements letter will outline which requirements must be met prior to each development milestone e.g. prior to construction certificate, subdivision works certificate, occupation certificate and/or subdivision certificate. (Amended)

- 2.8. Prior to the issue of a Construction Certificate Engineering details prepared and certified by a practicing structural engineer must be submitted to the Council (Water Authority) for development constructed near or over the sewer main and / or adjacent to Council's water mains. The engineering details must comply with Council's guidelines for "Building Over or Near Council Sewer and Water Mains" and must be approved by Council prior to the issue of a Construction Certificate. A fee for engineering plan assessment must be paid when submitting the engineering details.

Additional fees for the submission of contractor's documentation and sewer inspection fees apply for the adjustment or encasement of Council's sewer main. Subject to approval of the engineering plans, and payment of the prescribed fees, the developer must contact Council's Water and Sewer Quality Inspector on mobile phone 0419 412 725 a minimum of one week prior to commencement of any work involving building over and / or adjacent to sewer mains.

- 2.9. Design details of the following engineering works within private property must be submitted to and approved by Council prior to the issue of a Construction Certificate:
- a. Driveways / ramps and car parking areas must be designed according to the requirements of AS2890: Parking Facilities for the geometric designs, and industry Standards for pavement designs. A longitudinal driveway profile between the parking level and Vine Street centreline, along centreline and both edges, shall be prepared by a suitably qualified and experienced engineer demonstrating that the driveway grades comply with the above standard. (Amended)
 - b. A stormwater detention system must be designed in accordance with the Gosford DCP 2013 Chapter 6.7 - Water Cycle Management and council's Civil Works Specification. The stormwater detention system must limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1% AEP storm event. A runoff routing method

must be used. An on-site stormwater detention report including an operation and maintenance plan must accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.

- c. On-site stormwater retention measures must be designed in accordance with council's DCP Chapter 6.7 - Water Cycle Management. A report detailing the method of stormwater harvesting, sizing of retention tanks for re-use on the site and an operation and maintenance plan must accompany the design.
- d. Nutrient/pollution control measures must be designed in accordance with Gosford DCP 2013 Chapter 6.7 - Water Cycle Management. A nutrient / pollution control report including an operation and maintenance plan must accompany the design.
- e. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to council's drainage system located in Vine Street. This shall include the provision of a flap valve on the outlet to prevent backwater entering into the basement.
- f. Full details of the holding tank capacity, pump type and system, discharge rate and the delivery line size for the basement drainage.
- g. The minimum floor level of all habitable rooms in the development must be RL 4.1m AHD.
- h. All building materials used or located below RL 3.6m AHD must be of a type that is able to withstand the effects of immersion.
- i. The driveway crest level to the basement carpark at the site boundary to be a minimum RL 3.109m AHD (south) and minimum RL 3.137m AHD (north).
(Amended)
- j. Proposed structure certified to withstand the expected forces of floodwater.
- k. Provide flood gates and wall heights to minimum RL 4.1m AHD at driveway to basement carpark off Vine St and to waste collection area to prevent stormwater flows entering basement carpark and waste collection area generally in accord with Northrop Engineers driveway to basement Civil Engineering Plans C3.1 & C3.2 Rev E job No NL210853 29/5/23. Flood gates are to still be operative under mains power outages (ie. include backup power supply) and not to activate under normal stormwater gutter flows. (Added)

These design details and any associated reports must be included in the construction certificate. The plans shall be generally in accordance (with required amendments) with the submitted stormwater concept management plan by ADW Johnson (refer

Reference No. 238328 (1), dated 7/9/2016), which are to be advanced as necessary for Construction Certificate issue purposes.

- 2.10. A Road Safety Check prepared by a Road Safety Auditor recognised on the NSW Register of Road Safety Auditors must be submitted to the Council as the Roads Authority prior to the issue of a Construction Certificate. Any deficiencies identified within the audit must be resolved in consultation with Council prior to the approval of design drawings.
- 2.11. A "Flood Mitigation" report is to be submitted to and approved by Council prior to the issue of a Construction Certificate. The report is to detail industry best practice strategies and mitigation measures that will reduce the risk to life and property associated with the residential building's main access via a floodway (as detailed in Report of Drew Bewsher – Flooding and Stormwater Issues, Sept 2016).
- 2.12. The recommendations of the "Draft Emergency Response Plan for Residential and for the Theatre – Sept 2016" report are to be incorporated into the design of the development prior to the issue of a Construction Certificate.
- 2.13. Prior to the issue of a Construction Certificate, amended plans are to be submitted to and approved by Council which provide the following changes to the development to address waste management matters:
 - a. Submission of revised plans to indicate separate fully dimensioned Residential and Commercial waste storage enclosures.
 - b. The Residential waste storage enclosure is to be sized to accommodate a minimum of 5 x 120 litre mixed waste MGB's, 5 x 240 litre recyclable waste MGB's and a nominal number of 240 litre green waste MGB's should they be required for resident use only.
 - c. The Residential waste storage enclosure is to be located to provide internal resident access to the enclosure having a gradient not exceeding 10% alternatively an interim residential waste holding enclosure located adjacent to the resident lift may be considered with residential waste within the interim waste holding enclosure to be transferred by a caretaker or similar to a principal Residential waste enclosure located to facilitate roll out of MGB's to Burns St for kerbside collection.
 - d. Suitable internal access to the Residential and Commercial waste enclosure/s is required to ensure transfer of waste can be undertaken without travel outside the boundaries of the property.
 - e. A 10.0m long kerbside presentation location is to be indicated on the revised plans within Burns St adjacent to the proposed waste storage enclosure.
 - f. The Commercial waste storage enclosure is to be sized consistent with the multiple uses within the proposed development in accordance with Chapter 7.2 - Waste

Management of Gosford DCP 2013 and the Better Practice Guide for Waste Management in Multi-Unit Dwellings published by DECC.

- g. Mixed and recyclable mobile garbage bins for kerbside collection by a Private waste contractor are to be indicated.
 - h. Mixed waste and recyclables mobile garbage bins for kerbside collection are to be wheeled out on arrival of the Private waste collection contractor and returned to the Commercial waste storage enclosure immediately after servicing. (Amended)
 - i. The waste storage enclosure/s are to be located to be readily accessible to the occupants of the residential units, the Commercial operator and the Residential and Commercial waste collection contractors. (Amended)
 - j. The Residential and Commercial waste enclosure/s are required to be in accordance with Chapter 7.2 - Waste Management of Gosford DCP 2013 to ensure waste is appropriately stored to minimise any potential odour/vermin issues within the proposed development and the public domain.
- 2.14 Prior to the issue of a Construction Certificate the revised signed and dated Waste Management Plan consistent with advice provided to address/clarify solid waste issues, and consistent with the amended plans approved pursuant to condition 2.13 of this consent, must be submitted to and approved by Council.
- 2.15 A Waste Management Strategy to detail responsibilities of transfer of Residential and Commercial waste, servicing frequencies and management of waste enclosure/s, consistent with the amended plans approved pursuant to condition 2.13 of this consent, must be submitted to and approved by Council prior to the issue of a Construction Certificate.
- 2.16 An Interpretation Plan shall be prepared by a suitably qualified heritage consultant to include appropriate measures to interpret the heritage significance of the original theatre to be retained and adaptively reused, including measures for ongoing maintenance. The Plan is to be submitted to Council for approval and approval obtained prior to the approval of the Construction Certificate and approved measures shall be detailed in the application for the Construction Certificate, and the following:
- a. A Photographic archival record of the Theatre is to be undertaken by a suitable qualified professional prior to commencement of construction works. The archival record and measured drawings should be undertaken in accordance with the Office of Environment and Heritage, Heritage Branch Guidelines *Photographic Recording of Heritage Items*. Two copies of the Record must be submitted to Council for approval and made available in the Library. Approval by Council must be confirmed in writing prior to construction.
- A report is to be prepared by a practicing structural engineer by the applicant detailing the structural adequacy of the Theatre building to withstand the

proposed excavation works. This report must include any measures required to be incorporated to ensure that no damage will occur during the course of works. The report must be submitted to Council and relevant adjoining property owners prior to the issue of any construction certificate.

- b. Submit an updated landscape plan is required. Approval by Council must be confirmed in writing prior to construction.
- 2.17 The fitout of the food premises is to comply with the Food Act, 2003, Food Regulation 2010, Food Standards Code and the Australian Standard AS4674 for the Design, Construction and Fitout of Food Premises. Details of compliance are to be included in the plans and specifications for the **Construction Certificate** to the satisfaction of the certifying authority
 - 2.18 Details of any proposed mechanical ventilation systems, detailing compliance with the relevant requirements of Clause F4.12 of the Building Code of Australia (BCA) and Australian Standard AS1668 Parts 1 & 2 (including exhaust air quantities and discharge location points) are to be submitted to and approved by the PCA **prior to a Construction Certificate being issued** for the subject works.
- A certificate is to be submitted at the completion of the installation and prior to the issue of a Occupation Certificate, from a practising Mechanical Engineer certifying that the construction, installation and operation of the exhaust hood ventilation system meets the requirements as AS 1668.1 and/or AS 1668.
- 2.19 Appropriate noise attenuation is to be incorporated into the design of the residential units to minimise the impacts of elevated noise in accordance with a specification to be provided by an appropriately qualified and experienced Acoustic Consultant.
 - 2.20 In accordance with the Voluntary Planning Agreement (ECM Doc No 3080720 – incorporating the Voluntary Planning Agreement executed between the parties dated 15 September 2006) signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited dated 22 January 2007 (the terms of which are incorporated herein as if fully set out herein), compliance with the following:

- In accordance with Recital E and clause 4(a) of the 2006 Voluntary Planning Agreement, payment of the total sum of \$500,000 for the public purpose of the provision of public amenities, namely, the construction and enhancement of car parking facilities near the development in South End Park, Avoca and the embellishment and beautification of the adjoining public open space known as Hunter Park, Avoca all as depicted on the plan annexed to the 2006 Voluntary Planning Agreement and marked with the letter "B"; and
- In lieu of Section 94 Contributions, payment of an amount of \$10,296 for the provision of public amenities by Council ("the Contribution Amount"). The Contribution Amount will be increased on each of 1 January, 1 March, 1 July and 1 October in each year from the date of this Agreement [being the date of the

2006 Voluntary Planning Agreement] until the Contribution Amount is paid by the same percentage increase as the percentage change, if any, in the Consumer Price Index in the 3 months prior to the relevant review date.

The above contribution amounts are to be paid prior to the issue of any Construction Certificate.

Any Construction Certificate is not to be issued by a certifying authority until the developer has provided the certifying authority with a copy of a receipt issued by Council that verifies that the contributions have been paid in accordance with the wording of this condition. A copy of this receipt is to accompany the documents required to be submitted by the certifying authority to Council under Clause 104 of the Environmental Planning and Assessment Regulation 2000.

- 2.21 Prior to the issue of a Construction Certificate the development consent to DA 6344/1999 for the Outdoor Theatre is to be relinquished.
- 2.22 **Structural Design plans are to be submitted to Council's Water Assessment Team for assessment and acceptance prior to commencement of works on site.**

Part of the development has been identified to be within the zone of influence of Council's existing and proposed sewer main – as defined in Council's ["Building in Proximity to Water and Sewer Pipelines Policy"](#). The Development shall be designed and constructed to comply with the policy to ensure additional load is not placed on the sewer main and the development is structurally independent should the sewer main and surrounding material be excavated.

They are to comply with the pier requirements as identified in the policy. A plan view and section view drawing detailing the zone of influence in relation to the structure shall be submitted via email (contact details provided below). The design plans must include certification by a practicing qualified structural engineer specifically stating that the structural design plans are: **"adequate to support and protect the proposed structure from damage in the event that water/sewer main is excavated, or disturbance or settlement occurs within the zone of influence and in accordance with Central Coast Council's Building in Proximity to Water and Sewer Pipelines Policy"**. Each drawing in relation to building over sewer is to be stamped with the above certification and should also be signed and dated by the structural engineer. If the base of the pool is below the zone of influence, then this is to be shown on the structural plans and no piercing is required.

Note: Fees apply for this assessment as quoted in this letter and are payable prior to the assessment. The details accepted by Council shall form part of the documentation for the Construction Certificate issued by the Accredited Certifier. (Added)

3. PRIOR TO COMMENCEMENT OF ANY WORKS

All conditions under this section must be met prior to the commencement of any works

- 3.1. A Principal Certifying Authority is to be appointed after the construction certificate for the building work has been issued and prior to the commencement of any works.
- a. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
 - b. Submit to Council a *Notice of Commencement of Building Works* or *Notice of Commencement of Subdivision Works* form giving at least two (2) days notice of the intention to commence building or subdivision work. The forms can be found on Council's website www.gosford.nsw.gov.au
- 3.2. A copy of the stamped approved plans must be kept on site for the duration of site works and the plans must be made available upon request to either the Principal Certifying Authority or an officer of Council.
- 3.3. Site works must not be commenced until the sediment control measures have been installed in accordance with the approved plans / Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation and Control*.
- 3.4. Prior to the commencement of any works a sign is to be erected in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
- a. The name, address and telephone number of the principal certifying authority for the work; and
 - b. The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c. That unauthorised entry to the work site is prohibited.

Remove the sign when the work has been completed.

- 3.5. Both a Plumbing and Drainage Inspection Application must be submitted to Council prior to the commencement of any works, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the *Plumbing and Drainage Act 2011* (to be provided by licensed plumber). These documents can be found on Council's website at: www.gosford.nsw.gov.au.

[Contact Council prior to submitting these forms to confirm the relevant fees.](#)

- 3.6. Prior to the commencement of any works, a Tree Protection Zone is to be established around the Eucalyptus tree located on the road reserve corner of Vine and Burns

Street. Due to the limited area available, the distance from the tree to a protective fence should be no less than 2m. The protective fence is to consist of a 1.8 metre high chain mesh fence erected around the tree and must remain intact until construction is completed. The fence is to be sign posted to warn of its purpose.

- 3.7. Prior to the commencement of any works a Construction Traffic Management Plan is to be prepared for the relevant works development and submitted to and approved by Council. The Plan shall include Traffic Control Plans prepared by a suitably qualified and experienced consultant with necessary construction management measures identified during demolition, excavation, delivery and construction phases. All works must ensure the safety of all vehicles and pedestrians. (AMENDED)
- 3.8. Demolition involving asbestos must be undertaken in accordance with the *Work Health and Safety Act 2011*.

The person having the benefit of this consent must ensure that the removal of:

- a. more than 10m² of non-friable asbestos or asbestos containing material is carried out by a licensed non-friable (Class B) or a friable (Class A) asbestos removalist, and
- b. friable asbestos of any quantity is removed by a licensed removalist with a friable (Class A) asbestos removal licence.

The licensed asbestos removalist must give notice to the regulator before work commences in accordance with Clause 466 of the *Work Health and Safety Regulation 2011*.

4. DURING WORKS

All conditions under this section must be met during works

- 4.1. Clearing of land, excavation, and / or earthworks, building works, and the delivery of building materials must only be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

- a. No work is permitted on Sundays and Public Holidays
- b. No work is permitted on:
 - Saturdays when a public holiday is adjacent to that weekend.
 - Construction industry awarded rostered days off.
 - Construction industry shutdown long weekends.

Clause b does not apply to works of a domestic residential nature as below:

- i Minor renovation or refurbishments to single dwelling construction.
- ii Owner occupied renovations or refurbishments to single dwelling construction.
- iii Owner builder construction of single dwelling construction; and / or

- iv Any cottage constructions, single dwellings or housing estates consisting of predominantly unoccupied single dwellings.
- 4.2. Erosion and Siltation control measures must be undertaken and maintained during the carrying out of all works, in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls must comply with Gosford DCP 2013 Chapter 6.3 - *Erosion and Sedimentation Control*.
- 4.3. A copy of the stamped approved plans must be kept on site for the duration of site works and the plans made available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.4. Council must be notified when plumbing and drainage work will be ready for inspection(s) and the work must be made accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.
- 4.5. The following Crime Prevention Through Environmental Design (CPTED) principles and strategies must be incorporated into the development during the carrying out of "works" to minimize the opportunity for crime:
 - a. Provide adequate lighting to common areas as required under *AS1158: Lighting for roads and public spaces*.
 - b. Paint the ceiling of the car park white.
 - c. Design of landscaping, adjacent to mailboxes and footpaths, must not provide concealment opportunities for criminal activity.
 - d. Design the development to avoid foot holes or natural ladders so as to minimise unlawful access to the premises.
 - e. Provide signage within the development to identify all facilities, entry/exit points and direct movement within the development.
- 4.6. The works within the road reserve that required approval under the Roads Act must be constructed in accordance with Council's Civil Works Specification and Gosford DCP 2013 Chapter 6.3 - *Erosion Sedimentation Control*.
- 4.7. The location of all electrical fixtures and/or gas outlets are to be at a minimum height of RL 3.6m AHD.
- 4.8. All Site Preparation, Demolition and Construction commitments as detailed within the required revised signed and dated Waste Management Plan in accordance with the Gosford City Council Development Application Guide and Chapter 7.2 – Waste Management of Gosford DCP 2013 must be complied with during the carrying out of works.

- 4.9. During construction, the Applicant/developer must arrange with the relevant service provider / Authority (e.g. Ausgrid, Jemena, communications provider) for the supply of services concurrent with the engineering work. Arrangements must include where required any relocation of existing mains and services and dedication of easements for mains and services.
- 4.10. Filling or debris must not be placed within any watercourse or drain.
- 4.11. Should any Aboriginal objects or artefacts be uncovered during works on the site, all works shall cease. The Office of Environment and Heritage shall be contacted immediately and any directions or requirements complied with.

5. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

All conditions under this section must be met prior to the issue of any Occupation Certificate

- 5.1. An application for the Occupation Certificate is to be submitted to the Principal Certifying Authority for approval.
- 5.2. The premises must not be occupied until the Occupation Certificate has been issued.
- 5.3. A Certificate of Compliance for all plumbing and drainage work and a Sewer Service Diagram showing sanitary drainage work (to be provided by licensed plumber) in accordance with the *Plumbing and Drainage Act 2011* must be submitted prior to the issue of an Occupation Certificate.
- 5.4. Lot 140 DP 9359 and Lot 651 DP 16791 must be consolidated into a single allotment under one Certificate of Title prior to the issue of any Occupation Certificate.
- 5.5. Prior to the issue of an Occupation Certificate, the Applicant must construct, grade, drain, seal and line mark including directional arrows with impervious paving material the driveway, vehicle manoeuvring area and 14 car parking spaces as shown on the approved plan, in accordance with *AS2890.1-2004: Parking facilities - Off-street parking*.
- 5.6. Prior to the issue of an Occupation Certificate, mail receptacles appropriately numbered for each dwelling unit in the development, as well as for the managing body, in consultation with Australia Post, must be provided.
- 5.7. Prior to the issue of an Occupation Certificate, works within the road reserve that required approval under the Roads Act are to be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'. Documentary evidence for the acceptance of such works obtained from the Roads Authority must be provided prior to the issue of any Occupation Certificate.

Note 1: A maintenance bond shall be paid on completion of the works in accordance with Section 1.07 Maintenance of the 'Civil Construction Specification'.

- 5.8. Any damage not shown in the dilapidation report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of any Occupation Certificate.
- 5.9. Prior to the issue of an Occupation Certificate the internal engineering works within private property must be completed in accordance with the plans and details approved with the construction certificate.
- 5.10. Prior to the issue of any Occupation Certificate the Deposited Plan (DP) must be amended to:
 - Include an Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan.
 - a To create a 'Restriction as to User' over all lots containing an on-site stormwater detention system and/or a nutrient/pollution facility restricting any alteration to such facility or the erection of any structure over the facility or the placement of any obstruction over the facility.

And,

- Include an instrument under the Conveyancing Act 1919 for the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).
 - a To ensure on any lot containing an on-site stormwater detention system and/or a nutrient/pollution facility that:
 - (i) The facility will remain in place and fully operational.
 - (ii) The facility is maintained in accordance with the operational and maintenance plan so that it operates in a safe and efficient manner
 - (iii) Council's officers are permitted to enter the land to inspect and repair the facility at the owners cost.
 - (iv) Council is indemnified against all claims of compensation caused by the facility.

Registered title documents showing the restrictive and positive covenants must be submitted to and approved by the Principal Certifying Authority prior to the issue of any occupation certificate.

- 5.11. Prior to the issue of an Occupation Certificate, a registered surveyor is to confirm that the finished floor level of the car park and the finished crest level to the car park are in accordance with the design levels.
- 5.12A. Prior to the issue of an Occupation Certificate, a suitably qualified engineer is to certify that the automatic flood gates have been installed in accordance with the manufacturer's instructions, and that they are operating as designed.
- 5.12. Flood mitigation strategies, in accordance with the "Flood Mitigation" report, are to be installed and/or constructed.
- 5.13. Prior to the issue of an Occupation Certificate the Applicant/developer must arrange with the relevant service provider / Authority (e.g. Ausgrid, Jemena, communications provider) for the supply of services concurrent with the engineering work. Arrangements must include where required any relocation of existing mains and services and dedication of easements for mains and services.
- 5.14. Prior to the issue of an Occupation Certificate all existing buildings and structures must be connected to the stormwater systems.
- 5.15. Prior to the issue of an Occupation Certificate all existing buildings with plumbing fixtures must be connected to the sewer systems.
- 5.16. Pursuant to clause 4(c) of the Voluntary Planning Agreement (ECM Doc No 3080720 - incorporating the Voluntary Planning Agreement executed between the parties dated 15 September 2006) signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited dated 22 January 2007 (the terms of which are incorporated herein as if fully set out herein), the Applicant will, on registration of a strata plan of subdivision for the Land [as defined in the Voluntary Planning Agreement] or the issue of an occupation certificate for the development of the Land, whichever occurs first, dedicate to the Council without costs to the Council the strip of land 1.2 metres wide along Vine Street frontage (Vale Street) depicted on the plan annexed to the Voluntary Planning Agreement and marked with the letter "D".
- 5.17. Certification from a suitably qualified and experienced flooding consultant demonstrating that the recommendations within the Report of Drew Bewsher dated 7 September 2016 have been fully implemented for the development, including the Flood Emergency Response Plans (FERP's) must be submitted to Council prior to the issue of an Occupation Certificate.
- 5.18. Prior to the issue of an Occupation Certificate the refrigerated/cooling/freezing chamber, which is of sufficient size for a person to enter must have-
- (a) a door which is capable of being opened by hand from inside without a key; and
 - (b) internal lighting controlled only by a switch is located adjacent to the entrance doorway inside the chamber; and

- (c) an indicator lamp positioned outside the chamber which is illuminated when the interior light is switched on; and
- (d) An alarm that is-
 - a. located outside but controllable only from within the chamber; and
 - b. able to achieve a sound pressure level outside the chamber of 90dB(A) when measured 3m from the sounding device.

The door required by (a) above must have a doorway with a clear width of not less than 600mm and a clear height of not less than 1.5m.

Reason: to ensure compliance with the Building Code of Australia (BCA).

- 5.19. Council is to be notified upon completion of work and following the issue of the occupation certificate, prior to trading commencing to enable the premises to be inspected by Council's Environmental Health Officer and for the premises to be registered with the Council as a food premises.

Reason: to ensure that the fit out of the food premises complies with relevant standards and to enable registration of the food premises.

- 5.22. A Liquid Trade Waste Approval must be obtained from council prior to the issue of an Occupation Certificate.
- 5.23. Submit an application to Council under section 305 of the Water Management Act 2000 for a section 306 Requirements Letter. The Application form can be found on Council's website centralcoast.nsw.gov.au. Early application is recommended.

The section 305 application will result in a section 306 letter of requirements which must be obtained prior to the issue of any Construction Certificate. The requirements letter will outline which requirements must be met prior to each development milestone e.g. prior to construction certificate, subdivision works certificate, occupation certificate and/or subdivision certificate. (Added)

- 5.24. **Provide an inspection report/certification from a practicing qualified structural engineer** to Council demonstrating that sewer protection / pier works have been undertaken in accordance with the design assessed and accepted by Council. This certification shall be provided prior to issue of the Section 307 Certificate of Compliance. (Added)

6. ONGOING OPERATION

- 6.1. The on-site stormwater detention facility is to be maintained in accordance with the operation and maintenance plan.
- 6.2. The nutrient / pollution control facilities are to be maintained in accordance with the operation and maintenance plan.

- 6.3. No obstructions to the wheel out of the waste bins are permitted including grills, speed humps, barrier kerbs etc.
- 6.4. All Use of Premises and On-Going Management of waste requirements as detailed within the required revised signed and dated (and approved) Waste Management Plan in accordance with the Gosford City Development Application Guide and Chapter 7.2 – Waste Management of Gosford DCP 2013 must be complied with.
- 6.5. Comply with all commitments as detailed within the approved, required Waste Management Strategy.
- 6.6. The Residential mobile garbage/recycling/green waste containers must be placed at the approved location at the kerbside no earlier than the evening prior to the collection day and return to the approved Residential waste storage enclosure as soon as possible after service, no later than the evening on collection day. The residents, caretaker and Body Corporate are responsible for the placement and return of the mobile waste containers.
- 6.7. Commercial waste mixed and recyclable mobile garbage bins to be wheeled out on arrival of the private Commercial waste collection contractor and immediately returned to the approved Commercial waste storage enclosure.
- 6.8. Commercial waste to be serviced at such times to not conflict with Residential waste services.
- 6.9. Commercial waste to be serviced at a suitable frequency to ensure adequate storage capacity is available within the sealed mixed and recyclable waste MGB's at all times and to minimise potential odour issues.
- 6.10. Food waste to be serviced at maximum 3 day intervals. Alternatively, food waste may be stored within a dedicated food waste refrigerator/chiller and placed in waste MGB's on arrival of the Commercial waste collection contractor for immediate servicing.
- 6.11. No waste material, waste packaging or waste product to be placed or stored outside of the approved, sealed mixed and recyclable waste storage containers within the approved waste storage enclosures.
- 6.12. The waste storage enclosure must be constructed and managed in accordance with the provisions of Gosford DCP 2013, Part 7: Chapter 7.2 - *Waste Management, Appendix D* and *Appendix G*, as applicable.
- 6.13. The conditions of the Liquid Trade Waste Approval must be complied with at all times.
- 6.14. The cinemas are limited to 75% of their seating capacity prior to 4pm on Sundays during the summer public school holiday period in December/January. The Applicant will restrict seat availability in the cinemas through the cinema Point of Sale ticket system by 25% for screenings or other performances or events which commences before 4.00 pm. Records of

daily ticket sales for these specified days will be kept and will be made available for inspection by Council or will be produced to Council on request.

(reason: to limit parking impacts of the proposed development)

- 6.15. The area identified on the approved plans as "Foyer" (previously noted as "gallery") is an ancillary use to the cinema and is not permitted to be leased separately or operated as a separate entity.

7. GENERAL

- 7.1. Public authorities who may have separate requirements in the following aspects are to be consulted:
- a. *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b. *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c. *Ausgrid* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d. *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e. *Central Coast Council* in respect to the location of water, sewerage and drainage services.
- 7.2. All work under this Consent is to be carried out in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011 No 10* and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 7.3. Dial Before You Dig
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

- 7.4. Separate application is required should the applicant require a new or upsized water supply connection to Council's water supply system.
- 7.5. Backflow prevention device(s) must be installed and maintained in accordance with Council's *WS4.0 Backflow Prevention Containment Policy*. This policy can be found on Council's website at: www.gosford.nsw.gov.au
- 7.6. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with council's current fees and charges policy.
- 7.7. Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with council's fees and charges.
- 7.8. The inspection fee for works associated with approvals under the Local Government Act is calculated in accordance with council's current fees and charges policy.

8. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application have no pecuniary interest to disclose in respect of the application.

Robert Eyre
Reporting Officer

XXXXX
Reviewing Officer

The staff authorised to determine the application have no pecuniary interest to disclose in respect of the application. The report is endorsed and the recommendation contained therein.

Approved/Refused:

Date:



Property:

No's 69 & 71 Avoca Drive, Avoca Beach Lot 140 DP 9359 & Lot 651 DP 16791

Visual Impact Analysis - Avoca Beach Picture Theatre.

Section 4.56 Modification Application - Modification of DA42661/2012

Prepared by Dr Philip Pollard FRAIA MPIA



Figure1: Looking west across Hunter Park – Avoca Theatre is to the right of the image, at its Burns Street and Vine Street corner.

1 Introduction

1.1 Purpose of Report

The author, Dr Philip Pollard, was commissioned by Karen Zeuschner of Johnson Projects, to provide an independent Visual Impact and View Analysis in respect to the s4.56 modification to the existing development approval for a mixed use development incorporating a cinema multiplex, the existing Avoca Theatre, and five new apartments. The modification proposal is documented in the Architectural plans prepared by CKDS Architecture, Issue 10, Avoca Theatre Mixed Use S4.56 Application dated 21/12/2022, and in the Modification Application of DA 42661/2012 for Avoca Beach Picture Theatre 69 & 71 Avoca Drive, Avoca Beach (Ref: 190768) prepared by ADW Johnson, dated September 2022.

I understand that this Analysis, including photomontages of the proposal included in it, is proposed to be provided to Central Coast Council as part of the Section 4.56 Modification Application to DA42661/2012.

A copy of my CV is appended.

1.2 Methodology

I am generally familiar with the area, and attended the site and its surrounds on 30 March 2023 specifically to consider the proposal and its possible visual impacts.

I have been requested to review the report prepared by Dr Richard Lamb (RLA) in support of the original Development Application, and also to consider the overview prepared by Council's officers in respect to the most recent amendment which sought to increase the height of the roof ridge to Cinema 2 by 0.7m. As part of that assessment, and consistent with the initial RLA analysis, Council identified seven properties which were deemed to require consideration in regard to view impacts. These are shown in *Figure 2* below.



Figure 2: Page 25 of 51, Record of Pre-Development Advice, Central Coast Council, 10 September 2021

Council has in its Record of Pre-Development advice meeting of Friday 10th September 2021 (from which the above plan was extracted) considered the potential view impacts arising from the proposal before it at that time. While the current Modification proposal differs to a moderate extent from the design presented at that time, the principles established in this earlier analysis, and the 2016 Analysis of Dr Richard Lamb in respect to the approved development, are useful to inform the subject Modification application.

I understand that, on the basis of public submissions in response to the exhibition of the subject Modification proposal, Council has specifically requested further analysis of the view impacts to the residences at 1/51 Avoca Drive and 72A Avoca Drive.

The ADW Johnson Modification Application, dated September 2022 under the heading **Clause 4.3** summarises the proposed modification as:

The originally approved development on site exceeds the 10m height control by approximately 42%. Subsequent amendments permitted an increase of 700mm and a maximum RL 14.9m AHD associated with the roof of Cinema 2, resulting in a further variation to the development standard.

The proposed modifications to roof are described in Part 4.1 of this report and are repeated here for clarity:

- The roof being extended over the residential unit balconies facing Vine Street to align with the balcony edge;

- The curved roof over Cinema 2 being replaced with a single fall skillion roof, and slightly raised to accommodate the height of the cinema screen;

ITEM	CURRENTLY APPROVED	PROPOSED	EXTENT OF VARIATION
Height of Building	RL 14.9	RL 15.145 (new roof level)	+245mm above approved height

Figure 3 – Extract from ADW Johnson Report Page 17. *Note that previously referenced screen to plant area has been deleted from the proposal as per the elevation below in Figure 3a*

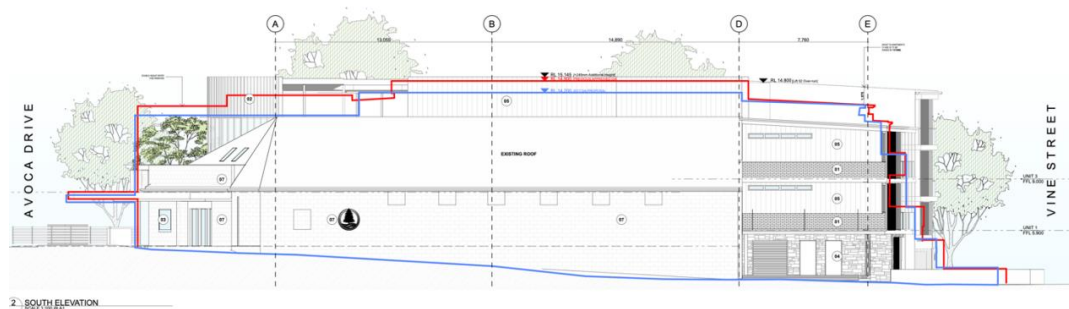


Figure 3a – South Elevation – CKDS A2001 Issue 10 – 21/12/2022

The proposed changes in the building's profile are outlined in the architectural elevations Issue 10, Page A-2001, 21/12/2022, from which *Figure 3a* above is extracted. The principal changes proposed by the modification, in so far as potential view impacts are concerned, involve an increase in the height of the roof by 245mm across its central cinema area, with a greater increase in more limited locations, including above the footprint of the stairwell facing Avoca Drive, and an increase to the skillion roof above the apartments facing Vine Street of up to 1 metre is also proposed. A reduction in height, and corresponding bulk and scale, is proposed in the area of the new Foyer to the cinemas facing Avoca Drive. The South Elevation seen above, is particularly relevant to the consideration of potential View Impacts from 1/51 Avoca Drive and 72A Avoca Drive.

Photomontages of the proposal have been prepared by Mr David Murgatroyd of Rockhunter Pty Ltd, whose professional work I am very familiar with, having initially met him when he had prepared montages for the opposing side in a LEC matter, in which I was engaged by Kiama Council to provide expert evidence. I have since engaged his services on a number of occasions, and have consistently found his work to be accurate technically, and to honestly illustrate the respective proposal under consideration.

The NSW Land and Environment Court's Planning Principles established in *Tenacity Consulting v Warringah Council* [2004] is considered the most relevant and appropriate means of assessing any impacts, and is referenced in the following Visual Impact Analysis.

2.0 Avoca Beach and its context.

Prior to consideration of individual view impacts, landscape character consideration can provide a useful context in which to undertake informed local impact evaluations. The relevant landscape character in this instance is the Avoca Beach area, towards its southern end. The topography in the area rises steeply in a roughly concave bowl formation, on the lower reaches of which are dense stands of forest scale trees in Hunter Park and surrounding streets and public places. The topography is such that dwellings set part way up the bowl and above, beyond the canopy height of trees on the flatter ground around Hunter Park, typically enjoy more open views of the beach and the foreshore to the north and north east. Dwellings on the lower streets, including Avoca Drive, are set below the tree canopy, and their views, if available at all, are filtered substantially by the stands of trees – including trees in other properties, and especially substantial stands of native vegetation on public land between the residences and the waterfront.

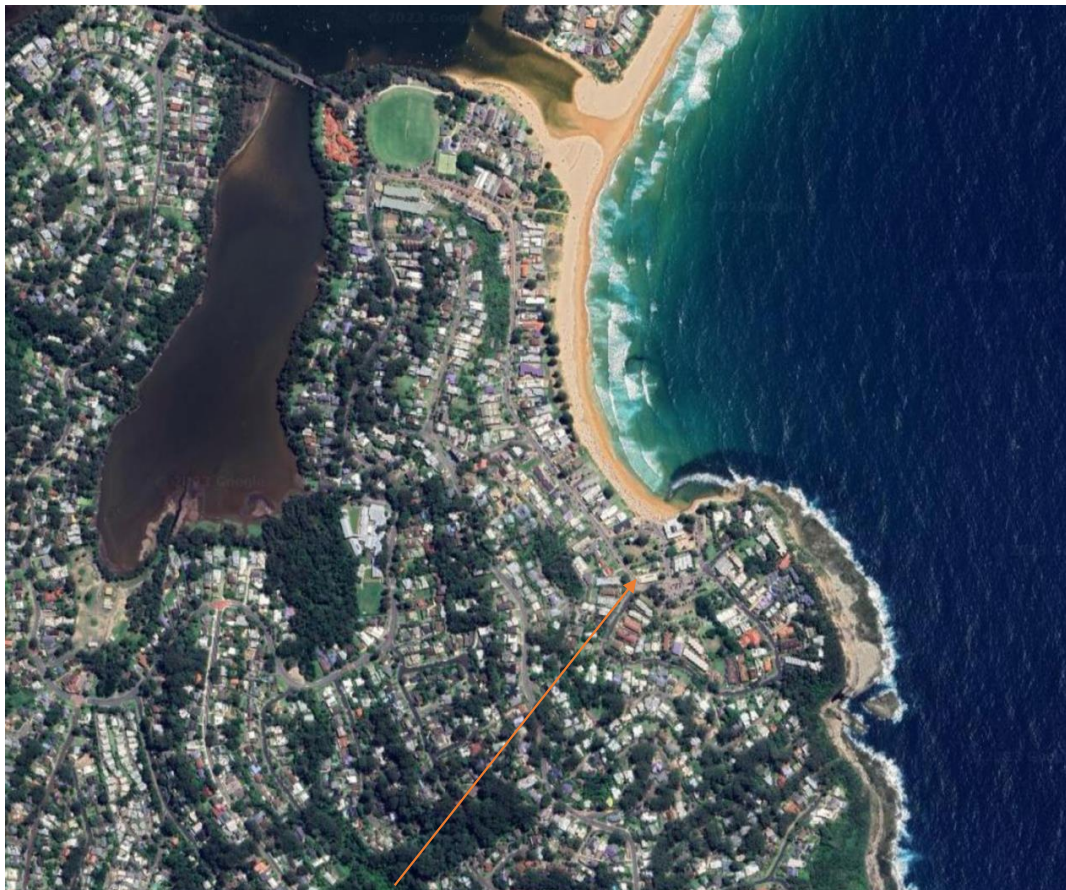


Figure 4:- Subject Site shown with Orange arrow – note development closer to the coast to the north and to the east of the Site
Google Maps

2.1 Aspects that make a place unique

As outlined in the Transport for NSW *Guideline for Landscape Character and Visual Impact Assessment*, landscape character relates to the built, natural and topographical aspects that make a place unique.

The character of a landscape is more than its visual appearance, although an area's visual presentation is clearly a central means of perceiving a place, it is not the only way it is perceived. Furthermore, individual, fixed point "views" to a place are more a representative approximation of our perception of an area, whereas we typically take in our environment by moving about in it, and layer visual impressions with other sensory input over time, to create a cognitive "map" or impression of a place. Limited or constricted fixed-views can act as a shorthand for the viewer's layered cognitive map, that has been built up from familiarity with the area, and views obtained from moving around in it.

2.2 Previous View Analyses

In preparing his visual impact analysis (VIA), in 2016 Dr Richard Lamb attended a number of properties to the south-west and south of the Site and photographed the views, in a number of instances in the presence of a registered surveyor, who identified the geolocation of the camera in order to establish its geo-relationship with the Site. Dr Lamb noted the following in respect to 1/51 Avoca Drive:

Potential view loss exists for one unit at No. 1/51 Avoca Drive and two dwellings at 72A and 72 Avoca Drive. with regard to 1/51 Avoca Drive, views from this street level unit's rear terrace include the roof of the existing theatre, which is visible in a narrow 'window' of view between trees, blocking part of the view of water off Avoca beach. Part of the wave zone at the beach is visible above the existing theatre roof. A slim horizontal section of the view above the existing roof will be lost (as indicated approximately by the height pole in the photograph). The part of the view to be lost, includes built form, vegetation and a narrow band of water. The wave zone, beach and remainder of the cameo whole view toward background in North Avoca would be retained.

Page 6 RLA

In respect to 72A and 72 Avoca Drive, Dr Lamb noted:

Nos 72A and 72 Avoca Drive are elevated dwellings on the south side of the street, which have views toward Avoca Beach and North Avoca over a foreground composed of residences in the Avoca Bowl north of Avoca Drive. A part of the roof of the existing picture theatre building is visible with a backdrop of trees in Hunter Park which are between the proposed development site and the beach. Part of the proposed development, predominantly the roof of the theatre component, would be visible above the level of the roof of the existing theatre building. The part of the view to be lost, includes vegetation and a narrow band of water seen heavily filtered through vegetation in the park beyond the development site, which would be retained by the development. The wave zone of the majority of the beach and remainder of the sweep of beach visible between Avoca and North Avoca in the view would be retained, as would the remainder of the view.

Page 6 RLA

In relation to the properties 1/51 Avoca Drive and 72A (and 72 Avoca Drive adjacent) Dr Lamb concluded that any view loss arising from the Application before the LEC would be minor, at most.

In my opinion all but three of the views from residences identified as affected can be discounted as being affected by potential view loss given that the threshold test in step 1 of Tenacity has not been met. For the view from No.1/51, 72A and 72 Avoca Drive, the minor loss of view assessed in Step 3 does not in my opinion justify proceeding to Step 4. In my opinion the reasonableness question in relation to those views does not arise. However, if I am wrong and Step 4 is to be considered, it is my opinion that the view loss is nonetheless, reasonable.

Page 6 RLA

It is noted that since 2016 when the photos were taken by Dr Lamb, the vegetation in the area, which he described then as “dense native evergreen vegetation” and street trees, can be seen to have grown in both height and density, when the photos of 2016 and 2022/23 are compared from the corresponding locations. This is particularly evident in respect to the area to the north of 1/51 Avoca Drive and 72A Avoca Drive.

In respect to the preparation of photomontages illustrating the development on its site, as viewed from local residences Dr Lamb notes:

- a. There does not appear to be any utility in having 3D representations of the proposed development prepared. In fact, it would be difficult to show that photomontages prepared to represent the views affected would conform to the Land and Environment Court of New South Wales practice direction for the preparation of photomontages for use in evidence in the Court, as it would be difficult to show that a wire frame model of the existing environment could be fitted accurately to the photographs.
- b. This is because of the minimal visibility of the existing building/s as a result of foreground screening by vegetation. If the proposed development is of no, or minimal visibility, there can be no significant visual impacts.

Page 7 RLA

3.0 Visual Impact Assessment –

3.1 Assessing the Visual Impact – LEC Planning Principles

The two primary NSW LEC Planning Principles for considering impacts to views are *Tenacity Consulting v Warringah Council* and *Rose Bay Marina Pty Ltd v Woollahra Municipal Council*. The former relates to impacts arising to views obtained from private property, and the latter on views obtained from public locations. It is not proposed to undertake a further *Rose Bay Marina* based examination of public views, as the Principle is primarily aimed at specifically identified fixed views. Such views are generally of a broad or panoramic nature, and take in elements that can be considered iconic. While views from public places around the Site are attractive, the nature of the site and the extent of stands of dense vegetation in proximity to it, coupled with the presence of other built-form development closer than the Site to the beachfront, mean that

there are no significant views featuring the Site from any public place, that could reasonably warrant detailed analysis in terms of *Rose Bay Marina*. Dr Lamb arrived at a similar conclusion in his 2016 VIA.

3.2 Views from Private Properties

It is proposed here to generally assess the nominated private view impacts under the Planning Principle in respect to view loss in respect to private properties under: the *Tenacity Consulting v Warringah* [2004] NSW LEC140 –

The *Tenacity* Planning Principle is primarily focused upon achieving an outcome that enables, where possible, view sharing as a desirable outcome. The guidance is premised upon reasonableness and equity, achieved via capable design that mitigates avoidable adverse view impacts.

Private properties that could potentially be impacted by the proposal are essentially limited to a small number of proximate residences at lower levels on the landform, with viewing locations below the predominant local tree canopy. This equates generally with the tan shaded area identified in *Figure 2: (above) Page 25 of 51, Record of Pre-Development Advice, Central Coast Council*. Above the tree canopy level, viewing points are set on higher topography, and are located some distance from the Site. These higher views are not filtered by the canopies of trees in Hunter Park and nearby trees on level ground in surrounding public and private places, but the elevation of higher properties means that views are not adversely impacted by the Approved Development or by the proposed Modification. The proposal is sitting considerably lower than streets in the bowl above Avoca Drive, including Ascot Avenue and Fairscene Crescent, and will not cause obstruction of views to the beach, the land/water interface, or other attractive elements.

I concur with the opinion of Dr Lamb in his summation above (P7 RLA) that there can be minimal, if any, visual access to the site from all of the properties designated in *Figure 2* with the possible exception of 51 Avoca Drive and 72 and 72A Avoca Drive. The changes proposed in the s4.56 Modification involve quite limited height increase, and with the possible exception of the nominated properties, make no difference to the limited visual access brought about by topography, existing built form and by dense vegetation. I note also that photographic comparison demonstrates that since 2016, vegetation has increased somewhat in scale and density. Council's 2021 Record of Pre-Development Advice also provides a summary of view loss analysis (PP25-35) which is consistent with the opinion offered by Dr Lamb.

Council has requested the Applicant prepare of a visual representation of the proposed Modification, in respect to views obtained from 1/51 Avoca Drive and from 72A Avoca Drive, which has been undertaken under my direction as per the following outline:



Figure – 5 View from above the maximum proposed roof level under the Modification (above the existing tall palm trees) – looking towards the south showing 1/51 and 72A Avoca Drive

Roseth SC in *Tenacity* defines a four step process to assist in a determination of impacts of a proposed development from the private domain:

- Step 1: Views to be affected
- Step 2: Locations within the property from which the views are obtained
- Step 3: Extent of impact to the property as a whole
- Step 4: Reasonableness

The Step process is intended to be sequential, and one does not need to progress to the subsequent step unless the preceding threshold is reached.

Considering the views from 72A Avoca Drive:

Step 1: Views from the property were assessed from the private open space (deck) of the upper floor of the cottage at 72A, from the location indicated at an equivalent standing height of 1.6m above the deck floor. (Indicated by the orange arrow in *Figure 6* below).

Step 2: Location from which views are obtained - The western part of the deck at the point at which the photo in *Figure 7* was taken is illustrated in *Figure 6* below. This area of the deck is considered to offer views that are somewhat less obstructed by trees than more easterly sections of the deck adjacent.

Step 3: The extent of impact to the property as a whole is considered to be minor.

Step 4 – There is no justification for proceeding to Step 4, as the threshold for proceeding has not been met.



Figure 6 – Dwelling at 72A Avoca Dr and camera location shown with orange arrow. Camera is set at 1.6m above the floor of the deck.

As can be observed in the photomontage of the view obtained from 72A Avoca Drive, northerly views over the approved development on the Site, illustrated in solid green, will be heavily filtered by vegetation in the foreground. A moderate extent of open water, but no land/water interface, will be obstructed by the approved development. The additional component of the view obstructed by the s4.56 modification is very limited in its extent, with only a small component of the view of the lower section of the Norfolk Pine tree obscured. This is considered to have a minor impact on the view.



Figure 7 - View obtained from the deck of 72A Avoca Drive, from the location illustrated in Figure 6 – (Base photo- FL 50mm)



Figure 8 - Photomontage of approved built form (in green) and proposal as per the s4.56 design, illustrated in dark tint, outlined in red for clarity.

Considering the views from 1/51 Avoca Drive:

Step 1: Views from the property were assessed from the private open space (roof deck) of the upper floor of the apartment at 1/51, from the location indicated at an equivalent standing height of 1.6m above the turfed area of the roof. This location is illustrated in *Figure 9*. The POS rises from the outdoor dining area which is travertine tiled, up to a timber deck which in turn rises to a turfed area – from which the base photo in *Figure 11* was taken. A narrow timber boardwalk is adjacent to the lomandras that abut the glass balustrade. *Figure 10* is included only to illustrate the four rising levels from the apartment floor to the glass balustrade, and the location of the outdoor dining area.

Step 2: Location from which views are obtained – visual access to the beach is via a narrow gap in the trees within the park to the north of the property. If the viewer moves a short distance – a step or two - either way from this corridor, the narrow view to the beachfront is obscured by foliage. Glimpses from an internal corridor illustrated by Dr Lamb in his VIA showed a similar cameo view of water, sand and treed ridge-line to the glimpse available in *Figure 10*, which is at a similar floor level.

Step 3: The extent of impact to the property as a whole is considered to be minor.

Step 4 – There is in my opinion, not an evident justification for proceeding to Step 4, as the threshold for proceeding has not been met.



Figure 9 - Location of camera for photo seen in Figure 11.



Figure 10 - Outdoor dining area illustrating level changes (only)

As can be observed in the photomontage of the view obtained from 51/1 Avoca Drive, northerly views over the approved development on the Site, illustrated in solid green, will be heavily filtered by vegetation in the foreground. A moderate extent of open water, but no land/water interface, will be obstructed by the approved development.



Figure 11 – Existing view from a standing position from the rooftop turf area POS of 1/51 Avoca Drive (base photo- FL 50mm)



Figure 12- Photomontage of approved built form (in green) and proposal as per the s4.56 design, illustrated in dark tint, outlined in red for clarity.

The additional area of view obscured under the s4.56 proposal is illustrated in dark tint, with a red outline for clarity. As is evident in *Figure 12*, the additional component of the view obstructed by the s4.56 modification is limited in its extent, with a view to the roof of the Avoca Beach House restaurant and a small area of water obstructed. The sand/ water interface on either side of the “shark tower” and the tower itself remain visible. This is considered to have a overall minor impact on the view.

Impact upon views brought about by works proposed in the s4.56 Modification from the nominated private properties, 1/51 Avoca Drive and 72A Avoca Drive, have been considered here in terms of *Tenacity*, and are not assessed to be of a degree of impact that warrants progression to consideration in terms of *Step 4 – Reasonableness*.

If Step 4 were to be considered, in both instances I would note the following:

The Approved Development was determined by the LEC to be reasonable in its impacts, and there is in my opinion no substantive difference between the view impacts arising from the approved design and those of the proposed Modification. While views from both properties are enjoyed by their occupants, the existing views are highly filtered, and are available from limited locations within the respective properties.

7.0 Conclusion

Visual impacts to views obtained from nearby private properties are generally considered negligible, and in the cases of 1/51 and 72A Avoca Drive to be minor.

This assessment has also concluded that any impact from the proposed Modification to views from the public areas around Avoca Drive, Vine Street, Burns Street and their surrounds to generally to be negligible. Streetscape impacts are also considered to be consistent with current and desired future character, and the retention and sensitive integration of the existing Avoca Theatre to be a worthwhile and very positive contribution to the locality.



Dr Philip Pollard FRAIA MPIA

Nominated Architect 5241
Director, AMENITY urban & natural environments Pty Ltd

20 April 2023



30th March 2022
 Job Number 21031

SEPP 65 – APARTMENT DESIGN GUIDE REPORT – Avoca Beach Theatre Mixed Use – Residential Component

1.0 OBJECTIVES

OBJECTIVE	SUMMARY	ACTIONS	Compliance
	SITING		
3A-1	Site Analysis illustrates that design decisions have been based upon the opportunities and constraints of the site.	<i>The site is well located to public transport, services, and amenity. The development fully harnesses the beach views and solar access provided by the location. The massing of the proposal responds to local neighbouring and site conditions</i>	Yes
3B-1	Building types and layouts respond to the streetscape and site while optimising solar access within the development	<i>Apartments are all designed to maximise northern sun whilst still capturing the views to the east and north. Apartments comply with street frontage setbacks, providing privacy with an appealing treatment for the street corner and park frontage.</i>	Yes
3B-2	Overshadowing of neighbouring properties is minimised during mid winter	<i>No overshadowing occurs to neighbouring buildings.</i>	Yes
3C-1	Transition between private and public domain is achieved without compromising safety and security	<i>A clear and secure entry point that is accessible is provided along the Vine Street frontage for the residences.</i>	Yes
3C-2	Amenity of the public domain is retained and enhanced	<i>Apartments comply with street frontage setbacks, providing privacy with an appealing treatment for the street corner and park frontage. Access to the adjacent public domain [Hunter Park] is not compromised.</i>	Yes
3D-1	An adequate area of communal open space is provided to enhance residential amenity and provide opportunities for landscaping	<i>N/A</i>	<i>N/A</i>
3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	<i>N/A</i>	<i>N/A</i>
3D-3	Communal open space is designed to maximise safety	<i>N/A</i>	<i>N/A</i>



3D-4	Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood	N/A	N/A
3E-1	Deep soil zones allow for and support healthy plant growth. Min. deep soil zones <div> <div><650sqm</div> <div>No min. dimensions</div> <div>7% site area</div> </div> <div> <div>650 – 1500</div> <div>3m min dimension</div> <div>7% site area</div> </div> <div> <div>≥ 1500</div> <div>6m min dimension</div> <div>7% site area</div> </div>	8% Deep soil is achieved due to the nature of the site existing buildings.	No
3F-1	Adequate building separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy <div> <div>Height</div> <div>Habitable rooms/balconies</div> <div>Non habitable rooms</div> </div> <div> <div>Up to 12m</div> <div>6m</div> <div>3m</div> </div> <div> <div>Up to 25m</div> <div>9m</div> <div>4.5m</div> </div> <div> <div>>25m</div> <div>12m</div> <div>6m</div> </div>	N/A	N/A
3F-2	Site and building design elements increase privacy without compromising access to light and air and balance outlook and views between habitable rooms and private open space.	A balance between glass and solid balustrades provides unobstructed access to sunlight and views. Orientation of apartments provides a large degree of privacy without obstructing views.	Yes
3G-1	Building entries and pedestrian access connects to and addresses the public domain	Entry to the apartments is accessible via a ramp and external lift at Street Level located at residential entry along Vine Street	Yes
3G-2	Access, entries and pathways are accessible and easy to identify	The residential entry is clearly signed and identifiable, located within an intentional 'break' in the building.	Yes
3G-3	Large sites provide pedestrian links for access to streets and connection to destinations	NA	N/A
3H-1	Vehicle access points are designed to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Car parking entry is located at lowest points of site to minimise sloping entry. Entry is Via Vine Street and is a single double garage door to minimize its impact to the façade that is otherwise balconies to apartments to animate what is currently a very tired and empty streetscape.	Yes
3J-1	Car parking is provided based on proximity to public transport in metropolitan	Car parking is compliant however a number of bus stops are in close council	Yes

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	Sydney and centres in regional areas	<i>proximity which connect to wider transport hubs such as Gosford Station.</i>	
3J-2	Parking and facilities are provided for other modes of transport	<i>Compliant</i>	Yes
3J-3	Car park design and access is safe and secure	<i>N/A</i>	N/A
3J-4	Visual and environmental impacts of underground car parking are minimised	<i>Car parking situated underground to minimise visual impact. Where the minimal penetration occurs due to sloping site, vegetation is introduced to soften protrusion. Exposure of basement is compliant with DCP allowances</i>	Yes
3J-5	Visual and environmental impacts of on-grade car parking are minimised	<i>As above</i>	Yes
3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised	<i>As above</i>	Yes
	DESIGNING THE BUILDING		
4A-1	Optimise the number of apartments receiving min. 2 hours sunlight to habitable rooms, primary windows and private open space between the hours of 9am and 3pm All other areas – a min. of 3 hours A max. of 15% receive no sun in mid winter	<i>100% of the apartments achieve the minimum 2hrs required sunlight in mid winter to the living areas. Percentage of south facing apartments is 0%. Exterior communal spaces receive 3 hours of direct sunlight to nearly 100% of area.</i>	Yes
	2 hours min sunlight midwinter in Sydney/Newcastle/Wollongong	<i>See above</i>	Yes
	All other areas a min. of 3 hours	<i>See above</i>	Yes
4A-2	Daylight access is maximised where sunlight is limited	<i>In accordance with the guidance contained in the ADG, sun scarce exterior and interior spaces have been given light coloured finishes, and large amounts of glazing provide large amounts of ambient light</i>	Yes
4A-3	Design incorporates shading and glare control, particularly for warmer months	<i>Sliding vertical screens to all balcony areas allows customisable control of sun glare. Entirely controllable by the occupant.</i>	Yes
4B-1	All habitable rooms are naturally ventilated	<i>All habitable rooms are naturally ventilated, and many have multiple windows in different facades</i>	Yes
4B-2	The layout and design of single aspect apartments maximises natural ventilation	<i>NA</i>	Yes
4B-3	The number of apartments with cross ventilation is maximised At least 60% of apartments are naturally cross ventilated	<i>All apartments are cross ventilated.</i>	Yes

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	Over all depth of cross over apartments in 18m max.		
4C-1	Ceiling height achieves sufficient natural ventilation and daylight access. Min height of – Habitable rooms 2.7m Non habitable rooms 2.4m Two storey apartments 2.7m main living floor 2.4m for second floor (max. 50% area) Attic spaces 1.8m at edge of room 30° ceiling slope	All habitable rooms have ceiling heights of $\geq 2.7m$ All non habitable rooms have ceiling heights of $\geq 2.4m$	Yes Yes
4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms	Proposal has adequate floor to ceiling heights, see above	Yes
4C-3	Ceiling height contributed to flexibility of building use over the life of the building	Ceiling heights comply	Yes
4D-1	Layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	Layout of rooms is functional, articulated to make best use of the design's character and provide a high standard of amenity	Yes
	Min. areas 2 bed 70sqm	Complies	Yes
	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.	All habitable rooms have operable windows in excess of the 10% minimum requirement.	Yes
4D-2	Environmental performance of the apartment is maximised	See above	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	See Below	Yes
	In open plan layouts the maximum habitable room depth is 8m from a window	No habitable room location is more than 8m from a window	Yes
4D-3	Apartment layouts are designed to accommodate a variety of household activities and needs	Layouts incorporate flexible open plan living areas with a variety of multi purpose storage and study areas	Yes
	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobes)	Complies.	Yes
	Bedrooms have a minimum dimension of 3m (excluding robes)	Complies.	Yes

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	Living rooms or open plan living have min width of 3.6m for studios/1beds 4m for 2/3beds	<i>Complies.</i>	Yes
	Width of cross over apartments are at least 4m internally to avoid narrow layouts	<i>N/A</i>	<i>NA</i>
4E-1	Apartments provide appropriately sized private open space and balconies to enhance residential amenity	<i>All 5 dwellings have generous private outdoor spaces in the form of balconies.</i>	Yes
	Primary balconies 2 bed 10sqm 2m min depth	<i>NA</i>	Yes
	Apartments at ground level or on podium have a private open space instead of a balcony. Minimum area is 15sqm and minimum depth is 3m	<i>Complies</i>	Yes
4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	<i>All balconies are designed and detailed as integral components of the façades. Balconies are designed frame themselves within the skin of the exterior, blending into the overall form of the structure. Balconies maintain privacy for residents while allowing long access to sunlight and views. Timber screening over various densities also provide additional façade articulation as well as providing adjustable levels of privacy.</i>	Yes
4E-4	Private open space and balcony design maximises safety	<i>All balconies to be designed and constructed in accordance with the BCA</i>	Yes
4F-1	Common circulation spaces achieve good amenity and properly service the number of apartments	<i>Circulation space provides adequate amenity for residents as each floor services only 2 apartments. 1 lift is adequate to service the 5 apartments and exterior circulation space provides good access to beach and street</i>	Yes
	Maximum number of apartments off a circulation core on a single level is 8	<i>Maximum of 2 dwellings off a single core</i>	Yes
	For buildings 10 + storeys, maximum number of apartments sharing a single lift is 40	<i>N/A</i>	<i>N/A</i>
4F-2	Common circulation spaces promote safety and provide for social interaction between residents	<i>Circulation is direct and legible and secure. It is clearly defined as resident only space due to the distance from the boundary.</i>	Yes
4G-1	Adequate, well designed storage is provided in each apartment	<i>All apartments are provided with storage within one or more locations; being bedrooms, kitchens, study and dedicated storage cupboards. Further storage is to be added in basement during detail design.</i>	Yes

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	2 bed 8m3	<i>Apartments have adequate space to incorporate compliant storage, and will be included during detailing of design</i>	Yes
4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	<i>See above</i>	NA
4H-1	Noise transfer is minimised through the siting of buildings and building layout	<i>All apartments on site are located away from the major traffic noise. All wall construction and glazing is in accordance with the Acoustic Engineer's recommendations. Vertical circulation aligns quiet and noisy function spaces. Garage doors and other mechanical equipment is located min 3m away from bedrooms.</i>	Yes
4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments	<i>All separating construction to be in accordance with the BCA</i>	Yes
4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through careful siting and layout of buildings	<i>The portion of the site is on a side road is situated on relatively quiet urban streets and as such, noise pollution from traffic and ambience is kept to a minimum.</i>	Yes
4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	<i>Party walls will comply with noise attenuation requirements. All External fenestration will provide adequate noise dampening through glazing and sealing. External screening elements and apartment separation provides additional noise shielding to and from apartments</i>	Yes
4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.		Yes
4K-2	The apartment mix is distributed to suitable locations within the building.	<i>Different apartment types are located to best utilise and accommodate the site's best attributes.</i>	Yes
4L-1	Street frontage activity is maximised where ground floor apartments are located.	<i>Street frontage apartments all incorporate private outdoor terraces with garden element and privacy screening. Access from both the circulation corridor and street is also provided.</i>	Yes
4L-2	Design of ground floor apartments delivers amenity and safety for residents	<i>Landscaped courtyards on ground floor apartments incorporate vegetation and barrier screening.</i>	Yes
4M-1	Building facades provide visual interest along the street while respecting the character of the local area.	<i>Sliding Screens, varying balustrade types and a combination of complimentary building materials.</i>	Yes
4M-2	Building functions are expressed by the façade	<i>Building entries are expressed with prominence by utilising different material changes.</i>	Yes

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4N-1	Roof treatments are integrated into the building design and respond positively to the street.	<i>Penthouse roofs are designed to reduce the scale of the building through shallow depth and minimal pitch. Glass clerestories create a floating roof effect and visually separate the building.</i>	Yes
4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.		No.
4N-3	Roof design incorporates sustainability features	<i>Clerestories for solar access and efficient water catchment provided</i>	Yes
4O-1	Landscape design is viable and sustainable	<i>The landscape design and species selection makes intelligent and diverse use of species for all garden spaces and is in accordance with council guidelines</i>	Yes
4O-2	Landscape design contributes to the streetscape and amenity	<i>Street trees and public landscaping has been selected and designed by the landscape Architect to contribute to the streetscape. The landscaping incorporates species to thrive and contribute to a coastal environment. Differing species will differentiate public from private space. Boundary vegetation softens site boundaries and raises the pedestrian visual experience</i>	Yes
4P-1	Appropriate soil profiles are provided	<i>Landscape Architect has provided appropriate plant species for proposed soil volumes in accordance with council guidelines</i>	Yes
4P-2	Plant growth is optimised with appropriate selection and maintenance	<i>Plants have been selected by the Landscape Architect to suit the site conditions.</i>	Yes
4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces	<i>Planter boxes are provided to soften hard landscaped areas and basement protrusions as well as masking apartment fenestration from communal spaces.</i>	Yes
4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members	<i>Less than 10 Apartments. N/A</i>	N/A
4Q-2	A variety of apartments with adaptable designs are provided	<i>Less than 10 Apartments. N/A</i>	N/A
4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs	<i>N/A</i>	N/A
4R-1	New additions to existing buildings are contemporary and complementary and enhance an areas identity and sense of place	<i>N/A</i>	N/A
4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse	<i>N/A</i>	N/A
4S-1	Mixed use developments are provided in appropriate locations and provide	<i>N/A</i>	N/A



	active street frontages that encourage pedestrian movement.		
4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	<i>Residential only</i>	Yes
4T-1	Awnings are well located and complement and integrate with building design	<i>Awning use is appropriate for design in regulating solar access and creating visual appeal</i>	Yes
4T-2	Signage responds to the context and desired streetscape character	<i>Signage is to be incorporated into the mailing area as a motif for a sense of place. This will be clearly visible from street level and assist in identifying the residential entry also. Vine Street Façade.</i>	Yes
4U-1	Development incorporates passive environmental design	<i>Beyond compliance with BASIX's numerical standards, the site planning and building design maximise the benefits of passive solar design to the dwellings, exceeding ADG minimum standards.</i>	Yes
4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	<i>Thermal mass in concrete and use of awnings and eaves throughout will provide optimised passive solar design throughout the year</i>	Yes
4U-3	Adequate natural ventilation minimises the need for mechanical ventilation	<i>All apartments are naturally cross ventilated</i>	Yes
4V-1	Potable water use is minimised	<i>TBC</i>	TBC
4V-2	Urban stormwater is treated on site before being discharged to receiving waters	<i>In accordance with DCP</i>	Yes
4V-3	Flood management systems are integrated into site design	<i>In accordance with DCP</i>	Yes
4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	<i>Waste storage is located in allocated basement bin room located out of sight from residents and public. Waste is wheeled onto street for collection</i>	Yes
4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling	<i>Recycling provided in bin room</i>	Yes
4X-1	Building design detail provides protection from weathering	<i>Durable materials with appropriate flashing and capping are designed to shed water intelligently – reducing staining and maximising durability</i>	Yes
4X-2	Systems and access enable ease of maintenance		Yes
4X-3	Material selection reduces ongoing maintenance costs	<i>Robust and durable materials have been specified.</i>	Yes

The project will create a high quality residential environment for future residents, with very good amenity well above ADG requirements.

Caine King
 Architect; NSW ARB number: #7974

CKDS – Revision A
 Nominated Architects: Caine King #7974 / Stuart Campbell #7545



SYDNEY
CENTRAL COAST
NEWCASTLE

PO Box 4400, East Gosford NSW 2250

02 4321 0503

PO Box 958, Newcastle NSW 2300

02 4929 1843

E: admin@ckds.com.au

W: www.ckds.com.au

05.04.2022

AVOCA BEACH THEATRE RE DEVELOPMENT

Avoca Drive,
Avoca Beach NSW 2251

ARCHITECTURAL DESIGN STATEMENT

The proposed re-development of Avoca Beach Theatre aims to revitalise a well-known Central Coast attraction of significant local, social, and cultural value. This proposal provides an updated design which sets out to rationalise and modernise a series of earlier approaches resulting in a more appropriate response to the site and its context.

The proposal consists of two main components, the commercial [theatre] frontage, facing Avoca Drive and Hunter Park and the residential component also fronting Hunter Park and Vine Street, to the rear of the site.

The updated design aims to ensure that the prominent street frontage has an appropriate level of activation in order to animate and populate the streetscape. A large foyer space and feature stair is welcoming with an open and spacious entry which draws in visitors from the street, while the front courtyard provides a green buffer to the park and road. The new entry glass foyer extends the line of the parapet of the old theatre to ensure the scale of the existing theatre is re-interpreted and used as a basis for future additions, such as this.

The additional theatres and foyers spaces are arranged to ensure the majority of bulk is concentrated in the centre of the building. This approach avoids lengths of blank facades and ensuring the perimeter of the building is punctuated with glazing where possible to maximise views to the surrounding beachside setting as well improving passive surveillance and more importantly, animating the streetscape through the building's use.

Five private residences front Hunter Park and Vine Street. The apartments are accessed via a private residential entry. Large balconies improve the passive surveillance of a previously derelict part of the site, while providing dwellings with a significant amount of outdoor amenity, overlooking the park to the ocean beyond.

Another major consideration was the architectural response to the local environment. A selection of building material and elements have been used which reflect the coastal landscape of where the site is located. Subtle curves, intentional points of articulation and deliberate changes in building form allow the building to be broken down into smaller elements, rather than reading as a single form as per previous iterations.

The overall design aims to create a building that is respectful of its past and origins while providing the community with a building that is responsive to the future, evolving as it needs to meet changing social, economic, and cultural factors.

CKDS – Revision A

Nominated Architects: Caine King #7974 / Stuart Campbell #7545

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Note: The above statement is to be read in relation to the following drawings:

A-0001 Issue 10

A-0002 Issue 08

A-0004 Issue 08

A-0005 Issue 04

A-0006 Issue 04

A-1001 Issue 10

A-1101 Issue 11

A-1102 Issue 11

A-1103 Issue 11

A-1104 Issue 10

A-1105 Issue 11

A-2001 Issue 10

A-2002 Issue 10

A-2002 Issue 10

A-3001 Issue 08

A-3002 Issue 10

A-3003 Issue 07

A-5001 Issue 10

A-5002 Issue 10

A-5004 Issue 1

Nominated Architects: Caine King #7974 / Stuart Campbell #7545



30.09.2022

AVOCA BEACH THEATRE RE DEVELOPMENT

Avoca Drive,
Avoca Beach NSW 2251

ARCHITECTURAL DESIGN MODIFICATION STATEMENT

CKDS Architecture were engaged to lead the design modification which differs from the previously approved, original design undertaken by others. A description of the changes are addressed in the accompanying Statement of Environmental Effects.

Corey Diffin B Sc [Arch] / B Arch *Hons*

Associate



Avoca Beach Theatre Mixed Use Development

AVOCA DRIVE, AVOCA BEACH, NSW 2261

SEPP 65 Compliance Statement – *For Residential Component*



Prepared to accompany the Development Application submitted for;

Multi Dwelling Residential Development at Avoca Drive, Avoca Beach.
For Johnson Projects

Verification of Qualifications

Caine King and Stuart Campbell are registered as Architects in New South Wales and are enrolled in the Division of Chartered Architects in the register of Architects pursuant to the Architect Act 1921. Their registration numbers are 7974 and 7574 respectfully.

Statement of Design

CKDS Architecture has been working in conjunction with related professionals and experts in respect of the design. The project has been designed to provide a development that is respectful of local planning and design controls and that responds to the best practice design principles of SEPP No. 65.

CKDS Architecture verify that the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development are achieved for the proposed residential development as stated below.



Proposed Development

The proposed residential component of the site is located opposite Avoca Beach, fronting Hunter Park on the corners of Vine and Burns Street.

The design intent of the residential aspect of the project is to provide five luxury apartments that captures the potential vistas and presents a strong architectural to the context, which is currently occupied by an empty site and dilapidated cottage.

Whilst developing the design, due consideration has been given to the impact on immediate and surrounding neighbours, the architectural aesthetic and the surrounding coastal context. The following aims have been the drivers of the design response:

- Architectural Environment The proposed building sits in a primarily residential area and as such the design has focused on minimising any detriment to neighbouring amenity while maximising the experience of luxurious and community living. The neutral material palette, street setbacks and communal space provide a pleasing and fitting addition to the streetscape.
- Context As the building is located close to the beachfront, the design focused to provide every apartment with access to northern or eastern sun and beach views. The structure is set back from the boundaries to minimise overshadowing and avoid blocking neighbouring vistas.
- Scale Much consideration was taken to reduce the proposals scale to comply with the objectives of the planning controls and reduce impact. The building maintains a consistent two - three storey development that is reflective of similar multi residential dwellings in the immediate context.



SEPP Design Verification Statement

The assessment of the proposal is made in accordance with respect to the Design Quality principles as set out in SEPP 65, part 2. As noted in the introduction:

- Good design is a creative process which, when applied to towns and cities, results in the development of great urban places: buildings, streets, squares and parks.
- Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas.
- Good Design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges.

The design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

CKDS Architecture has prepared and reviewed the architectural drawings and are satisfied that the design meets the intent of the design quality principles as set out in part 2 of State Environmental Planning Policy No.65 Design Quality of Residential Flat Development.

CKDS Architecture has extensive experience in the design of residential housing and developments in various forms ranging from individual residential houses to high-density apartment development.

Reference has also been made to the Residential Flat Design Code in preparing this report. These sections are used in order to cite objectives for each of the section headings.



Note:

Design Quality Principles



Design Quality Principle 1: Context		
Objectives	Proposed Development	Compliance
<p>"Good design responds and contributes to its context. Context is the key natural and natural built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions."</p>	<p><i>A single residence and the existing theatre currently occupies the subject site. The site fronting Hunter Park, thrives off the local economy and tourism. The strategy for the development is to attract more people to the site for a variety of activities and uses. This will in turn contribute positively to the local economy and built environment.</i></p> <p><i>The proposed development will provide attractive and luxurious apartments for potential residents while improving the local streetscape and bringing a defining architectural element to the street corner. The design considerations will also encourage the beach culture of the local area.</i></p>	<p>Yes</p>
Design Quality Principle 2: Built Form and Scale		
Objectives	Proposed Development	Compliance
<p>"Good Design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings."</p> <p>Good Design also achieves an appropriate built form for the site and the building in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p><i>The design has been developed with due consideration to the scale of existing and proposed developments in the vicinity and are in line with the objectives of the Planning Strategies for the area. The built form is of a similar scale to the neighbouring developments and does not block their access to sunlight.</i></p>	<p>Yes</p>



Design Quality Principle 3: Density		
Objectives	Proposed Development	Compliance
<p>"Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment."</p>	<p><i>The development has been designed with due consideration given to apartment density. The building consists of 5 apartments over 2 levels, all with generous areas and balcony spaces, with courtyard design elements incorporated into every apartment. The low apartment density creates minimal traffic impact and allows large open communal spaces to be developed on site. It also improves passive surveillance in the area considerably.</i></p>	<p>Yes</p>
Design Quality Principle 4: Sustainability		
Objectives	Proposed Development	Compliance
<p>"Good design combines positive environmental, social and economic outcomes. Good Sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials, and deep soil zones for groundwater recharge and vegetation."</p>	<p><i>The proposed development focuses highly on sustainability providing a high level of passive environmentally sustainable design. Instances include: water reuse tanks, operable louvers to control sun penetration and privacy, compliant cross ventilation and solar access in accordance with the ADG, high level of solar thermal heating in winter.</i></p>	<p>Yes</p>



Design Quality Principle 5: Landscape		
Objectives	Proposed Development	Compliance
<p>"Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good Landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, provides for practical establishment and long term management."</p>	<p><i>The development employs a range of landscaping features that are appropriate for the various areas and are conducive to a beach landscape. Various elements include communal meeting areas, streetscape planting, planter boxes and private landscaped spaces for individual apartments. These spaces have been considered in relation to aspect, access and connection to the surrounding public areas.</i></p>	<p>Yes</p>



Design Quality Principle 6: Amenity		
Objectives	Proposed Development	Compliance
<p>"Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.."</p>	<p><i>The proposed design solution is consistent with the principles of SEPP No. 65 particularly through the orientation and design of the units (solar access and ventilation).</i></p> <p><i>An analysis of the building has been undertaken in order to meet BASIX requirements and solar amenity.</i></p> <p><i>The Statement of Environmental effects details the buildings performance in this regard with a conclusion that the design is consistent with the stated objectives.</i></p> <p><i>In conceiving the design, the following issues were considered:</i></p> <ul style="list-style-type: none"> ▪ <i>Each unit has been provided with a private balcony that has a functional area and configuration conducive to recreational use.</i> ▪ <i>100% of apartments can be considered to be cross ventilated</i> ▪ <i>100% of apartments have a minimum of 2 hours of solar access on June 21 between 9am and 3pm</i> <p><i>Day lighting has been considered for the general amenity of all apartments. The depth of the dwellings has been restricted to maintain optimal access to natural daylight to all rooms therein.</i></p>	<p>Yes</p>



Design Quality Principle 7: Safety		
Objectives	Proposed Development	Compliance
<p>"Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defines secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose"</p>	<p><i>The principle entrance points are clearly identifiable and allow for passive surveillance, basement areas will have remote security controls. A single, defined residential entry also assists in clear and present entry to the residential element of the development.</i></p> <p><i>Recesses and niches have been avoided in the public access areas.</i></p> <p><i>The car park layouts are designed to minimise opportunities for alcoves. The car park has been designed so that walls do not obstruct sight lines.</i></p> <p><i>The car park is open plan and security access will be provided.</i></p> <p><i>Lighting details will be furnished in accordance with Australian Standards.</i></p> <p><i>Direct access is available from the car parking levels to all apartments including disabled access.</i></p>	<p>Yes</p>
Design Quality Principle 8: Housing Diversity and Social Interaction		
Objectives	Proposed Development	Compliance
<p>"Good Design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.</p>	<p><i>This proposal provides for a market responsive 5 x 2 Bed apartments which allows for holiday lettings, people seeking to downsize from their previous family home, couples and professionals.</i></p> <p><i>Social interaction is achieved through well designed and centralised, shared entries and balconies that balance an appropriate mix of controlled privacy and passive surveillance.</i></p>	<p>Yes</p>



Design Quality Principle 9: Aesthetics		
Objectives	Proposed Development	Compliance
<p>"Good Design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good Design uses a variety of materials colours and textures.</p> <p>The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p><i>The form of the proposed structure responds to the cues of the context. The scale of the structure matches that of the neighbouring developments. The façade and materiality relates to the coastal context with the material palette consisting of materials such as stone, light neutral bricks and timber that mimic the local landscape.</i></p>	<p>Yes</p>



Part 1 – Local Context



Primary Development Controls

Building Height	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure future development responds to the desired scale and character of the street and local area. To allow adequate daylight and solar access to apartments, common open space, adjoining properties and the public domain. 	<i>The residential component of the development complies with the 10m height limit for the residential component. The scale and interface with the local context is appropriate and replicates other 2 storey developments in the neighbouring area.</i>	Yes
Building Depth	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure that the bulk of the development is in scale with the existing or desired future context. To provide adequate amenity for building occupants in terms of sun access and natural ventilation. To provide for dual aspect apartments. 	<i>The development has been designed to relate to the surrounding residential developments</i> <i>The building depth provides adequate amenity to the occupants. 100% of apartments will have cross ventilation and more than 100p% of apartments will have 2 hours of sun access in mid winter to the living space.</i>	Yes
Building Separation	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure that new development is scaled to support the desired area character with appropriate massing and spaces between buildings. To provide visual and acoustic privacy for existing and new residents. To control overshadowing of adjacent properties and private or shared open space. To allow for the provision of open space with appropriate size and proportion for recreational activities for building occupants. To provide deep soil zones for stormwater management and tree planting, where contextual and side conditions allow. 	<i>Building separation has been provided where possible in line with SEPP No. 65 requirements.</i> <i>Street setbacks are generally in accordance with requirements.</i>	Yes



Primary Development Controls

Street Setbacks	Proposed Development	Compliance
<ul style="list-style-type: none"> To establish the desired spatial proportions of the street and define the street edge. To create a clear threshold by providing a transition between public and private space. To assist in achieving visual privacy to apartments from the street. To create good quality entry spaces to lobbies, foyers or individual dwelling entrances. To allow an outlook to and surveillance of the street. To allow for street landscape character. 	Street setbacks are generally in accordance with requirements.	Yes
Side & Rear Setbacks	Proposed Development	Compliance
<p>Side setbacks:</p> <ul style="list-style-type: none"> To minimise the impact of development on light, air, sun, privacy, views and outlook for neighbouring properties, including future buildings. <p>To retain or create a rhythm or pattern of development that positively defines the streetscape so that space is not just what is left over around the building form.</p> <p>Rear setbacks:</p> <p>To maintain deep soil zones to maximise natural site drainage and protect the water table.</p> <p>To maximise the opportunity to retain and reinforce mature vegetation.</p> <p>To optimise the use of land at the rear and surveillance of the street at the front.</p> <p>To maximise building separation to provide visual and acoustic privacy.</p>	<p>Side Setbacks are in accordance with requirements.</p> <p>A new side setback envelope has been proposed as per surrounding developments, to allow maximum development efficiency while meeting design principles, social dynamics, privacy and amenity.</p>	Yes



Primary Development Controls

Floor Space Ratio	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure that development is in keeping with the optimum capacity of the site and the local area. To allow definable development density for generic building types. To provide opportunities for modulation and depth of external walls within the allowable FSR. To promote thin cross-section buildings, which maximise daylight access and natural ventilation. To allow generous habitable balconies. 	<p><i>The development seeks a slight variation to the allowable FSR due to the updated design increasing modulation, articulation and improving the overall appearance of the building as a whole, compared to the previous approval.</i></p> <p><i>Daylight, access to cross ventilation, room sizes and balconies exceed standard requirements.</i></p>	No



Part 2 – Site Design



Site Configuration

Site Analysis	Proposed Development	Compliance
	<i>A comprehensive and detailed site analysis has been formulated as part of the design process for the proposed development and the resultant design responds to all identified site attributes and constraints.</i>	Yes
Deep Soil Zones	Proposed Development	Compliance
<ul style="list-style-type: none"> To assist with management of the water table. To assist with the management of water quality. <p>To improve the amenity of developments through the retention and/or planting of large and medium size trees.</p> <p>Rules of Thumb</p> <p>A minimum 25% of the open space area of a site should be a deep soil zone.</p>	<i>Deep soil has been proposed as much as possible, however, due to the other uses and nature of existing buildings on the site, 8% is achieved.</i>	No
Fences and Walls	Proposed Development	Compliance
<p>To define the edges between public and private land.</p> <p>To define the boundaries between areas within the development having different functions or owners.</p> <p>To provide privacy and security.</p> <p>To contribute positively to the public domain.</p>	<p><i>The proposed development will include street treatment in accordance with Council requirements.</i></p> <p><i>Low planter walls, perimeter planting and limited fencing, if any will ensure that the proposed development has a positive and inviting interface with it's surroundings.</i></p>	Yes



Site Configuration

Landscape Design	Proposed Development	Compliance
To add value to residents' quality of life within the development in the forms of privacy, outlook and views.	<i>The landscape design will incorporate native plants to encourage fauna. Please refer to Landscape Architect documents.</i>	Yes
To provide habitat for native indigenous plants and animals.		
To improve stormwater quality and reduce quantity.	<i>ESD principals have been adhered to including water sensitive design and use of plants that require low levels of irrigation</i>	
To improve the microclimate and solar performance within the development.		
To improve urban air quality.		
To contribute to biodiversity.		

Open Space	Proposed Development	Compliance
To provide residents with passive and active recreational opportunities.	<i>Whilst, open space is limited on the subject site – the development has a significant frontage along its northern boundary to Hunter Park which provides a large expanse of open space which can be used for a variety of activities.</i>	No
To provide an area on site that enables soft landscaping and deep soil planting.		
To ensure that communal open space is consolidated, configured and designed to be useable and attractive.		
To provide a pleasant outlook.		

Rules of Thumb

Communal open space should generally be at least between 25-30% of the site area. Larger sites and brownfield sites may have potential for more than 30%

The minimum recommended area of private open space for each apartment at ground level is 25m²; the minimum preferred dimension in one direction is 4m.



Site Configuration

Orientation	Proposed Development	Compliance
<p>To optimise solar access to residential apartments within the development and adjacent development.</p> <p>To contribute positively to desired streetscape character.</p> <p>To support landscape design of consolidated open space areas.</p> <p>To protect the amenity of existing development.</p> <p>To improve the thermal efficiency of new buildings.</p>	<p><i>The proposed building apartment layout is oriented in design to achieve maximum possible solar access to the living areas of the residential units.</i></p>	Yes

Planting on Structures	Proposed Development	Compliance
<p>To contribute to the quality and amenity of communal open space on roof tops, podiums and internal courtyards.</p> <p>To encourage the establishment and healthy growth of trees in urban areas.</p>	<p><i>Edge and perimeter planting through planter boxes has been incorporated into the proposal where possible to soften the interface to the surrounding context.</i></p>	Yes

Stormwater Management	Proposed Development	Compliance
<p>To minimise the impact of residential flat development and associated infrastructure on the health and amenity of natural waterways.</p> <p>To preserve existing soil and natural features, including watercourses and wetlands.</p> <p>To minimise the discharge of sediment and other pollutants to the urban stormwater drainage system during construction activity.</p>	<p><i>The proposed development incorporates an approach that is designed to meet the following general objectives:</i></p> <ul style="list-style-type: none"> ▪ <i>Protect and minimise the impact of the development on the surrounding existing developments.</i> ▪ <i>Reduce run-off and peak flows using the local detention measures and minimising impervious areas,</i> <p><i>Stormwater quality would be treated through the implementation of the detention tank, which has been sized appropriately to reduce discharge from the site.</i></p> <p><i>Refer to Stormwater Management report for detail.</i></p>	Yes



Site Amenity

Safety	Proposed Development	Compliance
To ensure residential flat developments are safe and secure for residents and visitors.	<i>The public and private domain are clearly separate within the development.</i>	Yes
To contribute to the safety of the public domain.	<i>The proposal has been designed to improve the residential entry on street level with passive surveillance available from balconies which overlook street level.</i>	
	<i>With public vantage points at entry, the occupants and the public are offered a level of surveillance.</i>	

Visual Privacy

	Proposed Development	Compliance
To provide reasonable levels of visual privacy externally and internally, during the day and at night.	<i>Consideration has been given to ensure privacy is able to be managed and sustained by the occupants of the building. Sliding privacy screens and a balance of transparent and solid balustrades allow for view access from the living spaces, while solid elements control views into private spaces such as bedrooms. Sliding timber screening allows for flexibility.</i>	Yes
To maximise outlook and views from principal rooms and private open space without compromising visual privacy.		



Site Access

Building Entry	Proposed Development	Compliance
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To create entrances which provide a desirable residential identity for the development.

The main entries of the building are clearly defined, and accessible by pedestrians without accessing the car park.

Yes

To orientate the visitor.

To contribute positively to the streetscape and building façade design.

Parking	Proposed Development	Compliance
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To minimise car dependency for commuting and recreational transport use and to promote alternative means of transport – public transport, bicycling and walking.

The car park is accessed from Vine Street and is located in a secure basement.

Yes

To provide adequate car parking for the building's users and visitors, depending on building type and proximity to public transport.

Parking numbers have not varied from the original

To integrate the location and design of car parking with the design of the site and the building.

14 Space in total

[2 of the 14 spaces are accessible]

Street parking is immediately available on Vine Street as adjacent in the Avoca Beach SLSC carpark.

Pedestrian Access	Proposed Development	Compliance
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To promote residential flat development which is well connected to the street and contributes to the accessibility of the public domain.

Entry to the apartments is accessible via a ramp and external lift at Street Level located at residential entry along Vine Street.

Yes

To ensure that residents, including users of strollers and wheelchairs and people with bicycles, are able to reach and enter their apartment and use communal areas via minimum grade ramps, paths, access ways or lifts.

All access points are suitable for use by strollers and wheelchairs and people with bicycles.

Vehicle Access	Proposed Development	Compliance
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To integrate adequate car parking and services access without compromising street character, landscape or pedestrian amenity and safety.

The car park is accessed from Vine Street and is located in a secure basement.

Yes



To encourage the active use of street frontages.

Entries are clear due to their design and deliberate location along the façade. Signage will be incorporated for way finding.



Part 3 - Building Design



Building Configuration

Apartment Layout	Proposed Development	Compliance
To ensure the spatial arrangement of apartments is functional and well organised.	<i>The typical apartment layouts are simple in that they are buildable, serviceable and provide a good level of environmental performance with a Northern or Eastern orientation.</i>	Yes
To ensure that apartment layouts provide high standards of residential amenity.	<i>Each apartment layout provides a good level of residential amenity</i>	
To maximise the environmental performance of apartments.	<i>All kitchens are no more than 8m from a window</i>	
To accommodate a variety of household activities and occupants' need.	<i>The width of each apartment type is greater than 4m</i>	
	<i>All apartments [2B] are greater than 70m²</i>	
Rules of Thumb Single aspect apartments should be limited in depth to 8m from a window. The back of a kitchen should be no more than 8m from a window. The width of cross-over or cross-through apartments over 15m deep should be 4m or greater to avoid deep narrow apartments. Minimum apartment sizes: ➤ 1-bedroom 50m ² ➤ 2-bedroom 70m ² ➤ 3-bedroom 95m ²	<i>All achieved</i>	Yes



Building Configuration

Apartment Mix	Proposed Development	Compliance
<ul style="list-style-type: none"> To provide a diversity of apartment types, which cater for different household requirements now and in the future. To maintain equitable access to new housing by cultural and socio-economic groups. 	<i>The apartment mix will cater for different household requirements.</i>	Yes

Balconies	Proposed Development	Compliance
<ul style="list-style-type: none"> To provide all apartments with private open space. To ensure balconies are functional and responsive to the environment thereby promoting the enjoyment of outdoor living for apartment residents. To ensure that balconies are integrated into the overall architectural form and detail of residential flat buildings. To contribute to the safety and liveliness of the street by allowing for casual overlooking and address. 	<p><i>All balconies have a balcony with a minimum depth of 2m or greater and are oriented towards the sun where possible.</i></p> <p><i>The configuration of balconies and apartments will provide a good level of surveillance to public and private areas.</i></p> <p><i>Balconies within the proposed development, far exceed private open space / balcony requirements.</i></p>	Yes

Rules of Thumb

Minimum depth of private balconies 2 metres.



Building Configuration

Ceiling Heights	Proposed Development	Compliance
<ul style="list-style-type: none"> To increase the sense of space in apartments and provide well proportioned rooms. To promote the penetration of daylight into the depths of the apartment. To contribute to flexibility of use. 	2.7m minimum floor to ceilings for habitable rooms and 2.4m minimum for non habitable rooms can be achieved.	Yes

To achieve quality interior spaces while considering the external building form requirements.

Rules of Thumb

In general, 2.7m minimum for all habitable rooms on all floors, 2.4m is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.

For two storey units, 2.4m minimum for second storey if 50% or more of the apartment has 2.7m minimum ceiling heights.

Attic spaces, 1.5m minimum wall height at edge of room with a 30° minimum ceiling slope.

Flexibility	Proposed Development	Compliance
<ul style="list-style-type: none"> To encourage housing designs which meet the broadest range of the occupants' needs possible. 	Each of the proposed apartments exceed the minimum size requirements. Allowing for greater potential flexibility.	Yes

Building Configuration

Ground Floor Apartments	Proposed Development	Compliance
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- To contribute to the desired streetscape of an area and to create active safe streets.
- To increase the housing and lifestyle choices available in apartment buildings.

Ground Floor apartments provide excellent passive surveillance to the immediate surrounding context. They populate what is currently a predominately empty streetscape consisting of a single, dilapidated house.

NA

Rules of Thumb

Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units.

Provide ground floor apartments with access to private open space, preferably as a terrace or garden.

NA

Internal Circulation

- To create safe and pleasant spaces for the circulation of people and their personal possessions.
- To facilitate quality apartment layouts, such as dual aspect apartments.
- To contribute positively to the form and articulation of the building façade and its relationship to the urban environment.

To encourage interaction and recognition between residents to contribute to a sense of community and improve perceptions of safety.

Rules of Thumb

In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight.

Proposed Development

Internal corridors have been designed to provide privacy to front doors by use of turning corridors. The single circulation core is centred amongst apartment types for ease of access.

Compliance

Yes



Building Configuration

Mixed Use	Proposed Development	Compliance
<ul style="list-style-type: none"> To support the integration of appropriate retail and commercial uses with housing. To create more active lively streets and urban areas, which encourage pedestrian movement, service the needs of the residents and increase the area's employment base. To ensure that the design of mixed use developments maintains residential amenities and preserves compatibility between uses. 	<i>Not Applicable.</i>	<i>N/A</i>
Storage	Proposed Development	Compliance
<ul style="list-style-type: none"> To provide adequate storage for everyday household items within easy access of the apartment. <p>To provide storage for sporting, leisure, fitness and hobby equipment.</p>	<p><i>Adequate Storage will be provided to each apartment both within each apartment and in the basement.</i></p> <p><i>Of each of the 8m3 required for a 2B apartment, 4m3 will be located in the basement and 4m3 will be located within the apartments.</i></p>	<i>Yes</i>

Rules of Thumb

In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:

- Studio 6m3
- 1-bedroom 6m3
- 2-bedroom 8m3
- 3-bedroom 10m3



Building Amenity

Acoustic Privacy	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure a high level of amenity by protecting the privacy of residents within residential flat buildings both within the apartments and in private open spaces. 	<i>The apartments are designed to meet the acoustic requirements as outlined in the BCA through the use of acoustic insulation to provide a compliant level of amenity</i>	Yes

Daylight Access	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure that daylight access is provided to all habitable rooms and encouraged in all other areas of residential flat development. To provide adequate ambient lighting and minimise the need for artificial lighting within daylight hours. <p>To provide residents with the ability to adjust the quantity of daylight to suit their needs.</p>	<p><i>The development has been designed to relate to the surrounding residential developments</i></p> <p><i>The building depth provides adequate amenity to the occupants. 100% of apartments will have cross ventilation and more than 100% of apartments will have 2 hours of sun access in mid-winter to the living space.</i></p>	Yes

Rules of Thumb

Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.

Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10 percent of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed (see Orientation and Energy Efficiency).



Building Amenity

Natural Ventilation	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure that apartments are designed to provide all habitable rooms with direct access to fresh air and to assist in promoting thermal comfort for occupants. To provide natural ventilation in non-habitable rooms, where possible. <p>To reduce energy consumption by minimising the use of mechanical ventilation, particularly air-conditioning.</p>	<p><i>100% of Apartments have cross ventilation.</i></p> <p><i>All Kitchens have access to natural ventilation.</i></p>	Yes
<p>Rules of Thumb</p> <p>Building depths which support natural ventilation typically range from 10 to 18 metres.</p> <p>Sixty percent (60%) of residential units should be naturally cross ventilated.</p> <p>Twenty five percent (25%) of kitchens within a development should have access to natural ventilation.</p> <p>Developments which seek to vary from the minimum standards must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.</p>		Yes



Building Form

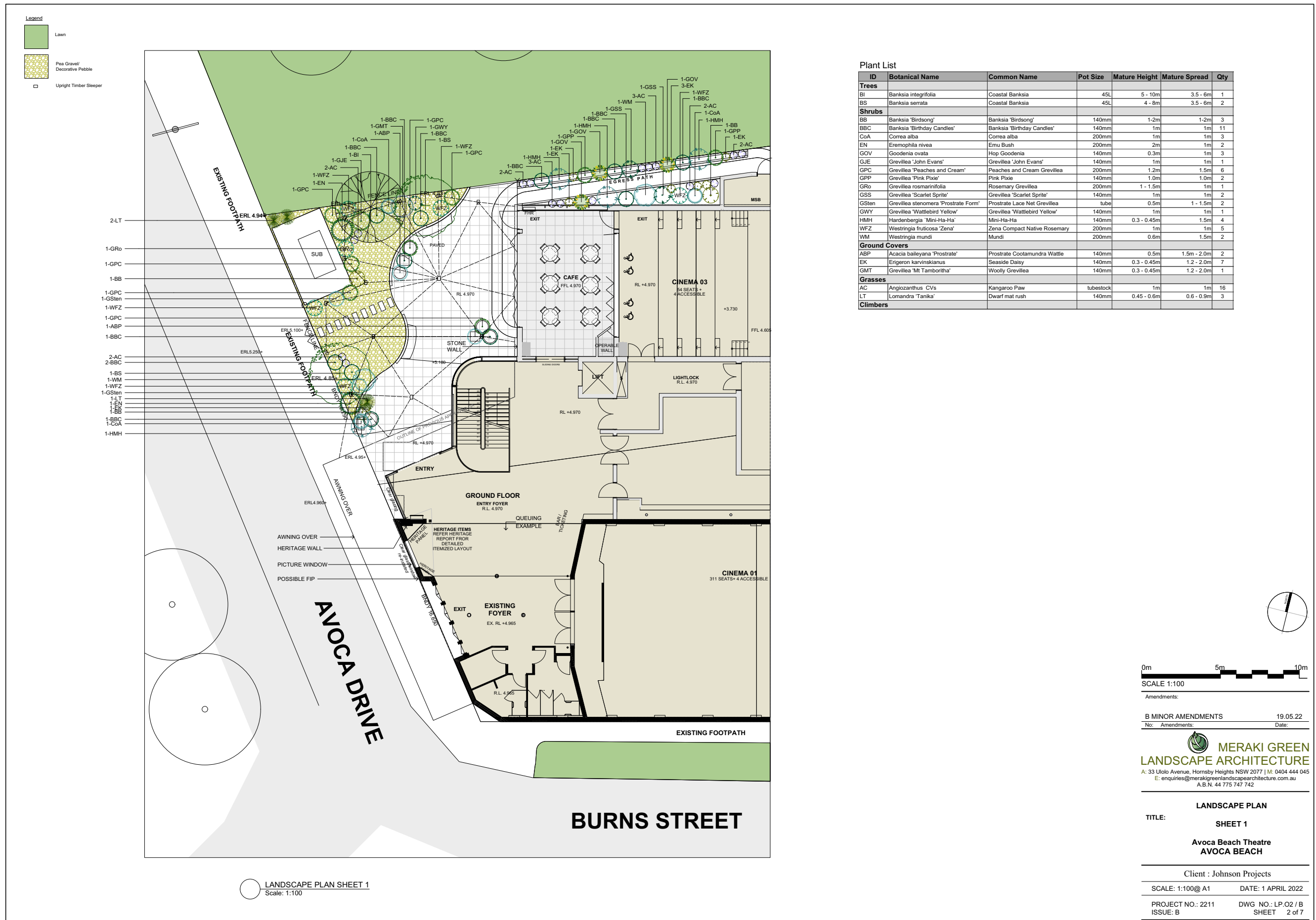
Awnings & Signage	Proposed Development	Compliance
<ul style="list-style-type: none"> To provide shelter for public streets. <p>To ensure signage is in keeping with desired streetscape character and with the development in scale, detail and overall design.</p>	N/A	N/A
Facades	Proposed Development	Compliance
<ul style="list-style-type: none"> To promote high architectural quality in residential flat buildings. To ensure that new developments have facades which define and enhance the public domain and desired street character. To ensure that building elements are integrated into the overall building form and façade design. 	<i>The façade has been designed with a mix of materials and elements to provide visual interest, whilst sitting comfortably within the context of the surrounding environment.</i>	Yes
Roof Design	Proposed Development	Compliance
<ul style="list-style-type: none"> To provide quality roof designs which contribute to the overall design and performance of residential flat buildings. To integrate the design of the roof into the overall façade, building composition and desired contextual response. To increase the longevity of the building through weather protection. 	<i>The roof design will be integrated into the overall design of the building.</i>	Yes
Energy Efficiency	Proposed Development	Compliance
<ul style="list-style-type: none"> To reduce the necessity for mechanical heating and cooling. To reduce reliance on fossil fuels. To minimise greenhouse gas emissions. To support and promote renewable energy initiatives. 	<i>The design considers ESD design principals to reduce greenhouse gas emissions.</i>	Yes

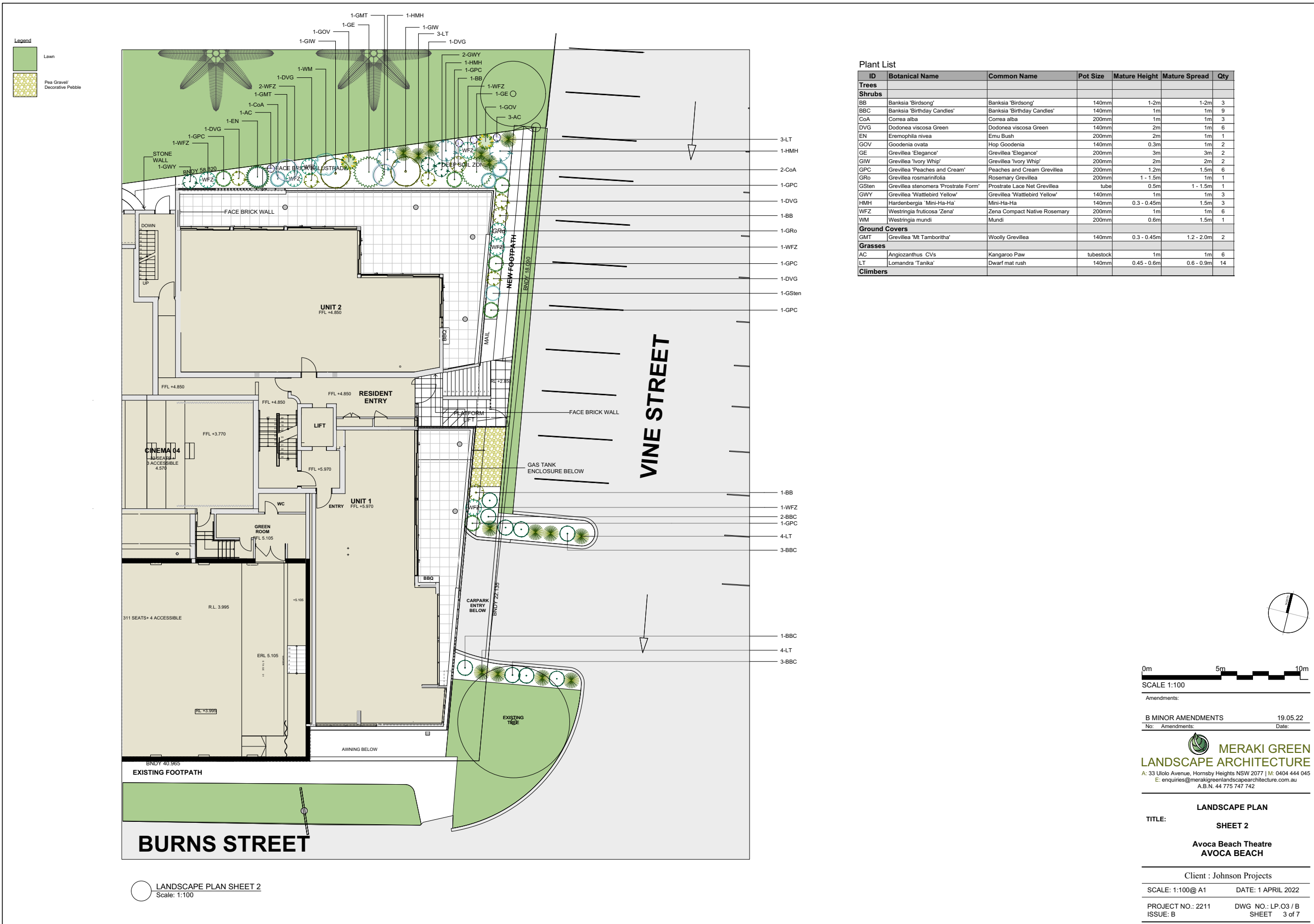


Building Form

Maintenance	Proposed Development	Compliance
<ul style="list-style-type: none"> To ensure long life and ease of maintenance for the development. 	<i>Robust and durable materials have been selected to enhance the life of the buildings and the landscaping.</i>	Yes
Waste Management	Proposed Development	Compliance
<ul style="list-style-type: none"> To avoid the generation of waste through design, material selection and building practices. To plan for the types, amount and disposal of waste to be generated during demolition, excavation and construction of the development. To encourage waste minimisation, including source separation, reuse and recycling. To ensure efficient storage and collection of waste and quality design of facilities. 	<i>Waste management plan will be prepared to minimise waste and recycle existing materials.</i>	Yes
Water Conservation	Proposed Development	Compliance
<ul style="list-style-type: none"> To reduce mains consumption of portable water. To reduce the quantity of urban stormwater runoff. 	<i>Energy efficient fittings will be used in all bathrooms.</i> <i>Soft landscaping used wherever possible. Stormwater detention provided.</i>	Yes









SYMBOL	NAME	QTY
•	Vedita LED VE1 - LS9401LED	45
-----	FESTOON LIGHTS- OUTDOOR STRING LIGHTS	

 LIGHTING PLAN
Scale: 1:200



Amendments:

B MINOR AMENDMENTS	19.05.22
No: Amendments:	Date:

 **MERAKI GREEN
LANDSCAPE ARCHITECTURE**
A: 33 Ululo Avenue, Hornsby Heights NSW 2077 | M: 0404 444 045
E: enquiries@merakigreenlandscapearchitecture.com.au
A.B.N. 44 775 747 742

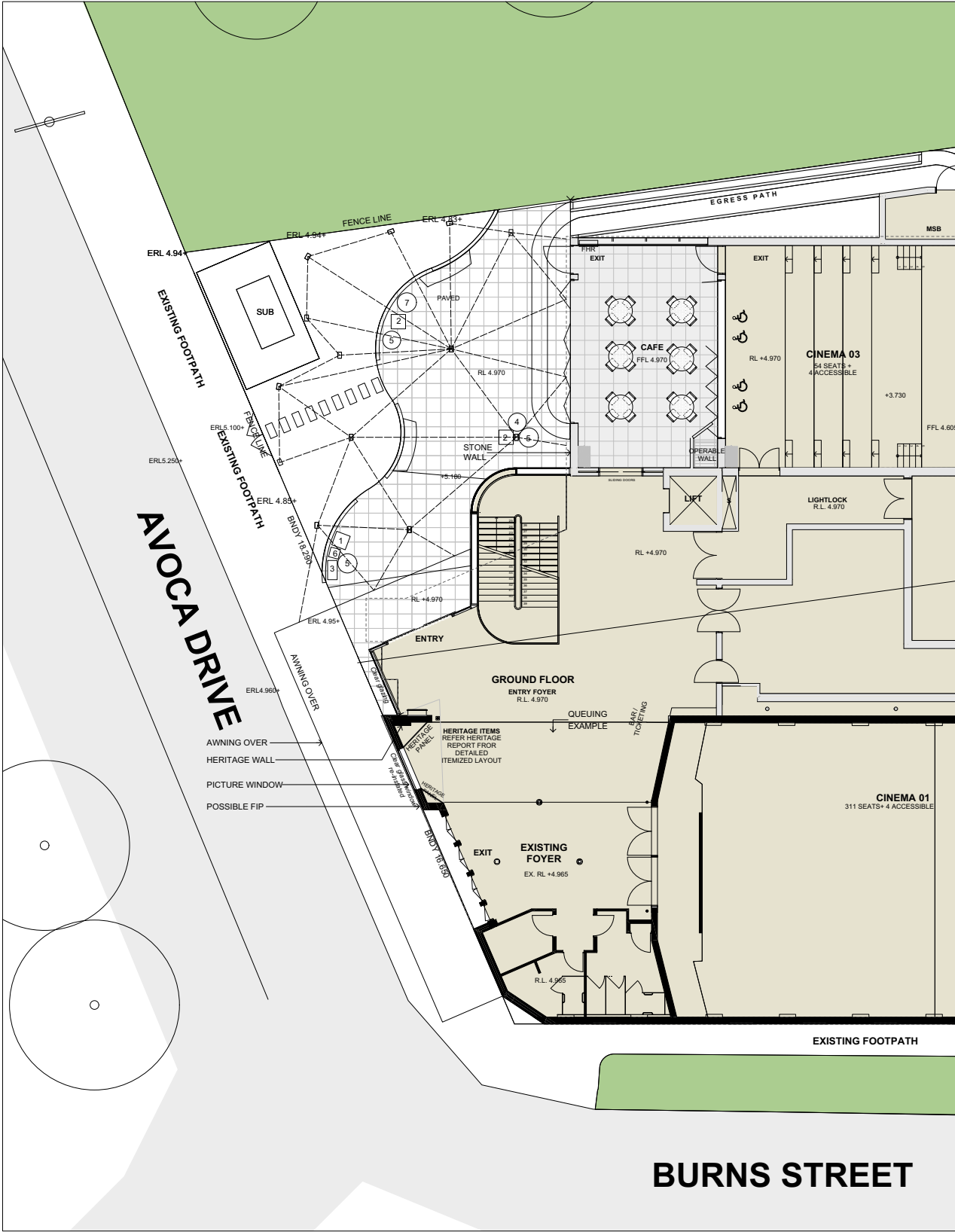
TITLE: **LANDSCAPE PLAN**
LIGHTING PLAN

Avoca Beach Theatre
AVOCA BEACH

Client : Johnson Projects

SCALE: 1:200@ A1 DATE: 1 APRIL 2022

PROJECT NO.: 2211	DWG NO.: LP.O4 / B
ISSUE: B	SHEET 4 of 7



POT DETAIL SHEET
Scale: 1:100

REFERENCE	SYMBOL	NAME	MEASUREMENTS	COLOUR	QTY
1		CUBE	600Lx600Wx600H	RUST	1
2		CUBE	700Lx700Wx700H	RUST	2
3		TALL RECTANGULAR PLANTER	800Lx400Wx800H	CHARCOAL	
4		ECLIPSE GARDEN BOWL	750Wx200H	CHARCOAL	1
5		RIO BOWL	800Wx400H	RUST	3
6		TALL TAPERED SQUARE	900Hx410W	CHARCOAL	1
7		U CUP PLANTERS	800Wx800H	CHARCOAL	1



RIO BOWL



GRC EGG PLANTER



U CUP PLANTERS



ECLIPSE GARDEN BOWL



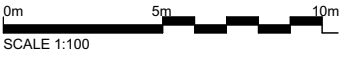
CUBE



TALL TAPERED SQUARE



TALL RECTANGULAR PLANTER



SCALE 1:100

Amendments:	
B MINOR AMENDMENTS	19.05.22
No: Amendments:	Date:

MERAKI GREEN
LANDSCAPE ARCHITECTURE
A: 33 Uilo Avenue, Hornsby Heights NSW 2077 | M: 0404 444 045
E: enquiries@merakigreenlandscapearchitecture.com.au
A.B.N. 44 775 747 742

LANDSCAPE PLAN

TITLE:
POT DETAIL SHEET

Avoca Beach Theatre
AVOCA BEACH

Client : Johnson Projects	
SCALE: 1:100@ A1	DATE: 1 APRIL 2022
PROJECT NO.: 2211	DWG NO.: LP.O5 / B
ISSUE: B	SHEET 5 of 7

<div>LANDSCAPE WORK SPECIFICATION</div> <div>Project:</div> <div>PRELIMINARIES</div> <div>1.01 GENERAL</div> <div>The following general conditions should be considered prior to the commencement of landscape works:<ul style="list-style-type: none">- The landscape plans should be read in conjunction with the architectural plans, hydraulic plans, service plans and survey prepared for the proposed development.- All services including existing drainage should be accurately located prior to the commencement of landscape installation. Any proposed tree planting which falls close to services will be relocated on site under the instruction of the landscape architect.- Installation of conduit for required irrigation, electrical and other services shall be completed prior to the commencement of hardscape works and hardstand pours.- All outdoor lighting specified by architect or client to be installed by qualified electrician- Anomalies that occur in these plans should be brought to our immediate attention.- Where an Australian Standard applies for any landscape material testing or installation technique, that standard shall be followed.</div> <div>1.02 PROTECTION OF ADJACENT FINISHES</div> <div>The Contractor shall take all precautions to prevent damage to all or any adjacent finishes by providing adequate protection to these areas / surfaces prior to the commencement of the Works</div> <div>1.03 PROTECTION OF EXISTING TREES</div> <div>Existing trees identified to be retained shall be done so in accordance with AS 4970-2009. Where general works are occurring around such trees, or pruning is required, a qualified Arborist shall be engaged to oversee such works and manage tree health.</div> <div>Existing trees designated on the drawing for retention shall be protected at all times during the construction period. Any soil within the drip-line of existing trees shall be excavated and removed by hand only. No stockpiling shall occur within the root zone of existing trees to be retained.</div> <div>Any roots larger in diameter than 50mm shall only be severed under instruction by a qualified arborist. Roots smaller than 50mm diameter shall be cut cleanly with a saw.</div> <div>1.8m high temporary fencing shall be installed around the base of all trees to be retained prior to the commencement of landscape works. The location of this fencing will be as per the TPZ defined by the consulting Arborist. If no Arborists report is available, install fence around the drip line of these trees, or a minimum of 3m from the trunk. The fencing shall be maintained for the full construction period.</div> <div>1.04 EROSION & POLLUTION CONTROL</div> <div>The Contractor shall take all proper precautions to prevent the erosion of soil from the subject site. The contractor shall install erosion & sediment control barriers and as required by council, and maintain these barriers throughout the construction period. Note that the sediment control measures adopted should reflect the soil type and erosion characteristics of the site.</div> <div>Erosion & pollution control measures shall incorporate the following:<ul style="list-style-type: none">- Construction of a sediment trap at the vehicle access point to the subject site.- Sediment fencing using a geotextile filter fabric in the location indicated on the erosion control plan or as instructed on site by the landscape architect.- Earth banks to prevent scour of stockpiles- Sandbag kerb sediment traps- Straw bale & geotextile sediment filter.- Exposed banks shall be pegged with an approved Jute matting in preparation for mass planting</div> <div>Refer to “Sitewise Reference Kit” as prepared by DLWC & WSROC (1997) for construction techniques</div> <div>SOIL WORKS</div> <div>2.01 MATERIALS</div> <div>Specified Soil Conditioner - Mass planting in natural ground</div> <div>The specified soil conditioner for mass planting shall be an organic mix, equal to "Soil conditioner", as supplied by Oz Landscaping Supplies.</div> <div>Note that for sites where soil testing indicates toxins or extremes in pH, or soils that are extremely poor, allow to excavate and supply 300mm of imported soil mix.</div> <div>Specified Soil Mix - Turf</div> <div>The specified soil mix for all turf areas shall be a min 75mm layer of imported soil mix consisting of 80% washed river sand (reasonably coarse), and 20% composted organic matter equivalent to mushroom compost or soil conditioner, or other approved lawn top dress.</div> <div>Site Topsoil</div> <div>Site topsoil is to be clean and free of unwanted matter such as gravel, clay lumps, grass, weeds, tree roots, sticks, rubbish and plastics, and any deleterious materials and materials toxic to plants. The topsoil must have a pH of between 5.5 and 7.</div> <div>2.02 INSTALLATION</div> <div>a) Testing</div> <div>All testing is to be conducted in accordance with AS 4419-2003 Soils for landscaping and garden use for an in depth soil analysis for pre-planting and diagnostic assessment of the soil.</div> <div>Tests shall be taken in several areas where planting is proposed, and site soil modified to ensure conditions are appropriate for planting as stated above.</div> <div>Note that a soil test conducted by "SESL Australia" or approved equal shall be prepared for all commercial, industrial and multi-unit residential sites. The successful landscape contractor shall implement the recommendations of this test.</div> <div>b) Set Out of Individual Trees & Mass Planting Areas</div> <div>All individual tree planting positions and areas designated for mass planting shall be set out with stakes or another form of marking, ready for inspection and approval. Locate all services.</div> <div>c) Establishing Subgrade Levels</div> <div>Subgrade levels are defined as the finished base levels prior to the placement of the specified material (i.e. soil conditioner). The following subgrade levels shall apply:<ul style="list-style-type: none">- Mass Planting Beds - 300mm below existing levels with specified imported soil mix.- Turf areas - 100mm below finished surface level.Note that all subgrades shall consist of a relatively free draining natural material, consisting of site topsoil placed previously by the Civil Contractor. No builders waste material shall be acceptable.</div> <div>d) Subgrade Cultivation</div> <div>Cultivate all subgrades to a minimum depth of 150mm in all planting beds and all turf areas, ensuring a thorough breakup of the subgrade into a reasonably coarse tilth. Grade subgrades to provide falls to surface and subsurface drains, prior to the placement of the final specified soil mix.</div> <div>e) Drainage Works</div> <div>Install surface and subsurface drainage where required and as detailed on the drawing. Drain subsurface drains to outlets provided, with a minimum fall of 1:100 to outlets and / or service pits.</div> <div>f) Placement and Preparation of Specified Soil Conditioner & Mixes.</div> <div><ul style="list-style-type: none">- Trees in turf & beds - Holes shall be twice as wide as root ball and minimum 100mm deeper - backfill hole with 50/50 mix of clean site soil and imported "Organic Garden Mix" as supplied by Oz Landscape Supplies or approved equal.- Mass Planting Beds - Install specified soil conditioner to a compacted depth of 100mmPlace the specified soil conditioner to the required compacted depth and use a rotary hoe to thoroughly mix the conditioner into the top 300mm of garden bed soil. Ensure thorough mixing and the preparation of a reasonably fine tilth and good growing medium in preparation for planting.</div> <div><ul style="list-style-type: none">- Turf Areas - Install specified soil mix to a minimum compacted depth of 75mmPlace the specified soil mix to the required compacted depth and grade to required finished soil levels, in preparation for planting and turfing.</div> <div>PLANTING</div> <div>3.01 MATERIALS</div> <div>a) Quality and Size of Plant Material</div> <div>In General, the principles & standards outlined in "Specifying Trees - a guide to assessment of tree quality" by Ross Clark will be demanded in the quality of all planting stock specified. These principles include, but are not limited to: <u>Above - Ground Assessment:</u> The following plant quality assessment criteria should be followed: <i>Plant true to type, Good vigour and health, free from pest & disease, free from injury, self-supporting, good stem taper, has been pruned correctly, is apically dominant, has even crown symmetry, free from included bark & stem junctions, even trunk position in pot, good stem structure</i> <u>Below - Ground Assessment:</u> <i>Good root division & direction, rootball occupancy, rootball depth, height of crown, non-suckering</i> For further explanation and description of these assessment criteria, refer to Ross Clark's book.</div> <div>All Plant material shall be to the type and size specified. No substitutions of plant material shall be permitted without written prior approval by the Landscape Architect. No plant shall be accepted which does not conform to the standards listed above.</div> <div>b) Fertilizers</div> <div>Fertilizers shall be approved slow release fertilisers suitable for the proposed planting types. Note that for native plants, specifically Proteaceae family plants including Grevillea species, low phosphorus fertilizers shall be used.</div> <div>c) Mulch</div> <div>Mulch shall be leaf litter mulch equal to "Forest Blend" as supplied by ANL. Mulch shall be completely free from any soil, weeds, rubbish or other debris.</div> <div>d) Turf</div> <div>Turf shall be "Kakadu" Buffalo or equivalent (unless stated otherwise), free from any weeds and other grasses, and be in a healthy growing condition.</div> <div>3.02 INSTALLATION</div> <div>a) Setting Out</div> <div>All planting set out shall be in strict accordance with the drawings, or as directed. Note that proposed tree planting located near services should be adjusted at this stage. Notify Landscape Architect for inspection for approval prior to planting.</div> <div>b) Planting</div> <div>All plant material shall be planted as soon after delivery as possible. Planting holes for trees shall be excavated as detailed and specified. Plant containers shall be removed and discarded, and the outer roots gently teased from the soil mass. Immediately set plant in hole and backfill with specified soil mix, incorporating the approved quantity of fertiliser for each plant type. Ensure that plants are set plumb vertically and root balls set to the consolidated finished grades detailed on the drawings. Compact the backfilled soil and saturate by hand watering to expel any remaining air pockets immediately after planting.</div> <div>c) Staking and Tying</div> <div>Trees shall be of a quality that, when planted, are freestanding, without the aid of stakes or ties, else they will be rejected.</div> <div>d) Mulching</div> <div>Mulch should be spread so that a compacted thickness of 75mm is achieved after settlement in all planting beds and around each individual plant. Apply immediately following planting and watering in, ensuring that a 50mm radius is maintained around the trunk of each plant .</div> <div>In all planter boxes, mulch to finish between 25-50mm below top of planter. There shall be no mixing of soil and mulch material.</div> <div>e) Turfing</div> <div>Moisten soil prior to the turf being laid. Turf shall be neatly butt jointed and true to grade to finish flush with adjacent surfaces. Incorporate a lawn fertilizer and thoroughly water in. Keep turf moist until roots have taken and sods/rolls cannot be lifted. Keep all traffic off turf until this has occurred. Allow for top dressing of all turf areas. All turf shall be rolled immediately following installation.</div> <div>f) Garden edging</div> <div>The Contractor shall install garden edging to all mass planting beds adjoining turf or gravel mulched areas, and where required. The resultant edge shall be true to line and flush with adjacent surfaces.</div> <div>Garden Edging: to be Treated Pine Timber edging (Unless otherwise specified by Client).</div> <div>g) Root Barrier</div> <div>Ensure root barrier is installed to all edges/junctions between the garden bed and adjacent hard surfaces including but not limited to retaining walls, carparking, paths, underground pipes and tanks and buildings within a 3m radius of the trunk of any proposed trees.</div> <div>Root barrier: Equivalent to treemax root barrier. Install root barrier to manufacturer's instructions.</div> <div>h) Pea Gravel</div> <div>Compact area for Pea Gravel installation with vibrating plate compactor before installing 20mm of crushed stone as a base for the installation of Pea Gravel.</div> <div>The edges of a pea gravel area are to be retained by a garden edge.</div> <div>Pea Gravel: Equivalent to White Scoria by Drinkwater's Landscape Supply PTY LTD.</div> <div>i) Pots</div> <div>As shown on Pot Detail Plan.</div> <div>Equivalent to: pots supplied by "Pots 'R Us"</div> <div>j) Timber Sleepers</div> <div>Positions as shown on Plans.</div> <div>Equivalent to: 3000x350x175mm Grey Weathered Timber Sleepers by Timbers with Veins</div> <div>k) Lights</div> <div>Positions as shown on Plans. Festoon lights to attach to upright timber sleepers and awning of building.</div> <div>Inground uplighting equivalent to: Vedita LED VE1 - LS9401LED by Lumascape installed per manufacturer's specifications</div> <div>Festoon lights equivalent to: Festoon Lights - Outdoor String Lights with Hanging Lamp Holders supplied by "Fat Shack Vintage."</div> <div>HARDSCAPE WORKS</div> <div>4.01 GENERAL</div> <div>The Contractor shall undertake the installation of all hardscape works as detailed on the drawing, or where not detailed, by manufacturers specification.</div> <div>a) Paving</div> <div>Refer to typical details provided, and applicable Australian Standards.</div> <div>Permeable paving may be used as a suitable means of satisfying Council permeable surface requirements, while providing a useable, hardwearing, practical surface.</div> <div>In most instances, the client shall nominate the appropriate paving material to be used.</div> <div>Australian Standards shall be adhered to in relation to all concrete, masonry & metal work. Some details are typical and may vary on site. All hardscape works shall be setout as per the drawings, and inspected and approved by the Landscape Architect prior to installation. All workmanship shall be carried out in a tradesman-like manner. Any queries or problems that arise from hardscape variations should be bought to the attention of the Landscape Architect.</div> <div>IRRIGATION WORKS</div> <div>5.01 GENERAL (PERFORMANCE SPECIFICATION)</div> <div>New irrigation systems to planting areas shall be a Commercial Grade Irrigation System conforming to AS 3500 & the latest Sydney Water Code</div> <div>The irrigation system shall be installed prior to all planting works. It shall incorporate a commercially available irrigation system, with dripper lines for all trees, and suitable jet sprinkler heads for the shrub species specified. It shall also incorporate a suitable back flow prevention device for the scale of works, an in-line filter, check valves, and suitable high and low density poly hose fittings and PVC piping to achieve flow rates suitable for specified planting.</div> <div>The landscape contractor shall check the existing pressure available from the ring mains and size irrigation piping to suit. Supply shall be from local hose cock where available. All piping and fittings are to be buried 50mm below the finished soil levels in garden bed areas, and secured in position at 5m centre with galv wire pins. Sizing of pipes shall be done so as to ensure that the working pressure at the end of the line does not decrease by more than 5%.</div> <div>Upon completion of installation, the system shall be tested and all components are to be satisfactorily functional and operational prior to approval. Should any defect develop, or the capacity or efficiency of the system decline during the agreed maintenance system, then these faults shall be immediately rectified.</div> <div>Detailed drawings of the entire proposed irrigation system shall be made available to the client for records and future maintenance of the system.</div> <div>CONSOLIDATION AND MAINTENANCE</div> <div>6.01 GENERAL</div> <div>The consolidation and maintenance period shall be 12 months beginning from the approved completion of the specified construction work (Practical Completion) except in the case of street trees, which shall be maintained for a period of 24 months. A qualified landscape maintenance contractor shall undertake the required landscape maintenance works. Consolidation and maintenance shall mean the care and maintenance of Contracted works by accepted landscaping or horticultural practices, ensuring that all plants are in optimum growing conditions and appearance at all times, as well as rectifying any defects that become apparent in the contracted works.</div> <div>This shall include, but not be limited to, the following items where and as required:</div> <div><ul style="list-style-type: none">- Watering all planting and lawn areas / irrigation maintenance.- Clearing litter and other debris from landscaped areas.- Removing weeds, pruning and general plant maintenance.- Replacement of damaged, stolen or unhealthy plants.- Make good areas of soil subsidence or erosion.- Topping up of mulched areas.- Spray / treatment for Insect and disease control.- Fertilizing with approved fertilizers at correct rates.- Mowing lawns & trimming edges each 14 days in summer or 18 days in winter- Maintenance of all paving, retaining and hardscape elements.</div> <div>On the completion of the maintenance period, the landscape works shall be inspected and at the satisfaction of the superintendent or landscape architect, the responsibility will be signed over to the client.</div> <div><div>Amendments:</div><div><div>B MINOR AMENDMENTS</div><div>19.05.22</div></div><div>No: Amendments: Date:</div></div> <div><div>MERAKI GREEN</div><div>LANDSCAPE ARCHITECTURE</div><div>A: 33 Ulolo Avenue, Hornsby Heights NSW 2077 M: 0404 444 045</div><div>E: enquiries@merakigreenlandscapearchitecture.com.au</div><div>A.B.N. 44 775 747 742</div></div> <div><div>LANDSCAPE PLAN</div><div>TITLE: SPECIFICATION SHEET</div><div>Avoca Beach Theatre</div><div>AVOCA BEACH</div></div> <div><div>Client : Johnson Projects</div><div><div>SCALE: n/a</div><div>DATE: 1 APRIL 2021</div></div><div><div>PROJECT NO.: 2211</div><div>DWG NO.: LP.07 / B</div></div><div><div>ISSUE: B</div><div>SHEET 7 of 7</div></div></div>
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ADW JOHNSON PTY LIMITED

ABN 62 129 445 398

Sydney
Level 35 One International Towers
100 Barangaroo Avenue
Sydney NSW 2000
Ph. 02 8046 7411
sydney@adwjohnson.com.au

Central Coast
5 Pioneer Avenue
Tuggerah NSW 2259
Ph. 02 4305 4300
Fax. 02 4305 4399
coast@adwjohnson.com.au

Hunter Region
7/335 Hillsborough Road,
Warners Bay NSW 2282
Ph. 02 4978 5100
Fax. 02 4978 5199
hunter@adwjohnson.com.au

Section 4.56 Modification Application**Modification of DA42661/2012 for
Avoca Beach Picture Theatre****Property:**

No's 69 & 71 Avoca Drive, Avoca Beach
Lot 140 DP 9359 & Lot 651 DP 16791

Applicant:

Johnson Projects

Date:

September 2022



Project Management • Town Planning • Engineering • Surveying
Visualisation • Social Impact • Urban Planning

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Document Control Sheet

Issue No.	Amendment	Date	Prepared By	Checked By
A	Draft	31 st March 2022	AHI	Client
B	Final for Lodgement	19 th May 2022	AHI	AHI
C	Amends for BASIX, Pre-Lodgement	21 st June 2022	AC	AC
D	Amended	23 rd September 2022	AC	AC
E	Client and Architect comments	29 th September 2022	AC	AC

Limitations Statement

This report has been prepared in accordance with and for the purposes outlined in the scope of services agreed between ADW Johnson Pty Ltd and the Client. It has been prepared based on the information supplied by the Client, as well as investigation undertaken by ADW Johnson and the sub-consultants engaged by the Client for the project.

Unless otherwise specified in this report, information and advice received from external parties during the course of this project was not independently verified. However, any such information was, in our opinion, deemed to be current and relevant prior to its use. Whilst all reasonable skill, diligence and care have been taken to provide accurate information and appropriate recommendations, it is not warranted or guaranteed and no responsibility or liability for any information, opinion or commentary contained herein or for any consequences of its use will be accepted by ADW Johnson or by any person involved in the preparation of this assessment and report.

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The Client should be aware that this report does not guarantee the approval of any application by any Council, Government agency or any other regulatory authority.

Modification Application of DA 42661/2012 for Avoca Beach Picture Theatre
69 & 71 Avoca Drive, Avoca Beach
(Ref: 190768)

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1.0 Introduction

ADW Johnson has been engaged by Johnson Projects ("proponent") to prepare a Section 4.56 modification application with Central Coast Council ("Council") to amend Development Consent 42661/2012 approved on 18th April 2017 by the Land and Environment Court (LEC).

A number of factors have led to the identified need for the proposed amendments. Firstly, the nature of the Cinema experience has changed dramatically. While this change has been happening gradually over several years – since the advent of streaming services, the COVID pandemic has accelerated the need for small, independent cinema operators to reconsider their business model. It is no longer viable to operate a one (1) screen cinema, nor is it viable to operate a number of similar sized theatres. Operators now have to expand the range of options available through providing a range of theatre sizes and experiences.

In order to maintain a viable business, the operators have identified the need to rearrange the approved theatre arrangements, thereby providing the required range of cinema experiences – ranging from the larger studio releases, to the smaller, independent / art house releases for which a larger theatre would be uneconomical. This new arrangement for the theatres, while maintaining the overall number of screens, has resulted in an overall reduction in cinema seats from the current approval.

These amendments have also allowed changes to the arrangement of other aspects of the approved development, including the food service options which now present a more pleasing presentation to the street front, and to the adjoining Hunter Park. These changes contribute to the enhancement of the public realm.

The second factor leading to the proposed changes is a review of the architectural possibilities in light of the amendments discussed above – while also recognising the five (5) years since the original approval, and the opportunity to improve on a design which in the end was driven more by Court proceedings than consideration of architectural merit.

The proposed modifications to the approved development are aimed at providing a more efficient, liveable and viable development, whilst continuing to retain the original appearance of the Avoca Beach Theatre (Cinema 1 and foyer).

The proposed amendments do result in minor variations to the approved height and FSR of the proposal, with the details of these variations are discussed elsewhere within this report. In short, the currently approved height already exceeds the LEP maximum, and the proposal seeks a minor increase on this variation for part of the roof area. These changes have primarily come about as a result of an improvement in the design of the roof; and for a small portion of the roof area, are the result of roof plant screening.

While part of the roof is proposed as slightly higher than the current approved form, the new design and arrangements for the building have been arrived at with a view to rationalising the form and planning. Importantly, and as alluded to above, the proposed new form is considered to be far less complicated and bulky than the current approval.

The current approved FSR complies with the LEP maximum, and with the proposed amendments, results in a slight exceedance.



It is to be noted however, that the overall footprint of the building remains unchanged, and the additional FSR is largely due to the screening of balconies within the dining areas, and the additional office space being included as FSR.

The modifications to the approved development provides for an updated design which rationalises and modernises a series of earlier approaches resulting in an improved response to the site and its context. The updated design aims to ensure that the street frontage has an appropriate level of activation in order to animate and populate the streetscape, and also provides an attractive presentation to Hunter Park. The architectural response to the local environment includes materials and elements which reflect the coastal landscape. The new arrangements ensure that the majority of the bulk is concentrated in the centre of the building, thus avoiding long lengths of blank facades, and ensuring the perimeter is punctuated where possible with glazing elements.

The proposal also requests the deletion of a condition restricting ticket sales during certain periods, as the reduced number of cinema seats has made this condition redundant.

The following statement has been prepared pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and addresses the necessary issues that require assessment to assist Council in making a determination on the subject application.

Development Consent 42661/2012 for 'alterations and additions to Avoca Beach Theatre to include demolition of an existing cottage and ancillary buildings, retention of the existing theatre/cinema, three additional cinemas, café, five (5) residential units and basement car parking' was approved on 18 April 2017 by the Land and Environment Court (LEC).

Further modifications to DA 42661/2012 have been approved by Council and include:

DA 42661/2012 Part 2

Modified consent was issued on 24th November 2017 comprising:

- Modification to the waste storage area and changes to the storage room and stair access at the basement floor level;
- Modifications to the 'back of house' areas adjacent to Cinema 3/4, modification to the stair, foyer, kitchen and extension of the roof to the first floor deck;
- Minor change to Unit No.'s 1 – 3.

DA 42661/2012 Part 3

Modified consent was issued on 8th April 2019 comprising:

- Increase the height of the roof ridge of Cinema 2 by 700mm;
- Internal reconfiguration of all residential units resulting in a minor increase in the residential gross floor area (being 23.36m²);
- Amendment to the description of the proposal contained within Condition 1.1A and plans and supporting documents referenced in Condition 1.1.

DA 42661/2012 Part 4

Modified consent issued on 15th September 2022 comprising:

- Amendment to condition to allow for demolition works to occur prior to all other conditions of consent needing to be complied with – consistent with other consents issued by Council.

The plans submitted with this proposal show the outline of the originally approved building, and of the current (amended) approval for the purpose of comparison. These are shown as blue and red outlines respectively.

A Pre DA Meeting was held with Central Coast Council on 10th September 2021 to discuss the proposed amendments that included unit layout adjustments, façade amendments to the residential and cinema components. This report considers the matters raised within the meeting and as outlined in the Record of Pre-Development Advice within **Appendix 8**.

Overall, the proposed amendments are consistent with the original consent and the current version, each of which included variations to the maximum Building Height and Floor Space Ratio (FSR) development standards.

On this basis, Council is requested to approve the modification of DA 42661/2012.



2.0 The Site

2.1 LOCATION

The subject site is located on the corner of Avoca Drive and Burns Street, Avoca Beach (see Figure 1).



Figure 1: Locality Map (Source: NSW Planning Portal)

2.2 LAND TITLE

The subject site contains two (2) allotments identified as Lot 651 DP 16791 and Lot 140 DP 9359, being No. 69 and No. 71 Avoca Drive, Avoca Beach respectively.

A copy of the Deposited Plans are provided as **Appendix 1**.

2.3 OWNERSHIP

Certificates of Title identify Lot 140 in Deposited Plan 9359 is owned by Norbet Enterprises Pty Ltd; and Lot 651 in deposited Plan 16791 is owned by Norman Augustus McDonald Hunter. Copies of the Certificates of Titles are provided as **Appendix 2**.



2.4 PHYSICAL DESCRIPTION

2.4.1 Site

The site contains the existing Avoca Beach Theatre, a weatherboard cottage and several outbuildings. The Theatre is to be retained as part of the development consent approved redevelopment of the site, and the weatherboard cottage and outbuildings will be demolished.

Figure 2 provides an aerial image of the site in the context of the surrounding locality.



Figure 2: Aerial Image (Source: Six Maps)

2.4.2 Access

Access to the site is from Avoca Drive.

2.4.3 Topography

The site is relatively flat.

2.4.4 Vegetation

The site is developed and contains no native vegetation.



3.0 Description of the Proposed Modification

3.1 PROPOSED MODIFICATION

The proposed amendments are summarised below:

Carpark Level

1. Plant room added;
2. Relocated disable car parking space;
3. Vertical circulation (stairs, lifts) positions amended;
4. Car park layout and entry amended. Ramp at entry is removed due to flood gate being primary tool for flood mitigation;
5. Waste area amended to reflect the current Central Coast Council (CCC) requirements and the Waste Management report.

Ground Floor

6. Stairs to foyer amended;
7. Stepping wall adjacent to the entry replaced with glazed connection between existing theatre and the new entry;
8. Stage to Cinema 3 adjusted for egress;
9. Cinema 3 seats reduced from approved 114 seats plus four (4) accessible to 54 seats plus four (4) accessible;
10. Café area shown on the ground floor plan as originally approved (Part 2 of DA42661/2012);
11. Relocation of kitchen from first floor level to ground floor level;
12. Cinema 4 layout rotated to achieve level access to the back of house area;
13. Cinema 4 seats increased from approved 28 seats plus three (3) accessible to 32 seats plus three (3) accessible;
14. Ground floor total number of cinema seats (Cinemas 3 and 4) reduced from approved 142 seats plus seven (7) accessible to proposed 86 seats plus seven (7) accessible. No change to Cinema 1 seating;
15. Cinema entries amended;
16. Ticket and candy bar layout amended to provide back of house storage;
17. Residential entry and vertical circulation amended;
18. Units 1 and 2 layout amended, balcony extend adjusted, and glazing line amended;
19. At-grade paved area to front of building.

First Floor

20. Units 3 and 4 layout amended, balcony extend adjusted, and glazing line amended;
21. First floor amenities relocated next to residential stair and lift;
22. Stair to offices relocated;
23. Cinema 2 seating layout adjusted and reduced from approved 148 seats plus four (4) accessible to proposed 54 seats;
24. Foyer seating added for 59 seats;
25. First floor total number of cinema seats reduced from approved 148 seats plus four (4) accessible to proposed 113 seats plus four (4) accessible;
26. Kitchen and Bar relocated;
27. Terrace screening added for weather protection;
28. Residential foyer and vertical circulation amended.

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Second Floor

- 29. Residential foyer and vertical circulation amended;
- 30. Unit 5 layout amended, balcony extend adjusted, and glazing line amended.

Roof

- 31. Curved roof over Cinema 2 replaced with single fall skillion roof;
- 32. Roof to theatre terrace amended;
- 33. Plant and solar array removed from existing theatre roof and relocated to new roof area;
- 34. Plant screen added around roof plant area;
- 35. Residential roof extent amended to reflect balcony edge below;
- 36. Solar panels added to satisfy BASIX requirements for an additional 3Kw.

The proposed modifications have been architecturally designed as verified in the Architectural Design Statement within **Appendix 13**.

The proposed modifications include amendments to the approved landscaping for the site (refer to **Appendix 4**).

The proposed amended Architectural Plans are provided as **Appendix 3**.

As a flow on from the reduced number of cinema seats, it is proposed that condition 6.14 be deleted. The reduced number of cinema seats will reduce parking demand during peak periods as defined by Council, making that condition redundant.

3.2 PURPOSE FOR MODIFICATION

The proposed amendments are aimed at achieving the objectives set out within the introduction. In short, they are intended to facilitate changes to the operation of the Avoca Beach Cinema in response to the changing nature of the Cinema experience; and to use the opportunity of the reduction in theatre seats and the associated internal changes to create a more vibrant site, with a significantly improved relationship to the street front, and to Hunter Park. Other changes, such as those proposed to the carpark and to the entry to this area, have come about due to the changing requirements of Council around issues such as waste collection, and an updated consideration of flooding issues which recognises the ability of the driveway slope to prevent the entry of floodwaters to the basement, without the need to rely on a wall or gate.

The proposed design changes are also considered to represent a more considered response to the built form of the existing Avoca Beach Cinema, as discussed within the Architectural Design Statement by CKDS Architects.

The specific modifications are grouped together below, with a brief explanation as to their nature, and the reason for each:



Building Height

The proposed roof form has changed with the roof being extended over the residential unit balconies facing Vine Street to reflect the balcony edge, and the curved roof over Cinema 2 being replaced with a single fall skillion roof – and slightly raised to accommodate a level internal floor and the height of the cinema screen.

The inclusion of a 3Kw solar panel, and roof plant equipment within a services zone on the roof and the proposed screen to conceal the roof plant equipment increases the building height over a minor portion of the new building.

Floor Space Ratio

The enclosure of approved level 1 deck for weather protection; the reconfiguration of the residential units and extension of the north east balcony edge; and the inclusion of the ancillary office space above the existing Theatre into the gross floor area calculation has slightly increased the floor space ratio (FSR) beyond the originally approved FSR of 1:1.

Cinemas

The number of approved cinemas will be retained by the proposed modifications. However, cinema layout and seating to Cinemas 2, 3 and 4 is modified, and the overall number of seats is reduced by 152 seats.

Foyer, Café, Bar and Kitchen

The approved uses are retained and reconfigured throughout the ground and first floor levels relating to the approved cinema/theatre use.

Unit Reconfiguration

The reconfiguration of approved residential unit layout is proposed both as a result of the changes made to extend the north east balcony edge, and to improve the amenity and liveability for residents, based on industry changes and the current market trend.

Basement Carpark Level

The basement level carpark entry, layout and waste area is modified internally to meet development consent conditions, Council and building services requirements.

3.3 CONDITIONS REQUIRING AMENDMENT

The following conditions within the current consent will require amendment to correspond to the proposed modifications:

Condition 1.1A – Description of the Approved Development

Amend to refer to the amended cinema seat numbers included as part of this Section 4.56 application.

**Condition 1.1 – Approved Plans and Supporting Documents**

Amend to refer to new plan numbers and supporting documents provided as part of this Section 4.56 application.

Condition 2.9 – Engineering Works

Amend conditions where relevant based on the amended civil plans and stormwater management plan provided as part of this Section 4.56 application.

Conditions 2.13 to 2.15 – Waste Management

Amend conditions where relevant based on the amended plans and supporting waste management plan provided as part of this Section 4.56 application.

- Cinema 1 = 311 seat + four (4) accessible
- Cinema 2 = 54 seats + four (4) accessible
- Cinema 3 = 54 seats + four (4) accessible
- Cinema 4 = 32 seats + three (3) accessible

Condition 2.16 – Heritage Interpretation

Delete this condition based on the Interpretation Plan and amended Landscape Plan being prepared and provided as part of this Section 4.56 application.

Refer to **Appendix 12 and Appendix 4** respectively.

Conditions 6.4 to 6.5 – Ongoing Waste Management

Amend conditions where relevant based on the amended plans and supporting waste management plan provided as part of this Section 4.56 application.

Condition 6.12 – Ongoing Waste Management

Amend conditions where relevant based on the amended plans and supporting waste management plan provided as part of this Section 4.56 application.

Condition 6.14 – Limited Cinema Seating Capacity in Summer School Holidays

Delete this condition, as it is noted that this condition was intended as a means by which ticket sales could limit the parking impacts of the proposal. With the currently approved 616 seat (total) capacity, the 25% restriction of sales would result in 462 seats being available. This number is only four (4) seats less than the proposed 466 total seats under the current proposal. Given the greatly reduced number of seats – and the fact that the current maximum is only four (4) less than the proposed total, it is not considered that this condition is still required.

4.0 Requirements for a Section 4.56 Modification

Modification Application of DA 42661/2012 for Avoca Beach Picture Theatre
69 & 71 Avoca Drive, Avoca Beach
(Ref: 190768)



4.1 RELEVANT ISSUES UNDER SECTION 4.56 OF THE EP&A ACT

Development Consent 42661/2012 was originally granted for 'alterations and additions to Avoca Beach Theatre to include demolition of an existing cottage and ancillary buildings, retention of the existing theatre/cinema, three additional cinemas, café, five (5) residential units and basement car parking' on 18th April 2017 by the Land and Environment Court (LEC).

To lodge an amendment under Section 4.56 of the EP&A Act, the applicant needs to satisfy the consent authority that the development as modified is substantially the same development as originally approved, as follows:

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

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

Comment: It is considered that the consent authority could be satisfied that the proposed development as modified is substantially the same development as that which was previously approved (as summarised in the table overleaf). The amended proposal will continue to retain Avoca Beach Theatre in its built form, context and setting including its Cinema 1 and foyer; continue to provide three additional cinemas; a café; five (5) residential dwelling units and basement car parking over basement, ground, first and second floor levels, and complies with the *Central Coast Local Environmental Plan 2022* (LEP), (with the exception of the maximum Building Height and Floor Space Ratio (FSR) development standards), the *Central Coast Development Control Plan 2022* (DCP); and remain consistent with the variations approved as part of the original consent.



QUANTITATIVE ASSESSMENT						
Item	Part 1	Part 2	Part 3	Part 4	Part 5	Change from Part 1
Gross Floor Area	1,801.96m ²	1,588.68m ²	1,712.63m ²	No change – amendment to condition only	1,979.43m ²	+177.47m ²
Floor Space Ratio	1:1	0.88:1	0.95:1	No change – amendment to condition only	1.09:1	+ 0.9
Building Height	RL14.2m	No change	RL14.9m	No change – amendment to condition only	RL15.145m RL 15.745m (Roof Plant Services Screen and solar panel – minor portion only)	+ 0.94m +1.54m
Car Parking Spaces	14 spaces	No change	No change	No change – amendment to condition only	No change	No change
No. of Cinemas/ Seating	4 cinemas (603 seats) + 10 wheelchair	4 cinemas (603 seats) + 11 wheelchair	4 cinemas (601 seats) + 15 wheelchair	No change – amendment to condition only	4 cinemas (451 seats) + 15 wheelchair	- 152 cinema seats +5 wheelchair seats
Number of Units	5	5	5	No change – amendment to condition only	5	No change
QUALITATIVE ASSESSMENT						
Traffic Impact	The proposed modification will decrease traffic movements below what is currently approved, due to the reduced number of cinema seats (152 less seats).					
Visual Impact / External Appearance	When viewed from outside, the proposed amendments to the built form essentially retain the same general arrangement of living / commercial areas, however these have been amended to enhance the public realm through such design changes as a café presenting to Avoca Drive, and a first floor foyer opening to Hunter Park. The residential units have been amended in the external presentation in a manner more suited to current design themes – mindful of the time since the original consent. The relatively minor increase in height to the roof ridge is addressed within the application report, where an assessment has been carried out based on the previous Council assessment of views for the current (not built) consent. The findings are that due to a range of considerations, the additional height, and the altered roof form will not result in a significant impact on views from the identified potentially affected sites.					



Material and Essential Features	The materials are proposed to be modified to present a more modern appearance – mindful of the time since the original consent. The material palette consists of materials such as stone, light neutral bricks and timber which mimic the local landscape.
Amenity Impact to Surrounding Properties	The proposed amendments are relatively minor in scale, with the proposed building still essentially occupying the same space, with the same general arrangements as those which were initially approved. The minor increase in height, and the amended roof profile have been assessed as not representing a significant loss of view from any of the previously assessed properties. In terms of amenity, the reduced number of seats in the cinemas will reduce traffic below that which was initially approved.

The proposed amendments will not change the overall nature and character of the development that was originally approved.

As demonstrated in the supporting reports and plans, the impacts of the proposed amendments will remain consistent with those of the approved development.

With regard to the question of the additional height, the proposed roof form has changed as follows:

- The roof being extended over the residential unit balconies facing Vine Street to align with the balcony edge;
- The curved roof over Cinema 2 being replaced with a single fall skillion roof, and slightly raised to accommodate the height of the cinema screen;
- The inclusion of roof plant equipment within a services zone on the roof and the proposed screen to conceal the roof plant equipment; and the solar panel. This change increases the building height over a minor portion of the new building to RL 15.745, and as such, will be largely not visible when viewed from the street.

With regard to the additional gross floor area increasing the approved FSR, the proposed changes are as follows:

- The "enclosure" of the approved level 1 deck due to the added terrace screening for weather protection – resulting this area now being counted as GFA;
- The reconfiguration of the residential units and extension of the north east balcony edge;
- The inclusion of the ancillary office space above the existing Theatre into the gross floor area calculation.

These changes have increased the originally approved floor space ratio (FSR) from 1:1 to proposed 1.09:1. However, the approved building footprint over the site has not changed, and the proposal does not seek to amend the overall approved setbacks. Vehicle access to the basement level has been slightly altered from Vine Street, as has the waste area - consistent with development consent conditions – and the carpark layout still remains within the approved built form.

Further to the above, case law has established that modification of applications must be both quantitatively and qualitatively substantially the same development as that originally approved. From a quantitative perspective, the amended proposal is substantially the same development with a minor increase to the approved height and FSR.



From a qualitative perspective, the same level of amenity and facilities will be provided to the residents and visitors/patrons to the Theatre by way of landscaping, open space and solar access, the number of cinemas and ancillary uses such as foyer, café, bar areas; and no additional impact will occur to views from adjoining properties, nor is there any significant impact on the Avoca Beach Theatre. Refer to the Qualitative and Quantitative Table above.

Most importantly, the proposed amendments do not result in the proposal operating differently from how the current approved version would operate. The proposed amendments have not come at the expense of any level of amenity for the future residents, nor to the adjoining property owners; and no loss of communal areas / amenities has been required to accommodate the amendments. The amended design will not result in significant overshadowing, and will not impact on important views as previously assessed by Council.

The amended design proposes a bulk and scale which is compatible with the current context and setting surrounding the site; just as the original design was compatible with the context and setting at the time of its approval. The amended proposal is considered to be 'essentially or materially the same' as the approved development.

In summary; the proposed modified development is considered to be quantitatively and qualitatively substantially the same development as that originally approved.

- b) *It has notified the application in accordance with:*
- (i) *The regulations, if the regulations so require, and*
 - (ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification of the proposed modification of a development consent, and*

Comment: It is acknowledged that Council will notify the proposal.

- c) *It has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

Comment: It is acknowledged that Council will make a reasonable attempt to notify the proposal to each person who made a submission.

- d) *It has considered any submission made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: It is acknowledged that submissions may be received during the notification of the proposal.

4.2 RELEVANT ISSUES UNDER EP&A REGULATION 2021

Clause 100 of the *Environmental Planning and Assessment Regulation 2021* (Regs) sets out additional requirements that all applications for modifications of consent must comply with, the relevant requirements and how they have been complied with are set out in the following table:



CLAUSE 100 REQUIREMENTS	COMMENT
(1) An application for modification of a development consent under Section 4.55(1), (1A) or (2) or 4.56 of the Act must contain the following information:	
a) The name and address of the applicant,	Johson Projects C/ - ADW Johnson PO Box 3717 Tuggerah NSW 2259
b) A description of the development to be carried out under the development consent,	Described within Section 3.
c) The address, and folio identifier of the land on which the development is to be carried out,	Described within Section 2.
d) A description of the modification to the development consent,	Described within Section 3.
e) A statement that indicates either: i. That the modification is merely intended to correct a minor error, misdescription or miscalculation ii. That the modification is intended to have some other effect, as specified in the statement,	Discussed within Section 4.1.
f) A description of the expected impacts of the modification,	Discussed within Section 4.1.
g) An undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,	Discussed within Section 4.1.
h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information	N/A. The original consent did not require removal of native vegetation.
i) If the applicant is not the owner of the land, a statement that the owner consents to the making of the modification application,	Discussed within Section 2.0.
j) A statement as to whether the modification application is being made to: (i) the Court under the Act, section 4.55, or (ii) the consent authority under the Act, section 4.56.	The application is being made to Council as the consent authority, in accordance with Section 4.56.

4.3 RELEVANT ISSUES UNDER SECTION 4.15

Under Section 4.15 of the EP&A Act 1979, the following matters need to be considered as part of the assessment of the modification:

a) i. The provisions of any environmental planning instruments,



Central Coast Local Environmental Plan 2022

The subject site is zoned R2 Low Density Residential under the provisions of Central Coast Local Environmental Plan 2022 (CCLEP 2022.)

Development consent was granted to DA 42661/2012 under the provisions of the Gosford Local Environmental Plan 2014 (GLEP 2014), being the applicable Instrument at that time.

Overall, the proposed amended development complies with the provisions of the LEP, with the exception of the maximum building height and floor space ratio development standards and those variations previously approved under the original consent.

The main provisions applicable to the amended development are discussed below:

Clause 7.18 – Certain Development at Avoca Drive, Avoca Beach

Clause 7.18 of CCLEP 2022 specifically applies to the subject site, which is identified as "Avoca Beach Theatre" on the Key Sites Map.

The clause is reproduced below;

- (1) This clause applies to Lot 140, DP 9359 and Lot 651, DP 16791, Avoca Drive, Avoca Beach, identified as "Avoca Beach Theatre" on the [Key Sites Map](#).
- (2) Development for the following purposes is permitted with development consent on land to which this clause applies—
 - (a) entertainment facilities,
 - (b) residential flat buildings,
 - (c) restaurants or cafes.
- (3) Development consent must not be granted to development referred to in subclause (2) unless the design of the development has been reviewed by a design review panel.
- (4) In deciding whether to grant development consent, the consent authority must consider the following—
 - (a) whether the development retains the existing theatre building,
 - (b) whether the design of the development complements the heritage character of the existing theatre building,
 - (c) whether the design of development achieves a high standard of urban design and architectural quality, including in relation to the interface between the development and the adjoining public park,
 - (d) whether the design of the development is appropriate for the location of the land on the coast,
 - (e) whether adequate car parking is provided,
 - (f) whether the development provides measures to conserve water usage and increase water efficiency,
 - (g) if applicable, the outcome of the review by the design review panel.
- (5) Subclause (3) does not apply to development if the Planning Secretary provides a written statement to the consent authority stating that the Planning Secretary considers the development is of a minor nature.



- (6) A building on land to which this clause applies resulting from development for the purposes of entertainment facilities may exceed the maximum height shown on the [Height of Buildings Map](#) if the consent authority is satisfied the part of the building that exceeds the maximum height is an integral part of the design of the building.
- (7) In this clause—
design review panel means a panel of 2 or more persons established by the consent authority for the purposes of this clause.

It is to be noted that the subject application is a Section 4.56 amendment to the current consent, and is therefore not a "development application", and as such, a "development consent" is not being sought, merely a modified consent. Accordingly, Sections 3 and 4 are not applicable. Nonetheless, it is noted that the original consent satisfied these similar requirements under the previous GLEP 2014, and none of the proposed amendments alter this.

Based on the above provisions of the CCLEP 2022, the proposed modifications to the approved development under DA/42661/2012 are permissible with the consent of Council.

The proposed modifications retain the approved uses relating to the Avoca Beach Theatre, café, residential flat building and car parking on the subject site.

The approved building height is to be amended as provided for in this clause and as discussed further below.

Clause 4.3 – Height of Building

The site is identified as being subject to a maximum building height of 10m.

The originally approved development on site exceeds the 10m height control by approximately 42%. Subsequent amendments permitted an increase of 700mm and a maximum RL 14.9m AHD associated with the roof of Cinema 2, resulting in a further variation to the development standard.

The proposed modifications to roof are described in Part 4.1 of this report and are repeated here for clarity:

- The roof being extended over the residential unit balconies facing Vine Street to align with the balcony edge;
- The curved roof over Cinema 2 being replaced with a single fall skillion roof, and slightly raised to accommodate the height of the cinema screen;
- The inclusion of roof plant equipment within a services zone on the roof and the proposed screen to conceal the roof plant equipment, and a 3Kw solar panel to achieve BASIX requirements. This change increases the building height over the south-west portion of the new building to RL 15.745, and as such, will be largely not visible when viewed from the street.

The overall modified building height is summarised below, and shown within **Figures 3** and **4**. The table overleaf separately considers the actual roof, and the plant services screen.



ITEM	CURRENTLY APPROVED	PROPOSED	EXTENT OF VARIATION
Height of Building	RL 14.9	RL 15.145 (new roof level)	+245mm above approved height
Height of Building	RL 14.9	RL 15.745 (top of roof plant services screen and solar panel)	+845mm above approved height

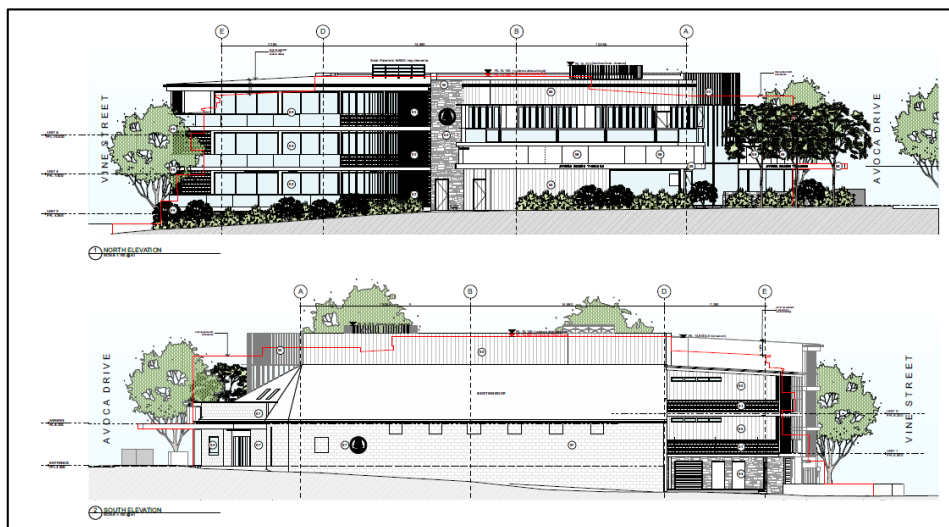


Figure 3: Extract of Amended North and South Elevations



Figure 4: Extract of Amended East and West Elevations

As shown on the roof plan (refer to **Figure 5** overleaf), the extent of the modified building height to accommodate the roof plant services screen and the solar panel equates to approximately 59m² or 4% of the total proposed roof area, contained within two (2) discrete portions. The additional height from the screen and panel is 5.67% greater than the approved building height and considered minor and inconsequential.

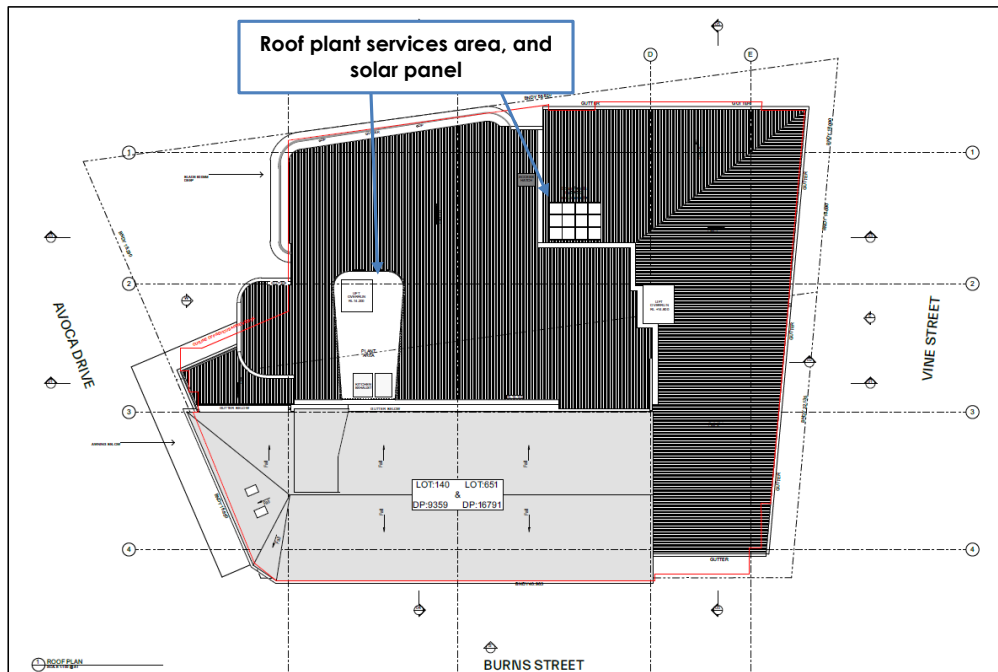


Figure 5: Extract of Proposed Roof Plan

The extent of the modified building height to accommodate the roof form changes as described above is 245mm or 5.07% above the currently approved building height (RL 14.9m) which is considered minor and inconsequential.

As the subject application is a Clause 4.56 Modification Application, a Clause 4.6 Variation Report is not required for the proposed height variation. A modification application can be approved even though it would contravene a development standard, and no Clause 4.6 variation is required. The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) identify a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application. Sections 4.55 and 4.56 of the EP&A Act has a broad power to approve, subject to its own stand-alone tests (such as the substantially the same test, and a requirement to consider all relevant Section 4.15 matters).

Notwithstanding the above, a merits assessment has been undertaken for the proposed height variation. Strict numerical compliance is considered to be unreasonable and unnecessary, as the varied building height continues to be consistent with the objectives of the building height standard (Clause 4.3), and the objectives of the R2 zone as demonstrated overleaf:



Clause 4.3
Objectives/Comments
<p>a) To establish maximum height limits for buildings to enable appropriate development density</p> <p>This is considered more of an introductory statement within the objectives rather than one which describes a particular aim to be achieved through the application of the development standard. This objective is best considered in conjunction with the others rather than on its own.</p> <p>The previous approval has established a building height above the maximum height limit.</p>
<p>b) To ensure that the height of buildings is compatible with the character of the locality</p> <p>The proposed height, being only a minor increase beyond the current proposed height, is considered to fit in appropriately with the character of the area. In making this observation, it is worth noting the specific provisions within the CCLEP 2022 (Clause 7.18 discussed above) which allows for height variations on the site. As has been found with the original consent and subsequent amendments, the relevant part of the building is an integral part of the design of the building. The reason for the exceedances relate to the required areas below for cinemas, and in this instance also include roof plant screening – an integral component of the building.</p> <p>The minor variation beyond the current approved height presents no adverse impacts upon adjacent or further afield buildings or public spaces. The site is located at the base of the surrounding hills, and is itself an island, bound by roads and a park, and with additional park areas immediately to the south. This level of separation, and the low nature of the site ensure that the site is able to be read separately within the urban form, and in a manner which does not detract from – and is compatible with – the local character.</p>
R2 Low Density Residential Zone
Objectives/Comments
<p>• To provide for the housing needs of the community within a low density residential environment.</p> <p>The proposed amended development will continue to provide for the housing needs of the community and is permitted in the low density residential zone under Clause 2.5 and Schedule 1 of the LEP.</p>
<p>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</p> <p>The proposed amended development will continue to enable other land uses such as the approved entertainment facility which is permitted under Clause 2.5 and Schedule 1 of the LEP to provide services to the residents and visitors of Avoca Beach. The proposed rearrangements will in fact add considerably to the vitality of the street front, with increased interaction.</p>
<p>• To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services.</p> <p>The proposed amendments do not expand on the extent of the non residential uses, and in fact decrease the total number of cinema seats. This reduction therefore would translate to a reduction in any level of disturbance which had previously been assessed and found to be acceptable. Similarly, the café areas, while having a slightly amended layout, are actually intended to provide a far greater level of activation of public spaces than that which is currently approved. None of the proposed amendments represent an increase in overall intensity of use of the site.</p>
<p>• To encourage best practice in the design of low-density residential development.</p> <p>The re-design of the roof form and façade complements the low-density residential environment where the subject site is flanked by residential development to the west and east including dense native evergreen vegetation. The approved development and proposed modifications will contribute a contemporary form into the composition of the view from surrounding roadways which is not dissimilar in scale or character of the existing theatre and multi – storey residential development within the immediate context.</p>
<p>• To maintain and enhance the residential amenity and character of the surrounding area.</p> <p>As discussed elsewhere in this report, the proposal simply represents amendments to an already approved development – which has operated on the site for decades – and is subject to a specific clause within the CCLEP 2022 which facilitates the uses.</p>



By providing for a greater level of activation at the street level and in the areas facing the park, it is considered that the amended scheme will contribute significantly to residential amenity and the character – and in doing so will facilitate the retention of an iconic business on the Central Coast.

- **To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.**

The proposed amended development will retain the approved non-residential land-uses and not cause any adverse amenity impacts on the surrounding residential area to the east and west of the site.

In addition to considerations outlined above, and to provide additional support to some of the assertions made, additional consideration has been given to the question of the potential impact on views from adjacent properties. This consideration has been based largely on the previous assessments carried out, including the assessment by Council as part of the assessment of the most recent amendment to the consent; and the initial assessment undertaken as part of the Court proceedings for the initial approval.

The most recent amendment which was the subject of the Council assessment sought to increase the height of the roof ridge to Cinema 2 by 0.7m. As part of that assessment, and consistent with the initial analysis, Council identified seven properties which required consideration in regard to view impacts. These properties are identified below:



The following assessment consists of analysis of these same views as assessed by Council for the most recent amendment to the consent.

45 Avoca Drive

This view analysis took into account views from Units 7, 8 and 9 within this complex, and noted that these dwellings do not have existing direct view access to the development site, due to either the orientation of the units, or the intervening built form and vegetation.



The previous Council assessment concluded that any view loss from this property as a result of the now approved amendment can be discounted.

This conclusion was arrived at by Council as part of the assessment of an additional 0.7m height to part of the building. For the purpose of that previous assessment; and for the current proposal, it is taken that the southern elevation of the proposal is the relevant presentation. As indicated on the proposed plans, the overall additional height to the highest point of the roof under the current proposal is 0.245m. This takes the highest point on the roof from the currently approved 14.9m to 15.145m.

Separate to the overall roof height, the southern elevation also shows proposed solar panels on part of the roof, and screening for a service zone on another section. The proposed screening has a maximum height of 15.745m, with a width of 5.5m when viewed from the southern elevation. The solar panels are scaled at a similar height, and present a 3.8m long width to the southern elevation. With a width of roof of 43m along the southern elevation, these two (2) elements, with their projecting beyond the roof are considered to be minor in terms of impact on views.

Under the current proposal, the eastern and western ends of the southern elevation show that the height of the roof is also increased at these points from the currently approved level. This increase is at it's greatest at the eastern end, measuring 1.0m, and decreasing to the west. In considering the increase in the height of the roof; additional elements such as the solar panels and roof plant screen; and the additional height at the eastern and western ends of the elevation, the primary point to be considered is that the previous Council assessment concluded that due to a combination of orientation of units, and the intervening built form and vegetation, any view loss from this property can be discounted. The same finding is still relevant to the currently proposed amendments. The extent of vegetation in particular between the subject site and 45 Avoca Drive is such that as with the previously approved amendmts, the current proposal is entirely screened from view. The image below illustrates the extent of this screening in a photograph taken from the upper balcony of 7/45 Avoca Drive.





47 & 49 Avoca Drive

The previous Council assessment concluded that any view loss from these properties as a result of (the now approved) amendment can be discounted. The image below, taken from 2/47 Avoca Drive illustrates that the (now approved) amendments would not block any views to scenic or highly valued items such as Avoca Beach or the water. Once again, the extent and the height of the intervening vegetation is such that no other views exist which would be obstructed.

With regard to the current proposal, the relevant elevation is once again the southern one, and therefore the position put forward in relation to 45 Avoca Drive is applied to 47 and 49 Avoca Drive.



51 Avoca Drive

The previous Council assessment of potential impact on views from this property considered views from a rear terrace at the uppermost level of the building. The images relied upon in that Council assessment detail the extent to which the roof of the current (original) cinema roof is visible, and the extent of wave zone which is visible beyond this. The most recent approval allowed for a 0.70m increase in height to the approved built form. The current proposal seeks an additional 0.245m beyond that, as discussed above in relation to 44 Avoca Drive. the additional height is considered as not having a significant impact on these views. While a small element of the water view may be interrupted, the view to the wave zone and the beach will not be obscured.

The east and western extensions to the roof beyond the most recent approval do not impact on the existing view, as these portions of the roof are already blocked by existing vegetation. The image below illustrates the extent of the existing roof visible from the terrace in question.



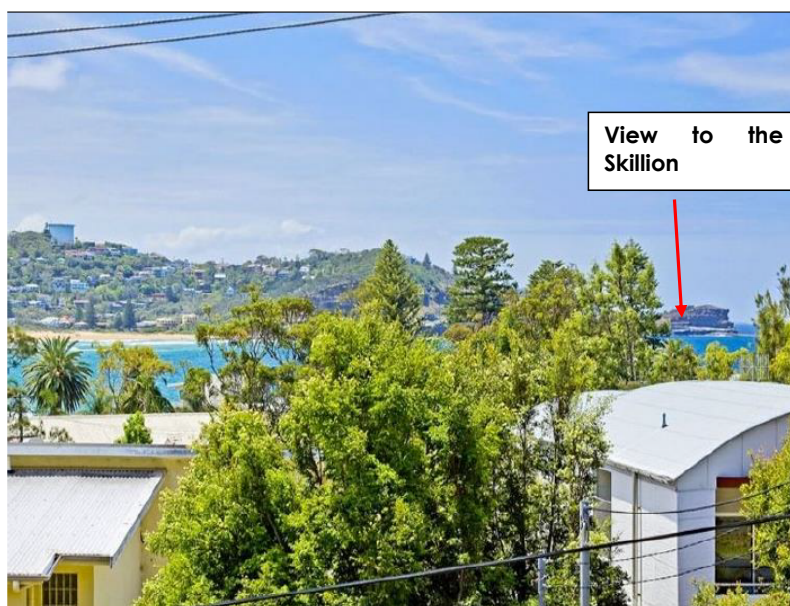
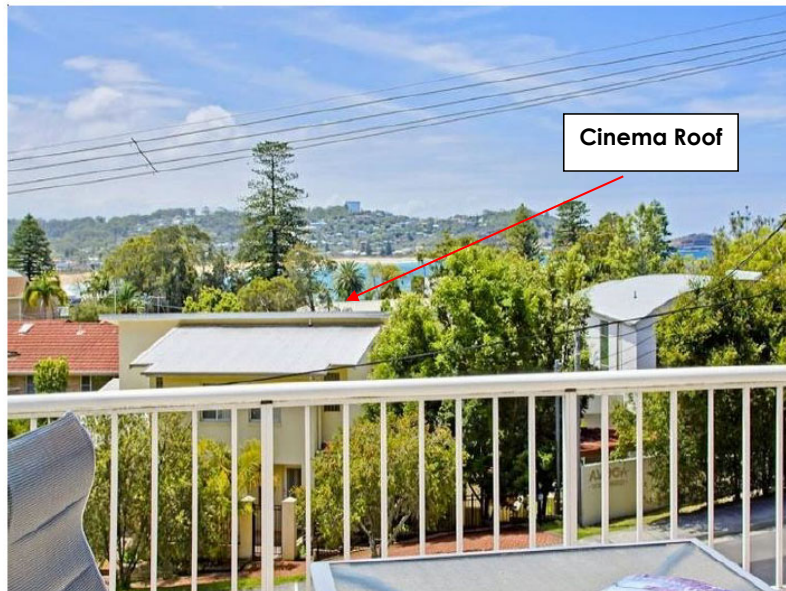
Council also considered the view from a lower terrace within the same building, noting that this view is largely obscured by vegetation, and would remain unaffected by the most recent approved amendments. The photograph below illustrates the fact that any existing view to the beach and the wave zone would similarly remain unaffected by the proposed additional 0.245m height, and that the eastern and western alterations to the roof form are not visible from that terrace. Note that existing buildings beyond the cinema exist within the identified view, and exceed the proposed height.



72A Avoca Drive

Council's assessment for the current approval considered the extent of built form and vegetation sited between the cinema and this property. The view from the northern balcony of this building is toward 57A Avoca Drive, with the existing cinema roof beyond this. The Council assessment further found that while part of the view from this property would be impacted by the now approved amendments, this portion of the existing view is heavily filtered by vegetation in Hunter Park. It was further noted that the wave zone of Avoca Beach would still be visible, as would the remainder of the beach between Avoca and North Avoca, and the view to the Skillion at Terrigal – which is not impacted at all.

The same conclusion holds for the proposed additional 0.245m associated with the current proposal. Once again, it is the southern elevation which is the relevant presentation, and as with other views considered, the extensions to the east and west of the roof line will have no impact due to the existing vegetation. The Council assessment refers to the height of the existing Avoca Surf Club building, which is 14.84m AHD, noting that the (now approved) amendments exceeded that height. The currently proposed 0.245m additional height to the roof will not significantly further obstruct the view in question. particularly taking into account the relative elevation of the two (2) sites, with 72A Avoca Drive having a ground level approx. 10m higher than the cinema site (based on SIX Maps LIDAR data), and the approx. 160m distance between the two (2) sites.



72 Avoca Drive

The previous Council assessment noted that the (now approved) modifications would result in a partial loss of a view comprising built form and a narrow band of water which is already heavily filtered by vegetation within Hunter Park.

It was further noted however, that the view of the wave zone and the remainder of the beach between Avoca and North Avoca would remain unaffected.

Modification Application of DA 42661/2012 for Avoca Beach Picture Theatre
69 & 71 Avoca Drive, Avoca Beach
(Ref: 190768)



The conclusion of Council at that time was that the modifications did not block a significant portion of views to scenic or highly valued items.

Under the current proposal, the same conclusion is able to be reached. The additional height beyond the current approval is minor, and will not obstruct the majority of the main view elements, which comprise the wave zone and the stretch of beach between Avoca and North Avoca. The additional roof length at the eastern and western ends of the building are not visible from this site due to the existing vegetation and built form between the two (2) sites. Once again, the distance between, and the relative height differences at ground level contribute significantly to this finding.



92 Avoca Drive

The previous Council assessment considered three (3) view points, being the upper and lower level balconies in Unit 3; and an upper level balcony in Unit 4. In all cases, Council noted that the principal outlook was in an easterly direction toward South End Park, as distinct from the oblique view corridor to the north east through a narrow opening in vegetation.

As opposed to the other view point assessments contained in this report where the southern elevation is the primary presentation to be considered, this property requires not only consideration of the southern elevation, but also requires consideration of at least a portion of the western elevation. Despite this, the required extent of consideration of the western elevation is limited due to the relatively minor portion which may be visible from this site.

As illustrated in the photograph overleaf, the only component of the western elevation which may be visible from the subject property (Unit 3) is the south western corner, comprising the existing theatre building at the ground level.

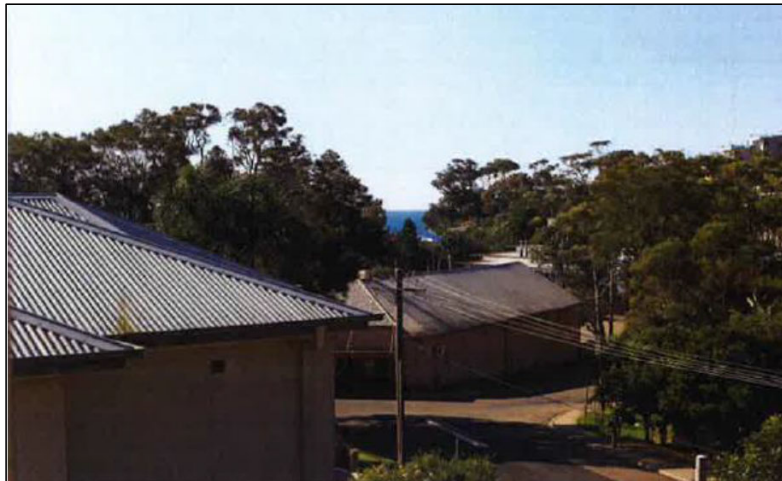
Given that this element is not amending the height, no view impact is attributable to this portion of the proposal.



In terms of the southern elevation and any proposed height variations, consideration of this is restricted to the mid portion of the proposal, owing to the extremely narrow nature of the view corridor. The current proposal only involves a 0.245m increase in height at this point beyond the current consent. The additional roof form at the eastern end of the proposal will result in a loss of some vegetation form the affected site, however this is not considered to be significant, and as expressed by Council initially, the primary view is not over the cinema site in any case.



The upper level terrace from Unit 3 obtains a slightly higher view point, but of the same narrow view corridor as the lower terrace (refer phot below). Owing to the higher view point, impacts on the limited water view will be less than for the lower terrace, once again noting that the primary view is to the east, over South End Park – not over the cinema site.



The upper level terrace of Unit 4 was also previously assessed by Council, and at that time, it was found that the (now approved) proposal, while resulting on some loss of vegetation views, would not significantly impact on the narrow water views.



With the current proposal only adding 0.245m in height on the portion of the proposal visible from the subject site, this minor, narrow, and oblique water view will not be significantly impacted.

Given the above, it is considered that sufficient planning grounds exist to support the proposed height variation. It is unnecessary and unreasonable to enforce strict numerical compliance with the height control, which has quite evidently been abandoned.

The proposed additional height is not considered to be significant given the scale of the approved building. Non-compliance with the maximum building height standard will not contribute to adverse environmental, social or economic impacts, and will not raise any matter of State or Regional significance.

Given the above, it is considered that an appropriate degree of flexibility should be applied in regards to the maximum building height standard given the variation being requested, and the fact the proposed amended development continues to achieve the objectives of the building height control and R2 Zone.

Clause 4.4 – Floor Space Ratio

The site is identified as being subject to a maximum Floor Space Ratio (FSR) of 1:1.

The currently approved development's FSR is 0.95:1. The proposed modifications increase the FSR to 1.09:1, which is a variation of 9% to the development standard.

As outlined in Part 4.1, the changes resulting in the increased FSR are:

- The "enclosure" of the approved level 1 deck due to the added terrace screening for weather protection – resulting this area now being counted as GFA;
- The reconfiguration of the residential units and extension of the north east balcony edge;
- The inclusion of the ancillary office space above the existing Theatre into the gross floor area calculation.

It is to be noted that none of these changes involve an increase in the approved overall building footprint.

The modified FSR is summarised in the table below.

FLOOR LEVEL	APPROVED	PROPOSED	Extent of Variation
Carpark	0	0	Nil
Ground Residential	235m ²	263.79m ²	+28.79m ²
Ground Commercial	742.98m ²	783.75m ²	+40.77m ²
First Residential	237.04m ²	247.07m ²	+10.03m ²
First Commercial	357.52m ²	531.34m ²	+173.82m ²
Second Residential	140.09m ²	151.75m ²	+11.66m ²
Second Residential	0	0	0
TOTAL	1712.63m²	1977.7m²	265.07m²



As can be seen in the above table, the main extent of the FSR increase is due to the enclosure of the approved level 1 deck with terrace screening for weather protection, and the inclusion of the ancillary office space on level 1 into the GFA calculation. The approved setback of the level 1 deck/terrace area from the northern boundary remains consistent with the approved northern boundary setback.

Figures 6 and 7 below demonstrate a GFA comparison between the approved and proposed modifications. The GFA comparison plans are provided within **Appendix 3**.

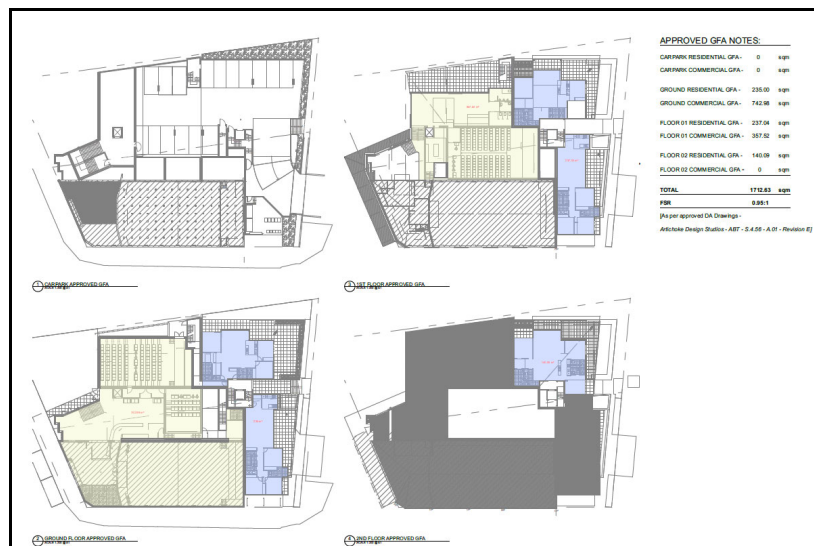


Figure 6: Extract of Approved GFA



Figure 7: Extract of Proposed GFA



As the subject application is a Clause 4.56 Modification Application, a Clause 4.6 Variation Report is not required for the proposed FSR variation. A modification application can be approved even though it would contravene a development standard, and no Clause 4.6 variation is required. The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) identify a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application.

Sections 4.55 and 4.56 of the EP&A Act has a broad power to approve, subject to its own stand-alone tests (such as the substantially the same test, and a requirement to consider all relevant Section 4.15 matters).

Notwithstanding the above, a merits assessment has been undertaken for the proposed FSR variation. Strict numerical compliance is considered to be unreasonable and unnecessary, as the varied FSR continues to be consistent with the objectives of the Floor Space Ratio (FSR) development standard (Clause 4.4), and the objectives of the R2 zone as demonstrated below:

Clause 4.4	
Objectives/Comments	
a) To establish standards for the maximum development density and intensity of land use,	
This is considered more of an introductory statement within the objectives rather than one which describes a particular aim to be achieved through the application of the development standard. This objective is best considered in conjunction with the others below rather than on its own.	
b) To control building density and bulk in relation to site area in order to achieve the desired future character for different locations,	
The proposed amended FSR does not increase building density and bulk from that originally approved.	
The approved future desired character of the site also remains unaltered by the FSR increase in that building setbacks and landscaping remain consistent with that approved. The future desired character is expressed through the LEP provisions which facilitate this precise style of development.	
Taking these factors into consideration, it is evident that the proposed additional FSR will in no way impede the ability of the development to achieve this objective.	
c) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	
The proposed modifications will not cause any adverse environmental effects beyond those that have already been considered and approved under the original consent. As previously mentioned, building setbacks and landscaping remain consistent with that approved. The public domain is retained for enjoyment with the proximity of the development to the open space in adjoining Hunter Park and Avoca Beach will encourage greater use of these facilities which will consequently bring vibrancy to this end of Avoca Beach. The development will increase the opportunity for greater interaction between the public and private domains. Based on the consideration of this objective, compliance with the development standard is unnecessary, as the proposed FSR does not hinder the objective being met.	
d) To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,	
The proposed amendments to the approved FSR does not alter the visual relationship of the approved development to that of the existing character of the area and views enjoyed by surrounding developments. As previously mentioned, view loss was acknowledged in the original assessment as minor, and from adjoining roadways, mainly comprising a loss of views to vegetation.	



<p>The minor FSR increase which remains internal to the approved floor plan layout and does not necessarily alter the approved building footprint will have no greater impact on views from adjoining development, than that which was originally assessed and approved. The approved development and proposed modifications will provide a contemporary form into the composition of the view from surrounding roadways which is not dissimilar in scale or character of the existing theatre and multi – storey residential development within the immediate context.</p>
<p>e) To provide an appropriate correlation between the size of a site and the extent of any development on that site,</p>
<p>The proposed amendments to the FSR remains internal to the approved floor plan layout, thus the size of the site and the extent of development on the site remains the same to that originally approved and it would be unreasonable to require compliance with the development standard to meet this objective.</p>
<p>f) To facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,</p>
<p>The proposed modified development retains its approved building envelope, setbacks, open space and deep soil zones leaving generous space for articulation and modulation of the building design. The building encapsulates significant articulation using a variety of materials. The proposed building is considered to be of a high quality design, and as such, one which will enhance the visual appearance of the area. The roof form comprises various pitches and roof forms to modulate the building ensuring the existing Avoca Beach Theatre building is conserved and 'seen' visually from the public domain within its existing context and setting to that as originally approved. On this basis, the proposed FSR does not hinder or impact upon design excellence and it would be unreasonable to require a compliant FSR to satisfy this objective as the proposed modified development has demonstrated design excellence in its modified form.</p>
<p>g) To ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,</p>
<p>This objective is not applicable as the approved and modified development is located within the R2 Low Density Residential zone.</p>
<p>h) To encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.</p>
<p>This objective is not applicable as the approved and modified development is located within the R2 Low Density Residential zone.</p>
<p>R2 Low Density Residential Zone</p>
<p>Objectives/Comments</p>
<p>• To provide for the housing needs of the community within a low density residential environment.</p>
<p>The proposed amended development will continue to provide for the housing needs of the community and is permitted in the low density residential zone.</p>
<p>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</p>
<p>The proposed amended development will continue to enable other land uses such as the approved entertainment facility which is permitted under the LEP to provide services to the residents and visitors of Avoca Beach.</p>
<p>• To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services.</p>
<p>The non residential uses, being the cinemas and café are not significantly increased by the proposal, with the actual number of cinema seats being greatly reduced. While part of the increase in FSR is attributable to the "enclosure" of the café balcony, this is not a full enclosure, and does not involve any additional bulk.</p>
<p>• To encourage best practice in the design of low-density residential development.</p>
<p>The modified development compliments the low-density residential environment where the subject site is flanked by residential development to the west and east including dense native evergreen vegetation. The approved development and proposed modifications will provide a contemporary form into the composition of the view from surrounding roadways which is not dissimilar in scale or character of the existing theatre and multi – storey residential development within the immediate context.</p>



• **To maintain and enhance the residential amenity and character of the surrounding area.**

The additional FSR proposed, as discussed above, does not arise from any increase in bulk of the building, and as such, does not represent any detriment to the residential character and amenity.

Given the above; it is considered that sufficient planning grounds exist to support the proposed FSR variation. It is unnecessary and unreasonable to enforce strict numerical compliance with the FSR control.

The proposed additional FSR is not considered to be significant given the scale of the approved building footprint and form. Non-compliance with the maximum FSR development standard will not contribute to adverse environmental, social or economic impacts, and will not raise any matter of State or Regional significance.

Given the above, it is considered that an appropriate degree of flexibility should be applied in regards to the maximum Floor Space Ratio (FSR) development standard given the variation being requested, and the fact that the proposed amended development continues to achieve the objectives of the FSR control and R2 Zone.

Clause 5.21 – Flood Planning

The subject site is mapped as flood prone land. A flooding report was prepared by Bewsher Consulting in 2016 to address the extent and impact of flooding on the now approved development. The current development consent is based on this report.

The proposed amendments are considered to be consistent with the provisions of Clause 5.21 as follows:

- The proposed amendments are compatible with the flood function and behaviour on the land;
- The proposed amendments will not adversely affect flood behaviour that results in detrimental increases in flood affectation of other developments or properties;
- The proposed amendments will not affect the safe occupation and efficient evacuation of people;
- The proposed amendments incorporate measures to manage risk to life in the event of a flood; and
- The proposed amendments will not affect the environment or cause avoidable erosion, siltation, destruction of or a reduction in the stability of nearby watercourses.

Flooding is further addressed within Section 4.7 of the Stormwater Management Plan prepared by Northrops within **Appendix 10**.

SEPP 65 – Design Quality of Residential Apartment Development

The proposed amendments to the development continue to be consistent with SEPP 65. A thorough design process has been undertaken to ensure a high quality product is provided. The proposed amendments maintain the original intent of the development respecting its past and origins whilst providing the community with a building that is responsive to the future, evolving as its needs to meet changing social, economic and cultural factors.

A SEPP 65 Design Verification Statement is provided within **Appendix 5**. A response to the Apartment Design Guide (ADG) is provided within **Appendix 6**.



The proposed modifications to the originally approved development will create a high quality residential environment for future residents, with very good amenity well above the ADG requirements.

SEPP BASIX 2004

The proposed amendments to the development continue to be consistent with SEPP BASIX. Compliance with the relevant thermal comfort, greenhouse gas emission and water reduction targets is maintained.

An Amended BASIX Certificate is provided within **Appendix 7**.

SEPP (Resilience and Hazards) 2021 – Chapter 2 Coastal Management

On 1st March 2022, SEPP Coastal Management was repealed and transferred into *State Environmental Planning Policy (Resilience and Hazards) 2021 - 'Chapter 2 - Coastal management'*.

The proposed amendments to the development continue to be consistent with the aims and requirements of Chapter 2. The proposed amendments will not impact on the coastal the coastal use or coastal environmental area in which the site is located and are suitable for the site and the zoning of the land.

ii. The provision of any draft environmental planning instruments,

N/A

iii. Any development control plans,

CCDCP 2.3 – Residential Flat Buildings & Shop Top Housing

Overall, the proposed amendments to the development are consistent with the DCP, noting that the original consent and subsequent amendments were assessed under the previous controls which predated the CCLEP and DCP. As illustrated within the submitted plans, the bulk of the proposed amended scheme is sited within the already approved foot print, and in some cases, has increased some of the setbacks already approved. The exceptions to this are the proposed balconies to Units 4 and 5, in particular, the rear (west facing balconies). In both instances, these balconies are less than the required 6.0m.

In considering the proposed variations, it is to be noted that the western boundary of the site faces Vine Street, which is primarily used for car parking associated with the beach and Surf Club. Additionally, these balconies are consistent with the approved setback for the balconies to Units 1, 2 and 3 which also face Vine Street. Given the nature of the use of Vine Street, and the improvements to the built form offered by the consistent line, it is considered that the proposed variations are supportable.

The remainder of the provisions under the DCP are not deemed as relevant to the consideration of the proposal, given the relatively minor proposed alterations to a scheme which already has variations to this DCP.



CCDCP Chapter 2.5 – Commercial Development

In the case of the subject proposal, full consideration against the requirements of this DCP is not considered as being required, as the nature of the proposed commercial component is not being significantly altered, and the number of cinema seats is actually being reduced. The proposed amendments are of a nature whereby full assessment against the DCP is not warranted.

CCDCP Chapter 2.13 Transport & Parking

The proposed modified development does not generate any additional demand for car parking and does not involve any modification of the car parking layout or vehicle access arrangements previously approved.

CCDCP Chapter 2.14 Chapter 7.2 Site Waste Management

The approved waste area within the basement level has been modified to reflect the current Central Coast Council waste management requirements. A Waste Management Plan is provided within **Appendix 11**.

iiia. Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There is no planning agreement that has been entered into under Section 7.4 relevant to the application.

iv. Any matters prescribed by the regulations,

There are no matters prescribed by the regulations relevant to the application.

b) the likely impacts of the development,

Context and Setting

The proposed amendments will continue to provide a development of a type and form which is consistent with the approved development and with the stated objectives of the R2 zone and the relevant LEP requirements. The amended design will not impact on views. A modern and refreshing built form will continue to be provided, enhancing the streetscape and adding to the revitalisation of the Avoca Beach Theatre site.

Access, Transport and Traffic

The scale of the proposed amendments do not trigger any consideration of access, transport and traffic beyond that which was assessed under the original consent.

Public Domain

The proposed amendments will continue to have a positive impact on the public domain, by providing an impressive architectural built form to Hunter Park in the north and Avoca Drive, in addition to preserving the sites' existing Avoca Beach Theatre building.



The amended landscape design will continue to provide greater visual access to the site, by maintaining the landscape scheme developed and approved under the original consent. The amended landscape plan is provided within **Appendix 4**.

Utilities

The proposed amendments do not trigger any consideration of utilities beyond that which was assessed under the original consent. Minor internal changes to vehicle access and movement in the basement car park is further identified in the amended civil engineering plans prepared by Northrop within **Appendix 9**.

Stormwater, Drainage and Water Quality

The proposed amendments will continue to provide an adequate stormwater management system for the management of all stormwater matters for the development. An amended Stormwater Management Plan prepared by Northrop is within **Appendix 10**.

Views

The proposed amendments will continue to have no impact on the filtered beach and ocean views enjoyed by surrounding residential developments.

Minor building height increase, which is not necessarily over the entire built form as shown on the proposed amended plans, will have no greater impact on views from adjoining development, than of that which was originally assessed and approved.

Flora and Fauna

The proposed amendments will not involve the removal of any additional trees, nor any impact on fauna beyond that already assessed and approved under the original consent.

Natural Hazards

The proposed amendments do not represent any increased risk from natural hazards beyond those already assessed and approved under the original consent.

Social and Economic Impact

Construction of the amended development will continue to strengthen the revitalisation of the Avoca Beach Theatre, and in turn increase the demand on existing and future local business. Furthermore, the development will continue to ensure the conservation of the sites' original theatre and improve upon tourism and entertainment facilities to the area.

The proposed modifications are also consistent with the relevant Directions under the *Central Coast Regional Plan 2036* in that upon completion of the development the housing will be provided within this promenant areas of Avoca Beach and the housing mix of the locality will be increased. This provides for additional population accommodation within walking distance of the shops, services and public transport, and will not adversely impact residential amenity nor create additional demands upon public infrastructure.



The development will continue to benefit the local economy via the creation of jobs during construction, and to operate the theatre complex, thereby further contributing to the activation of that area.

Safety, Security and Crime Prevention

The proposed amendments do not trigger any consideration of safety, security and crime prevention beyond that which was assessed and approved under the original consent.

Building Code of Australia

A BCA Report has been prepared by Blackett Maguire + Goldsmith. The proposed modifications have been assessed against the Deemed to Satisfy (DTS) provisions of the Building Code of Australia (BCA) 2019. The assessment confirms that the proposal is capable of complying with the Building Code of Australia 2019 Amendment 1. Refer to **Appendix 14**.

A Section J report has been prepared by Thermal Performance. The proposed modifications have been assessed against the Deemed to Satisfy (DTS) provisions of the Building Code of Australia (BCA) 2019. The assessment confirms that the proposal is capable of complying with Section J of the Building Code of Australia 2019 Amendment 1. Refer to **Appendix 15**.

c) The suitability of the site for the development,

As originally approved by the Land and Environment Court, the subject site remains suitable for the development. The amended development continues to be consistent with the zoning of the site, the LEP provisions specific to the site, and the intended character of the area.

d) Any submissions made in accordance with the Act or regulations,

As discussed above, it is noted that Council will notify the proposed amendments.

e) The public interest,

It is considered that the amended development continues to be in the public's interest in that it will develop an existing underutilised allotment, whilst ensuring the preservation of the existing Avoca Beach Theatre. The construction and occupation of the building will have numerous social benefits in terms of job creation and support for local business as well as providing an additional modern commercial and residential development within walking distance of Avoca Beach. Taking these factors into consideration; the amended development will continue to be in the public's interest.



5.0 Conclusion

Having regard for the provisions of Section 4.56 of the EP&A Act, it is considered that the amended proposal is substantially the same development as that originally approved by the Land and Environment Court.

The proposed amendments comply with all relevant planning provisions of the *Central Coast Local Environmental Plan 2022* (LEP), (with the exception of the maximum Building Height and Floor Space Ratio (FSR) development standards), the *Central Coast Development Control Plan 2022* (DCP); and remain consistent with the variations approved as part of the original consent. In this case the proposed amendments will allow for the delivery of the development, by providing a more efficient, liveable and viable development, whilst ensuring the conservation of the existing Avoca Beach Theatre.

The proposed amendments has been developed in accordance with the heads of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is considered to warrant approval.

Council is therefore requested to modify development consent DA/42661/2012 in the manner identified within the report.



Appendix 1

DEPOSITED PLANS



Appendix 2

CERTIFICATE OF TITLE



Appendix 3

PROPOSED AMENDED ARCHITECTURAL PLANS



Appendix 4

PROPOSED AMENDED LANDSCAPE PLANS



Appendix 5

SEPP 65 DESIGN VERIFICATION STATEMENT



Appendix 6

SEPP 65 APARTMENT DESIGN GUIDE REPORT



Appendix 7

AMENDED BASIX CERTIFICATE



Appendix 8

COUNCIL'S RECORD OF PRE-DEVELOPMENT ADVICE



Appendix 9

CIVIL ENGINEERING PLANS



Appendix 10

STORMWATER MANAGEMENT PLAN



Appendix 11

WASTE MANAGEMENT PLAN (AMENDED)



Appendix 12

INTERPRETATION PLAN HERITAGE SIGNIFICANCE



Appendix 13

ARCHITECTURAL DESIGN STATEMENT



Appendix 14

BCA REPORT



Appendix 15

SECTION J REPORT

7 October 2008

Department of Lands

Land Administration & Management
Property & Spatial Information

NORBET ENTERPRISES PTY LIMITED
SUITE 5, LVL 2, KINDARUN HOUSE
1 PACIFIC HWY
WYONG NSW 2259

1 Prince Albert Road
Queens Square
SYDNEY NSW 2000
GPO Box 15
SYDNEY NSW 2001
DX 17 SYDNEY
T (61 2) 9228 6713
F (61 2) 9233 4357
www.lands.nsw.gov.au

Our Ref: AE250289

NOTICE OF CAVEAT

Attached is a copy of a caveat lodged in Land and Property Information New South Wales affecting land of which you are the registered owner.

The caveator claims an estate or interest in the land and seeks to protect that estate or interest. The estate or interest claimed is specified in the caveat.

The caveat will remain on title until withdrawn or otherwise disposed of. It does not enable the caveator to deal in any way with the land; the legal effect is to prohibit the Registrar-General from recording certain dealings with the land while the caveat is in force.

Should you wish to question the right of the caveator to lodge the caveat, or if you require further guidance in the matter, you should consult with your Solicitor or Licensed Conveyancer.

For any further inquiries relating to this matter please contact Telephone Inquiry Section, on (02) 9228 6713 between the hours of 8.30 am and 5.00 pm, Monday to Friday.

Yours sincerely
Warwick Watkins
Registrar-General



Property:

No's 69 & 71 Avoca Drive, Avoca Beach Lot 140 DP 9359 & Lot 651 DP 16791

Visual Impact Analysis - Avoca Beach Picture Theatre.

Section 4.56 Modification Application - Modification of DA42661/2012

Further Comment by Dr Philip Pollard FRAIA MPIA



I refer to the package of architectural documentation prepared by CKDS Architects, dated 14/09/2023 which I understand is the basis of the amended proposed s4.56 application currently under consideration by the Consent Authority.

I have reviewed the revised proposal, which now involves a lesser increase to the overall maximum height of the development of an additional 245mm above the previously approved development. The current proposal, apart from this reduction in height of the screening for plant, remains otherwise as illustrated in the photomontages reproduced in my VIA dated 11 April 2023.

As I noted in that analysis, the view impacts arising in relation to the two properties nominated by Council – being 51 and 72A Avoca Drive, were accurately modelled and photomontages prepared in accordance with the LEC guidelines, and were considered to be minor. The removal of the plant-area screen would bring about a slight reduction to the identified minor visual impact, and does not bear upon the accuracy of the conclusions I drew in respect to the overall view loss and visual impacts of the proposal. I also note that, without entering enclosed private properties, I have attended all of the sites considered in Dr Lamb's VIA, found no basis of disagreement with Dr Lamb's VIA report conclusions.

The proposal is in my opinion a positive addition to the Avoca Beach area, and sits comfortably within its attractive context, while avoiding unreasonable impacts.



Dr Philip Pollard FRAIA MPIA

Nominated Architect 5241

Director, AMENITY urban & natural environments Pty Ltd

17 May 2024



Land and Environment Court

New South Wales

Case Name:	Norman McDonald & Anor v Central Coast Council
Medium Neutral Citation:	[2017] NSWLEC 1207
Hearing Date(s):	21-24 February 2017
Date of Orders:	18 April 2017
Decision Date:	18 April 2017
Jurisdiction:	Class 1
Before:	O'Neill C
Decision:	<ol style="list-style-type: none"> 1. The appeal is upheld. 2. Development Application No. 42661/2012 for proposed alterations and additions to the existing Avoca Beach Theatre for a mixed use development, at 69-71 Avoca Drive, Avoca Beach, is approved, subject to the conditions of consent at Annexure "A". 3. The exhibits, other than exhibits 1, B F and L, are returned.
Catchwords:	DEVELOPMENT APPLICATION: alterations and additions to the Avoca Beach Theatre; mixed use development; impact on the heritage qualities and character of the Avoca Beach Theatre; parking.
Legislation Cited:	Environmental Planning and Assessment Act 1979 Land and Environment Court Act 1979 Heritage Act 1977
Cases Cited:	BGP Properties v Lake Macquarie (2004) 138 LGERA 237
Category:	Principal judgment

Parties: Norman Augustus McDonald Hunter and Beth Janine Hunter (Applicant)
Central Coast Council (Respondent)

Representation: Counsel:
Mr P Tomasetti SC with Ms A. Hemmings barrister (Applicant)
Mr M. Staunton barrister (Respondent)
Solicitors:
Conditis Lawyers (Applicant)
Marsdens Law Group (Respondent)

File Number(s): 2016/155633

JUDGMENT

- 1 COMMISSIONER: This is an appeal pursuant to the provisions of s 97 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. 42661/2012 for proposed alterations and additions to the existing Avoca Beach Theatre for a mixed use development (the proposal) at 69-71 Avoca Drive, Avoca Beach (the site) by Central Coast Council (the Council).
- 2 The appeal was subject to mandatory conciliation on 18 July 2016, in accordance with the provisions of s 34 of the *Land and Environment Court Act 1979* (LEC Act). As agreement was not reached during the conciliation phase, the conciliation conference was terminated on 22 July 2016, pursuant to s 34(4) of the LEC Act.
- 3 Leave was granted by the Court on 16 September 2016 for the applicant to rely on an amended proposal. Leave was granted by the Court at the commencement of the hearing in court for the applicant to rely on a further amended proposal incorporating two minor amendments (the proposal).

Issues

- 4 The Council's contentions can be summarised as:
 - The development application should be refused because the proposal will have an adverse impact on the heritage character and qualities of the Avoca Beach Theatre.
 - The development application should be refused because the proposal provides inadequate car parking on-site.

- The terms of the Voluntary Planning Agreement between the Applicant and the Respondent dated 15 September 2006 as varied by Deed of Agreement dated 22 January 2007 (collectively 'the VPA') regarding the provision of 29 car spaces to be sealed and marked in the South End car park be given no weight in determining the contention that the proposal provides inadequate car parking.
 - The development application should be refused because the proposal is not satisfactory when assessed against the matters for consideration in clause 8 of State Environmental Planning Policy No 71 – Coastal Protection ("SEPP 71").
- 5 Council's contentions regarding flooding were addressed by the agreement of the flooding engineering experts (exhibit 8) to Council's satisfaction.

The site and its context

- 6 The site consists of two lots, Lot 140 DP 9359 and Lot 651 DP 16791, on the northern side of Burns Street, Avoca Beach, between Avoca Drive and Vale Street, with a total site area of 1802.1sqm. Hunter Park is on the northern side of the site.
- 7 The western lot contains the existing Avoca Beach Theatre and ancillary structures, constructed in 1951 and the eastern lot contains a weatherboard cottage.
- 8 The site is located within a natural amphitheatre at the base of a steep escarpment and it is visible from a number of locations in the area.
- 9 The site is located within a coastal township, adjoining low and medium density residential development, open space and commercial development to the north and adjacent to the beach.

The proposal

- 10 The proposal comprises the demolition of an existing cottage and ancillary buildings; retention of the existing cinema building including the interiors; and construction of a three level building containing basement car parking for 14 vehicles, three additional cinemas (cinema 2: 196 seats; cinema 3: 31 seats, cinema 4: 71 seats, exhibit F), foyer, café, amenities and five 3 bedroom residential units.

Planning framework

- 11 State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71) is a relevant consideration as approximately 20sqm of the site in the north-eastern corner is located within the 100m high water mark of Avoca Beach (exhibit E, volume 2, f 260).
- 12 SEPP 71 includes the following aim:
 - (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area
- 13 The relevant matters for consideration, at cl 8 of SEPP 71, are:
 - (d) the suitability of development given its type, location and design and its relationship with the surrounding area,
 - (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- 14 The Coastal Design Guidelines for NSW (exhibit G) includes the following relevant guidelines for appropriate buildings in a coastal context:
 2. Reinforce the clarity of the settlement structure with new buildings that are appropriate in terms of location, uses, scale, height and site configuration.
 4. Consider the appropriateness of new buildings within the whole streetscape, rather than each building as a stand-alone object.
 6. Ensure buildings address the street by providing direct and on-grade entries to the street for residential, commercial and retail purposes.
- 15 Gosford Council Local Environment Plan 2014 (LEP 2014) contains a savings provision, at cl 1.8A, for development applications made before the commencement of the plan and not finally determined. The development application was lodged in 2012, before the commencement of LEP 2014.
- 16 The site is zoned 2(f) Residential (Beach Frontage) pursuant to the Gosford Planning Scheme Ordinance (GPSO). The proposal is not permissible in the zone, however, it is permissible pursuant to an enabling clause in the GPSO at cl 49DN, inserted by the making of Gosford Local Environment Plan No 456 (LEP 456) on 12 October 2007. Clause 49DN is as follows:

49DN Avoca Beach Theatre

 - (1) This clause applies to Lot 140, DP 9359 and Lot 651, DP 16791, Avoca Drive, Avoca Beach, as shown edged heavy black on the map marked

"Gosford Local Environmental Plan No 456" deposited in the office of the Council.

(2) Development may, with development consent, be carried out on land to which this clause applies for the purpose of a residential flat building, a place of assembly, an art gallery or a restaurant.

(3) The maximum floor space ratio for the land to which this clause applies is 1:1.

(4) The maximum height for a building erected on the land to which this clause applies is 10 metres, except as provided by subclause (5).

(5) The consent authority may consent to development that exceeds the maximum height specified in subclause (4) if it is satisfied that any part of a building that is to exceed the maximum height:

- (a) is to be used for cinema or theatre purposes, and
- (b) is an integral part of the design of the building.

(6) Strata subdivision is permissible, with development consent, on the land to which this clause applies.

(7) The consent authority must not grant development consent to development on land to which this plan applies:

(a) unless the development application has been referred for assessment to an Independent Design Review Panel appointed in consultation with the Director-General of the Department of Planning, and

(b) except with the concurrence of the Director-General.

(8) The consent authority must not grant development consent to development on land to which this plan applies unless it has taken into consideration the following:

- (a) the assessment of the Independent Design Review Panel of the development application,
- (b) whether the proposed development retains the existing theatre building,
- (c) whether the design of the proposed development complements the heritage qualities of the existing theatre building,
- (d) whether the proposed development provides a high standard of urban design and architectural quality, including the interface between the development and the adjoining public park,
- (e) whether the design of the proposed development is appropriate for the location of the land in the coastal zone,
- (f) whether adequate car parking is provided,
- (g) whether the proposed development provides measures to conserve water usage and to increase water efficiency.

(9) Before granting concurrence under this clause, the Director-General must consider the assessment of the Independent Design Review Panel in relation to the following:

- (a) whether the proposed development retains the existing theatre

building,

(b) whether the design of the proposed development complements the heritage qualities of the existing theatre building,

(c) whether the proposed development provides a high standard of urban design and architectural quality, including the interface between the development and the adjoining public park,

(d) whether the design of the proposed development is appropriate for the location of the land in the coastal zone.

(10) The consent authority is not required to comply with subclauses (7) and (8) (a) if the Director-General certifies in writing that the development is of minor significance.

(11) This clause has effect despite any other provisions of this Ordinance.

(12) In this clause:

coastal zone has the same meaning as in the Coastal Protection Act 1979.

- 17 The Director-General's concurrence to the development application was given on 22 January 2014 (exhibit E, volume 2, ff 299-300). Notwithstanding this, the parties agreed that the Court has power to grant consent pursuant to s 39(2) of the LEC Act.

- 18 The following relevant definitions are included in the GPSO:

"Place of assembly" means a public hall, theatre, cinema, music hall, concert hall, dance hall, drive in theatre, open air theatre, music bowl or any other building of a like character used as such and whether used for the purposes of gain or not, but does not include a place of public worship, an institution or an educational establishment.

"Shop" means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause or a building or place used for a purpose elsewhere defined in this clause.

- 19 The following mandatory considerations are included in the GPSO, at cl 10(3):

(3) The Council must not grant consent for development on land within a zone unless it has taken into consideration the objectives of the zone and the consistency of that development within those objectives as well as the objectives of the Local Government Act 1993 relating to ecologically sustainable development.

(4) The Council must not grant consent for development unless it has taken into consideration the character of the development site and the surrounding area, where, for the purpose of this provision, character means the qualities that distinguish each area and the individual properties located within that area.

- 20 The aims of LEP 456 are:

- (a) to enable the land to which this plan applies to be developed for a mixed-use commercial and residential development, and
- (b) to ensure that any future development of that land retains the existing Avoca Beach theatre building, and
- (c) to provide for the establishment of an independent panel to provide advice to the consent authority about development applications relating to the land.

- 21 Clause 2 of LEP 456 removes the following matter from the table to cl 49E in the GPSO:

Part Lot 140, D.P. 9359, Avoca Drive, Avoca Beach, as shown edged heavy black on the map marked "Gosford Local Environmental Plan No. 388" deposited in the office of the Council	Outdoor cinema
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- 22 The site is zoned R2 pursuant to LEP 2014. The objectives of the R2 zone are as follows:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that development is compatible with the desired future character of the zone.
- To encourage best practice in the design of low-density residential development.
- To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.
- To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.

- 23 The proposal is not permissible in the zone, however, it is permissible pursuant to an enabling clause in LEP 2014 at cl 2.5, as follows:

2.5 Additional permitted uses for particular land

- (1) Development on particular land that is described or referred to in Schedule 1 may be carried out:
- (a) with development consent, or
 - (b) if the Schedule so provides—without development consent,
- in accordance with the conditions (if any) specified in that Schedule in relation to that development.

(2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.

Schedule 1 Additional permitted uses

(Clause 2.5)

1 Use of certain land at Avoca Drive, Avoca Beach

(1) This clause applies to land at Avoca Drive, Avoca Beach, being Lot 140, DP 9359, and Lot 651, DP 16791, identified as "Avoca Beach Theatre" on the Additional Permitted Uses Map.

(2) Development for the purposes of a residential flat building, an entertainment facility, an information and education facility and a restaurant or cafe is permitted with development consent.

(3) Development for the purposes of an entertainment facility may exceed the maximum height shown for the land on the Height of Buildings Map if the consent authority is satisfied that any part of the building that exceeds that height is an integral part of the design of the building in its context.

(4) Development consent must not be granted to development on land to which this clause applies unless:

(a) the design of the building or alteration has been reviewed by a design review panel, and

(b) the concurrence of the Director-General has been obtained.

24 Development Control Plan No 111 (DCP 111) applies to the proposal. The purpose of the DCP 111 at 1.3 is to ensure that sufficient, well designed on-site parking provisions are made in all new developments and when changes occur to the existing use/developments and when changes occur to existing developments. The development standards in DCP 111 are guidelines assumed to meet the objectives of an element, at 1.5. Where in the opinion of Council, an application satisfies the objectives set out in this plan, Council may grant consent to the application notwithstanding that one or more of the development standards are not complied with.

25 The relevant objective of DCP 111 is to provide parking facilities which are convenient and sufficient for the use of service groups, employees and visitors, at 1.6(c) of DCP 111.

26 In determining the car parking requirements for a development proposal, the following principles shall be followed, at 2.1 of DCP 111:

(a) The minimum standards as set out in this plan;

(b) The likely demand for on-site parking to be generated by the development;

- (c) The availability of public transport in the vicinity to service the likely demands to be generated by the development;
 - (d) Traffic volumes on the surrounding street network, including, where relevant, likely future traffic volumes;
 - (e) The probable mode of transport of the users of the development;
 - (f) The likely peak usage times of the development.
- 27 At 2.2 Variations and Compliance of DCP 111, on-site parking will be required in accordance with the standards of the plan except where good cause can be shown as to why strict compliance is unnecessary and requests for variation must be supported by evidence. A separate calculation is to be made for developments incorporating different categories of uses, at 2.3 of DCP 111.
- 28 The Council submits that the proposal is closest to the description in 2.3.2 of DCP 111, an existing building to be replaced by a new building and car parking is to be calculated for the new building area and use.
- 29 The applicant submits that the proposal is in fact a renovation of an existing building, at 2.5, where nothing in the plan requires the provision of additional parking where an existing building is being renovated for this existing use. The applicant submits that embedded in DCP 111 is the concept of a cash contribution in lieu of the provision of some or all of the parking being provided on-site in a commercial centre, at 2.6.

Public submissions

- 30 Seven residents provided evidence at the commencement of the hearing on-site, three objecting to the proposal and four in support of the proposal. Those providing evidence were selected from a very large group of local residents in attendance at the commencement of the hearing on-site. The evidence objecting to the proposal can be summarised as:
- The proposal is an over development of the site;
 - The height of the proposal is inconsistent with the established character of the southern end of Avoca Beach;
 - The proposal will exacerbate the parking shortfall in the vicinity of the site;
 - The intersection of Avoca Drive and Burns Street is dangerous and the mixed use development will result in more service vehicles and patrons using this intersection;

- A single theatre is appropriate for the location and a multi-theatre complex is inappropriate;
 - The proposal will detrimentally impact on the heritage significance of the Avoca Beach Theatre.
- 31 The objection raised by a resident objector regarding the possibility of church services being held at the Avoca Beach Theatre is not made out, as a 'place of assembly' as defined by the GSPO does not permit the development to be used as a place of public worship.
- 32 The evidence in support of the proposal can be summarised as:
- The Avoca Beach Theatre provides an important venue for the local community to meet;
 - The Avoca Beach Theatre is an arts venue which shows the latest films as well as live theatre and performances;
 - The continued viability of the Avoca Beach Theatre is dependent on the proposal.
- 33 Council tendered 21 folders of submissions made by resident objectors in relation to the proposal originally notified by the Council. The objections to this earlier iteration of the proposal can be summarised as (exhibit 3, volume 7, f 2737):
- The mixed use development is not permissible as only one use may be approved from the four listed uses in cl 49DN of GPSO;
 - The development does not comply with the objectives of the GPSO;
 - The development does not comply with the requirements for height, FSR, heritage quality, parking, urban design, disabled access and measures to conserve water usage;
 - Church services and religious conventions may be proposed;
 - Storage areas should be reconfigured as part of a redesign incorporating sufficient on-site parking;
 - No proposed strata or consolidation of lots is proposed;
 - The Statement of Environmental Effects is insufficient.

Expert evidence

- 34 The Council relied on the expert evidence of Ms Jennifer Hill (heritage), Mr Drew Bewsher (flood engineering) and Mr Graham Pindar (traffic and parking).

- 35 The applicant relied on the expert evidence of Mr Robert Staas (heritage), Dr Daniel Martens (flood engineering) and Mr Tim Rogers (traffic and parking).

Consideration

Impact of the proposal on the heritage qualities of the Avoca Beach Theatre

- 36 The Council contends that the proposal will have an adverse impact on the heritage character and qualities of the Avoca Beach Theatre. Clause 49DN(8) of GPSO requires that the consent authority must not grant development consent to development on land to which the plan applies unless it has taken into consideration whether the design of the proposed development complements the heritage qualities of the existing theatre building.
- 37 The heritage experts agreed on the following:
- The continued association of the Avoca Beach Theatre with members of the Hunter family is a positive heritage outcome in relation to the identified historic associations of the place;
 - The proposal will, by virtue of its continued use, reinforce the historic associations and social significance of the site as a local cinema owned and operated by members of the Hunter family and will remain an important focus of social activity in the town, meeting the requirements of the planning instruments. In this regard, there will be no loss of historical associations, continued use or social regard within the community;
 - The construction and structure of the original Avoca Beach Theatre building has low potential for yielding any significant cultural or technical evidence that is not readily available elsewhere;
 - The current linear parapet is a later reconstruction of the original stepped parapet;
 - The ventilation openings to either side of the theatre have been infilled;
 - The current 'Art Deco' style doors to the cinema foyer are not an original decorative feature of the original building, but replaced earlier doors;
 - The original entry foyer has been enlarged by the removal of walls partitioning off commercial tenancies that were part of the original construction and operation of the place;
 - The extended awning, timber stair, deck and roof addition fronting Hunter Park are later modifications of the original building with no particular heritage significance;
 - The principal view to the original Avoca Beach Theatre is the diagonal view along Avoca Drive (prominent location on a major intersection);

- Hunter Park was established in 1974 by the removal of a number of substantial houses;
 - There are no listed heritage items or conservation areas at Avoca Beach;
 - At the time of construction, the Avoca Beach Theatre was located within a context of single storey housing and views were only available above the houses, as evident in the 1954 photo;
 - Since the establishment of Hunter Park wider views of Avoca Beach Theatre have been available;
 - The original simplified vernacular form of the theatre is retained;
 - The original elevation of the Avoca Beach Theatre is retained to Burns Road and at the intersection of Avoca Drive;
 - The existing public entry to the theatre is generally retained;
 - The existing public entry to the theatre, its awning and the foyer are retained substantially intact;
 - The interiors of the building are of little aesthetic significance and there is little original fabric remaining, notwithstanding this, the internal character of the existing theatre is generally retained by the proposal;
 - Demolition of the other structures on the lot adjoining the subject site, being a cottage, a shed and an outbuilding do not impact on the heritage significance to the values identified for the Avoca Beach Theatre;
 - The new development retains a substantial outdoor area for film viewing that interprets the early history of the undertaking commenced by the original owners in Cliff Avenue.
- 38 The heritage experts disagreed on the visual impact of the proposal on the Avoca Beach Theatre.
- 39 According to Ms Hill, the design of the proposal does not respond to the aesthetic heritage values of the existing building, as it is not compatible with the scale and simplicity of the existing Avoca Beach Theatre. In her view, the scale of the proposed entry foyer to the northern face of the existing building, which includes stair access to the new cinemas and upstairs foyer, obscures the simple form of the Avoca Beach Theatre and does not provide adequate separation to the heritage item. It should respond to the existing low scale character of the original, as a grand foyer is not necessary. Views from Vine Street and Hunter Park will be substantially altered by the proposed new development, as the proposal for substantial additions to the rear of the existing building and on the northern side extending onto the adjoining site will

impact on the heritage qualities of the existing building. In Ms Hill's opinion, the social value of the Avoca Beach Theatre is embodied in the building.

- 40 According to Mr Staas, the design of the proposal has appropriately responded to the limited aesthetic heritage values of the existing building and maintains its prominence when viewed from the primary viewing location at the intersection in a manner that is appropriate for its level of cultural significance. In his view, it is not necessary for the new design to relate specifically to the 'simple vernacular form' of the theatre in circumstances where this is not identified as being of any heritage value. The principal values of the place have been clearly identified as historical and social rather than aesthetic. Mr Staas does not consider that the view from Hunter Park of the existing building is an essential part of any historic setting associated with the Avoca Beach Theatre or that it was intended to be seen from that location. The scale of development permissible under the amending LEP 456 envisaged that the stand-alone character of the existing building would not be retained.
- 41 On 9 March 2015, the then Minister for Planning made an Interim Heritage Order (IHO) under s 24 of the Heritage Act 1977 over the property known as "Avoca Beach Cinema" at 69 Avoca Drive, Avoca Beach (exhibit E, volume 2, f 303). On 9 March 2016 the IHO over the property expired. A letter from the Hon. Mark Speakman MP, Minister for Heritage to the Council, dated 24 February 2016, relevantly includes the following in relation to the IHO (exhibit E, volume 2, ff 351-352):
- On the Heritage Council's recommendation, IHO 127 was made over the Avoca Beach Theatre for a period of 12 months commencing 9 March 2015. This was to allow time for an investigation of the theatre's potential local heritage significance. The theatre had been nominated for listing on the State Heritage Register (SHR) in 2013 but the Heritage Council's State Heritage Register Committee found that the theatre was not of state significance and recommended that the SHR nomination should not proceed.
- 42 The letter also confirms that the Avoca Beach Theatre was included in the Community Based Heritage Study for Gosford City Council. The Gosford Heritage Inventory sheet dated 23 June 2015 for the Avoca Beach Theatre includes the following statement of significance (no author noted) (exhibit E, volume 2, f 343):

Significant to the historical development of Avoca Beach, the building and function are highly valued by the local community of Avoca Beach and surrounds, as an early place of entertainment and the theatre is prominently located on a major street junction, complementing the streetscape with the traditional but rudimentary façade, functional awning and decorative elevation.

- 43 The National Trust's non-statutory listing of the Avoca Beach Theatre includes the following (exhibit E, volume 2, f 236):

Avoca Beach Theatre has been in continuous operation as a cinema, and theatre, since 1951. The principal significance of the cinema lies in its social and cultural contributions to the community life in Avoca Beach.

The cinema is of unusual interest, having developed initially as an outdoor cinema and continuing to screen films outdoors, intermittently, to the present.

The Theatre has a strong association with Norman Hunter Snr (and Mervyn Hunter) whose family has played an important and continuous role in Avoca beach community and business life, and built the theatre.

The Theatre has remained in the ownership of the Hunter family until the time of listing. The Theatre is of historical significance as it was constructed and decorated by local residents on a partially voluntary basis.

- 44 At its meeting on 5 November 2002, the Extraordinary Review Committee of the Council resolved to delete the Avoca Beach Theatre as an item of environmental heritage, with the heritage value of the property being taken into consideration as part of the process (exhibit E, volume 2, ff 224-225).
- 45 The Avoca Beach Theatre is not listed as an item of environmental heritage in Schedule 8 of the GPSO or in Schedule 5 of LEP 2014. The site is not within the vicinity of a heritage item, nor is it within a heritage conservation area.
- 46 Sub-clause 49DN(8) of the GPSO requires consideration of whether the proposed development retains the existing theatre building and whether the design of the proposed development complements the heritage qualities of the existing theatre building.
- 47 I accept the agreement of the experts that the existing building is retained by the proposal.
- 48 I accept their agreement that the existing building does not demonstrate aesthetic characteristics worthy of the threshold for a local heritage listing. The agreement of the heritage experts regarding the limited heritage value of the Avoca Beach Theatre is broadly consistent with a number of heritage

assessments of the Avoca Beach Theatre previously carried out (exhibit E, volume 2, ff 239, 329).

- 49 I accept Ms Hill's evidence that the social value that the community place on the Avoca Beach Theatre is embodied in the physical fabric of the existing building, although I would add that social value for a place focuses primarily on the experiential qualities of that place and not primarily on the physical fabric. Social value is a collective attachment to a place, embodying meanings important to that community. The key conservation issue with a place of social value is to ensure its continuing ability to evoke the associations, qualities and memories of that place, where the intactness of the original fabric is less important than it would be if the building was assessed as having architectural merit and demonstrated aesthetic characteristics worthy of meeting the threshold for local heritage listing. For this reason, I accept Mr Staas' evidence that seeing the existing building in the round is not a priority, as the substantial additions to the northern and western sides of the existing building will not necessarily diminish the esteem felt by the community for the Avoca Beach Theatre, because the existing important elements of the fabric of the building associated with its value are being retained, including, the dominant view of the Avoca Beach Theatre from the Avoca Drive intersection; the entry and foyer from Avoca Drive and cinema 1. I am satisfied that the design of the proposed development complements the heritage qualities of the existing theatre building.

Parking requirements

- 50 The proposal includes 14 car parking spaces in the basement; 9 for the residential apartments and 5 for the cinema use.
- 51 The Council contends that the table in cl 3.2 of DCP 111 provides for the following car parking requirements and the shortfall in car parking spaces on-site is 33 spaces:

Element	Parking Rate	Area	Required	Proposed
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Cinemas	1 per 10 seats	317 new seats	32	5
Foyer	Ancillary use	-	0	0
Café/terrace	1/16sqm	90sqm	6	0
Residential units	1.5 per unit	5 units	8	8
Residential visitors	0.2 per unit	5 units	1	1

52 The parties agree that the existing cinema has 296 seats and the Council has calculated the parking requirements based on the number of additional seats in the three new cinemas. (I note that the plans in exhibit F list the maximum occupancy of the three new theatres as a total of 298 seats, which result in 30 parking spaces being required for the cinemas, and existing cinema 1 as 315 seats).

53 The applicant contends that the table should be as follows:

Element	Parking Rate	Area	Required	Proposed
Cinemas	1 per 10 seats	113 new seats	12	5
Foyer	Ancillary use	-	0	0

Café/terrace	1/16sqm	90sqm	0	0
Residential units	1.5 per unit	5 units	8	8
Residential visitors	0.2 per unit	5 units	1	1

54 According to the applicant's Statement of Facts and Contentions in Reply (exhibit B), the net increase in cinema seats is 113 as the existing consent is for 500 seats (exhibit E, volume 3, f 586) and the net increase reflects the total number of seats in excess of the approved 500. The applicant contends that there is an existing approved café, so the new café should not be required to provide additional car parking spaces. The applicant submits that the total requirement for on-site car parking under DCCP 111 is 21 spaces; which is satisfied by the 14 spaces provided and the 29 spaces allowed for in the terms of the VPA, giving a surplus of 22 spaces.

55 The traffic experts agreed on the following:

- The recent traffic surveys (exhibit 5, attachment 2) commissioned by the applicant demonstrate that the maximum 33 space deficiency from the expanded cinemas under Mr Roger's assumptions can be accommodated either on-street or within the nearby car parks outside the summer school holiday period. If this maximum demand were to occur, it would rely mainly on the car spaces within the extended South Park car park during the day. At night, the on-street parking and adjacent car parks have ample capacity to accommodate the cinema parking demands. This resolves the parking issue for all times outside of summer school holiday periods.
- The additional surveys (exhibit 6, attachments) undertaken after the first joint report by the experts demonstrate that there is ample spare parking capacity within the areas surveyed on Saturdays during the summer school holiday period, such that the expanded cinema demands can be readily met.
- The additional Sunday surveys show a high parking utilisation associated mainly with beach activity prior to 4pm. At peak times, demand overflows into informal parking areas, not previously expected to be relied upon, by beach patrons. The overflow effect is not significant in the context of the analysis. There remains unused on-street parking during the peak demand period, which could be utilised by cinema patrons.

- The requirement for 33 car parking spaces in the vicinity of the proposal is a worst case scenario at times of highest demand for the proposal and consistent with the requirements of DCP 111. The experts agreed that cinema occupancy was not used to assess parking requirements.
 - The Vine Street car park is likely to be used by cinema patrons during the evening when there is ample spare capacity in the car park and cinema demand is at its highest. The experts agreed that 40% - 60% of the 33 car parking spaces will be accommodated by the Vine Street car park during the evenings.
 - The available parking spaces in the public domain in the vicinity of the proposal satisfy Council's identified short fall of 33 parking spaces, subject to constraining the capacity of the cinemas to 75% before 4pm on Sundays during summer. There is sufficient parking available in the vicinity of the site to accommodate the demands of a 75% maximum occupancy of the proposal at the peak Sunday summer times during the early afternoon.
- 56 Mr Roger's agreement that the 33 car parking spaces are available in the vicinity of the site at the times of high demand is based on an understanding that the relevant terms in the VPA cannot be relied upon.
- 57 The experts disagreed on whether the calculation of additional cinema seats should be based on the existing approval for 500 seats or the actual number of 296 seats in the existing cinema. I prefer Mr Roger's assumption because the proposal is for an intensification of the existing use and the number of additional new seats in cinemas 2, 3 and 4 is a total of 298 (exhibit F). I do not accept that the currently unused capacity within the existing consent for 500 seats in cinema 1 can be credited towards the proposed seats in additional and new cinemas; because the proposal is likely to attract more patrons when different films are being shown in the three new cinemas than it would with those 500 seats accommodated in cinema 1 at a single film showing. However, nothing turns on this finding, as the agreement of the traffic experts is based on the Council's calculation of the shortfall of 33 car parking spaces required.
- 58 I accept Council's version of the car parking requirements for the site based on DCP 111 and consequently I accept that the proposal has a shortfall of 33 car parking spaces. I do not accept the applicant's submission that the proposal is a renovation under 2.5 of DCP 111, as the proposal is for the intensification of the cinema use as part of a mixed use development. I accept Council's submission that the car park works envisaged by the VPA do not add any additional car parking spaces to the South End car park. I accept the

agreement of the experts that the shortfall of 33 car parking spaces can be accommodated in the public domain, within the vicinity of the proposal, by utilising the existing available capacity of the existing South End car park, the Vine Street car park and the on-street car parking, at all times other than Sundays during the summer school holiday period before 4pm.

- 59 I accept the agreement of the experts that a condition be imposed on the consent to limit the patronage of the cinema component of the proposal to 75% on Sundays during summer school holidays before 4pm. The parties are to agree on a suitable and enforceable mechanism for imposing the limitation, to be included in condition 6.12. I accept the agreement of the parties to a trial period without the limitation during the first school summer holidays with a requirement for a parking assessment to be carried out.

The VPA

- 60 The Council contends that in taking into consideration the terms of the VPA in accordance with s 79C(1)(a)(iia) of the EPA Act, the VPA be given no weight in the determination of the development application, where the applicant seeks to rely on it for the satisfaction of the parking requirement. It is the Council's submission the rezoning of the site as a result of the VPA is a substantial benefit already obtained by the applicant.
- 61 The original Deed of Agreement was made on 15th September, 2006 and amended by a Deed of Agreement made 22 January 2007 (collectively 'the VPA'). The relevant terms of the VPA provide for the following:
- The Council to forward a Draft Local Environmental Plan (DLEP) to the Department of Planning with a request for the Minister to make to the plan. The purpose of the DLEP is "to seek to change the [GPSO] to permit a particular development (which would otherwise be prohibited under the current zoning of the Land in the deemed Environmental Planning Instrument) to be carried out on the Land which incorporates the existing Avoca Beach Theatre; it consists of two new cinemas, a cultural gallery, a restaurant, 5 residential units and basement parking for 15 cars and a loading dock and associated works." (Recital D, VPA, volume 3 of exhibit E, f 451).
 - The payment of a monetary contribution by the Developer in the amount of \$500,000 for the public purpose of the provision of public amenities; "the construction and enhancement of car parking facilities near the development in South End Park, Avoca" and "the embellishment and beautification of the adjoining public open space known as Hunter Park, Avoca, as depicted on the

plan annexed hereto" (the 'car park and embellishment works') (Recital E, VPA, Vol 3 of exhibit E, f 451). "The owners have volunteered \$500,000 to Council for the embellishment of Hunter Park and provision of required (29) parking spaces in South End Park as well as the dedication of land 1.2m wide along the Vine Street frontage." (Recital F(E), VPA, volume 3 of exhibit E, f 453).

- Council amended the DLEP prior to the VPA to require the proposed building to be setback 0.6m from the Avoca Drive boundary to retain the prominence of the north western corner in the existing cinema and to exhibit a clear visual differentiation between the existing cinema (Recital F(B), VPA, volume 3 of exhibit E, f 452).
 - The Council agrees to expend within a period of 3 years of payment by the applicant of the sum of \$500,000 upon the car park and embellishment works; \$300,000 on the embellishment works and \$200,000 on the carpark. If the sum or any portion of the sum is not spent within that period, the Council will return it or that portion to the Applicant whereupon the outstanding obligations of both parties under this agreement will be at an end (VPA, volume 3 of exhibit E, f 454).
 - The applicant agrees that on the grant of a development consent by a consent authority for the carrying out of any development permitted by the LEP as amended by the DLEP, then prior to the issue of a Construction Certificate for that development, to pay the sum of \$500,000; to consolidate the lots comprising the land; to dedicate to Council the 1.2m strip along Vine Street; and in lieu of s 94 contributions the applicant is to pay Council \$10,296 for the provision of public amenities by Council (as increased by CPI) (VPA, volume 3 of exhibit E, f 455).
 - The agreement excludes the application of ss 94 and 94A of the EPA Act to any development permitted by the DLEP (VPA, volume 3 of exhibit E, f 455).
 - The amendment to the VPA made on 22 January 2007 added a term that "the obligations under the preceding paragraphs of this Deed shall remain binding between the parties in the event of the Minister deciding to gazette a LEP which takes a different form to that included within Annexure A, but maintains the intent and does not unduly disadvantage the parties."
- 62 Council accepts that it is bound by the VPA and is obliged to comply with the terms of the VPA upon the grant of development consent for the carrying out of development permitted by the amended GPSO. Council's contention is that the terms of the VPA regarding the car park works should be given no weight in the assessment of the short fall in car parking provided by the proposal.
- 63 The terms of the VPA regarding parking are that the "owners have volunteered \$500,000 to Council for the provision of required (29) parking spaces in South End Park" (Recital F(E), VPA, volume 3 of exhibit E, f 453). The applicant contends that the VPA was publicly exhibited and then entered into by Council

and the applicants, and the applicants have relied upon the terms of the VPA in the preparation of the development application now before the Court.

64 The Council contends that the provision of 29 car parking spaces in the South End car park should not be relied on by the proposal for the following reasons:

- The development application should be refused because inadequate car parking is provided for the proposed development;
- The car park is an existing car park and the sealing and marking of car parking spaces will simply formalise the parking and not augment the current capacity of the car park;
- The VPA sought to change the relevant environmental planning instrument, with benefits to be provided only if consent was granted in accordance with the specific permissible use provided for in the amending LEP.456. The development application should be assessed in accordance with the matters for consideration in s 79C of the EPA Act and it cannot be assumed that the benefits provided for in the VPA will be realised. In the alternative, any benefits arising from the VPA do not outweigh the detrimental impact of the short fall in parking provided by the proposal;
- The benefits provided for in the VPA are unlikely to be realised in the 3 year timeframe imposed by the VPA. It is 10 years since the VPA was made by the parties, and the evolution of the projects the subject of the car park and the embellishment works referred to in the VPA has resulted in significant constraints to Council's ability to spend the funds on actual works as described by the VPA within 3 years;
- The works to Hunter Park are now subject to a detailed plan for construction and not the landscape concept plan attached to the VPA (exhibit E, volume 3, f 470 and exhibit 10);
- At the time of making the VPA, Council was unaware of the extent of works required prior to being able to seal and mark the car parking spaces in the South End car park. It is now clear that the car park works are dependent on significant drainage works being carried out including raising the level of the South End car park, and according to the evidence of Mr Metcalf, the drainage works are most likely unachievable within 3 years (exhibit 9).

65 I accept Council's submission that in taking into consideration the provision of the VPA in the determination of the development application, in accordance with s 79C(1)(a)(iia) of the EPA Act, the terms of the VPA regarding the provision of 29 car spaces to be sealed and marked in the South End car park be given no weight. It is Council's position, evidenced in the affidavits of Council staff (exhibits 9 and 10), that there is a real likelihood that the works contemplated by the VPA are unachievable in the 3 year timeframe imposed by the VPA and that the works to embellish Hunter Park are no longer consistent

with the agreed concept plan, and I accept Council's submission that it is likely that the benefits provided for in the VPA will not be realised. If the money is not spent according to the agreement and in the specified time frame, the VPA provides for the return of the funds, or unspent portion of the funds, to the applicant. I do note, however, that Council undoubtedly had significant bargaining power in negotiating the terms of the VPA and so the traditional principle of freedom of contract suggests that as Council evidently agreed to the imposition of the time frame for spending the funds in the agreement, it is simply a matter for Council whether it manages to do so or not. This observation, however, has no bearing on the appeal, because I have not given the terms of the VPA weight in determining the contention regarding a shortfall in the provision of parking on-site and have instead based my findings on the agreed evidence of the traffic experts; nor have I assumed that the embellishment works to Hunter Park will be realised.

Findings

- 66 Much of the objector evidence and the written submissions can be distinguished as objections to the amending LEP 456, which on its making inserted cl 49DN into the GPSO. The exhibition of the (then proposed) VPA, from 19 July 2006 until 16 August 2006 attracted 518 submissions against the VPA (and 2 in support) and Council, confronted with that opposition, resolved to execute the VPA (exhibit E, volume 3, f 435) and did so. The insertion of cl 49DN into the GPSO is merely a historical matter from the perspective of this appeal and I am bound to give weight to the fact that the application is to use the site for the specific permitted purpose for which it is zoned (*BGP Properties v Lake Macquarie* (2004) 138 LGERA 237 [117]). The relatively recent making of LEP 2014, including extensive community consultation, contains the enabling clause at 2.5 demonstrating that Council has recently looked again at the potential development of this site and confirmed that the permitted use is appropriate, subject to the considerations in Schedule 1(5) of LEP 2014 (*BGP Properties v Lake Macquarie* (2004) 138 LGERA 237 [119]). Importantly though, the zoning does not create a presumption that the use will necessarily be achieved; as the acceptability of the proposal depends on whether the

design results in acceptable environmental impacts with reference to the matters for consideration under s 79C of the EPA Act.

- 67 I am satisfied that the proposal is consistent with the development envisaged by cl 49DN of the GPSO, as the proposal complies with the provisions of cl 49DN of the GPSO, including the maximum floor space ratio (FSR) of 1:1 and height of 10m, except as provided by sub-clause (5). The two merits contentions raised by the Council in this appeal, that the development application should be refused because the proposed development will have an adverse impact on the heritage character and qualities of the Avoca Beach Theatre and that inadequate car parking is provided for the proposed development, have not been made out, for the reasons given in the judgment.
- 68 I am satisfied that the design of the proposal, by Artichoke Design Studios, provides a high standard of urban design and architectural quality, including the interface between the existing building and Hunter Park and it complements the heritage qualities of the existing Avoca Beach Theatre building; that it is consistent with the development envisaged by the amending LEP 456 and LEP 2014; and it satisfies the relevant aims and guidelines of SEPP 71. This new layer of development will harmonise with the special character and qualities of the Avoca Beach Theatre and its setting. For these reasons, the proposal can be granted consent.

Directions

- 69 Directions were handed down on 28 February 2017, as follows:

Towards the end of the third day of the hearing, the Council sought to add a condition of consent to specify the opening hours of the proposal and the applicant objected to the tender of the additional condition on the basis that it would require further evidence. The parties agreed that the respondent raised the issue of a condition for the proposal's opening hours with the applicant on 15 February 2017.

The Council proposes a condition of consent for opening hours 9am until 11pm Sunday to Thursday and 9am until 12 midnight Friday to Saturday.

The applicant submits that an acceptable limit on opening hours would be 8.30am until 1pm every day, with ability to open outside those hours for live performances and movie marathons and the café/terrace.

The proposal is for an intensification of the existing use and the imposition of specified opening hours on that use is appropriate, because patrons leaving the venue late at night may impact on the amenity of local residents. I do not

accept the submission that it is inappropriate to impose a condition for specified opening hours on the proposal because the 1950 building permit for the Picture Theatre at Avoca Beach did not impose a restriction on opening hours. I do accept that it is appropriate to permit staff to be in attendance at times outside of the permitted opening hours.

With the agreement of the parties, the hearing was adjourned following closing submissions for findings to be made on the contested issues in the appeal and, in the event of finding for the applicant; final orders to be made following either the agreement of the parties or further hearing time on the outstanding issue of opening hours.

The parties are directed to negotiate appropriate opening hours for the cinema and café/terrace components of the proposal to be included in the conditions of consent at 1.3. The parties are to communicate the agreement with the Registry within 2 weeks of this judgment and agreed conditions of consent are to be filed. Final orders will be made in chambers. In the event that agreement cannot be reached, the parties are directed to approach the Court's Listing Manager within 2 weeks for a further hearing date on this issue.

- 70 Following additional time being granted by the Court for continued negotiations between the parties regarding the opening hours, the parties agreed on condition 1.3 in the attached conditions of consent and the conditions of consent were filed on 30 March 2017.

Orders

- (1) The appeal is upheld.
- (2) Development Application No. 42661/2012 for proposed alterations and additions to the existing Avoca Beach Theatre for a mixed use development, at 69-71 Avoca Drive, Avoca Beach, is approved, subject to the conditions of consent at Annexure "A".
- (3) The exhibits, other than exhibits 1, B F and L, are returned.

Susan O'Neill

Commissioner of the Court

155633.16 O'Neill (C) (2.10 MB, pdf)

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Item No: 2.2
Title: DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre
Department: Environment and Planning

8 April 2019 Ordinary Council Meeting

Trim Reference: F2018/00020-06 - D13465372

Author: Antonia Stuart, Senior Development Planner

Manager: Ailsa Prendergast, Section Manager, Development Assessment (South)

Executive: Scott Cox, Director, Environment and Planning

Summary

An application has been received for modifications to an approved mixed use development at No.'s 69 – 71 Avoca Drive, Avoca Beach.

The application has been examined having regard to the matters for consideration detailed in s.4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The modification application is required to be reported to Council in accordance with Council's adopted *Policy for Determining Development Applications Subject to Significant Public Objections* as a total of 54 submissions were received at Council associated with the proposal.

Applicant	Doug Sneddon Planning Pty Ltd
Owner	Norbet Enterprises Pty Ltd
Application No	DA 42661/2012 Part 3
Description of Land	LOT: 140 DP: 9359, LOT: 651 DP: 16791, 71 Avoca Drive AVOCA BEACH, 69 Avoca Drive AVOCA BEACH
Proposed Development	s. 4.56 – Modifications to approved mixed use development
Site Area	1,802.10m ²
Zoning	R2 LOW DENSITY RESIDENTIAL
Existing Use	Avoca Theatre; Dwelling House
Employment Generation	Yes
Estimated Value	The proposed modifications will not alter the estimated cost of construction further to that previously approved.

Recommendation

- 1** *That Council grant consent subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 and other relevant issues.*

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

2 That Council advise those who made written submissions of its decision.

Precis:

Proposed Development	The applicant is seeking to modify the consent for Development Application No. 42661/2012 under s. 4.56 of the <i>Environment Planning and Assessment Act 1979</i> , comprising both internal and external changes.
Permissibility and Zoning	The subject site is zoned R2 Low Density Residential under the provisions of <i>Gosford Local Environmental Plan 2014</i> (GLEP 2014.) Clause 2.5 of GLEP 2014 identifies additional permitted uses for particular land as described or referred to in Schedule 1. The proposed development is listed in Schedule 1 – Additional permitted uses in GLEP 2014, where cl.1(2) identifies development for the purposes of a residential flat building, an entertainment facility, an information and education facility and a restaurant or cafe is permitted with development consent.
Relevant Legislation/ Policies	<p>The following planning policies and control documents are relevant to the development and were considered as part of the assessment:</p> <ul style="list-style-type: none"> • <i>Environment Planning and Assessment Act 1979 – s. 4.15 and s.4.56</i> (EP&A Act) • <i>Roads Act 1997</i> (Roads Act) • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> • <i>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</i> (SEPP 65) • <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP Coastal Management) • <i>Gosford Local Environmental Plan 2014</i> (GLEP 2014) • <i>Draft Central Coast Local Environmental Plan 2018</i> (Draft CCLEP 2018) • <i>Gosford Development Control Plan 2013</i> (GDGP 2013) • <i>Draft Central Coast Development Control Plan 2018</i> (Draft CCDCP 2018) • <i>Apartment Design Guide. Tools for improving the design of residential apartment development</i> (ADG) • <i>Central Coast Regional Plan 2036</i> (CCRP 2036) • <i>Gosford City Council Climate Change Policy.</i> • <i>Central Coast Council's Community Strategic Plan 2018-2028 'One Central Coast'.</i>

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

Legislative Clauses Requiring Consent Authority Satisfaction	<ul style="list-style-type: none"> Section 4.15 of <i>Environmental Planning & Assessment Act 1979</i> - Evaluation. Clause 8A (2)(d) of the <i>Local Government Act 1993</i> Clause 28 (Determination of development applications) of <i>State Environmental Planning Policy (SEPP) No 65 – Design Quality of Residential Apartment Development</i>. Clause 6 (Building to which Policy applies) of <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>. Clause 2.3 (Zone Objectives and Land Use Table); Clause 4.6(4) (Exceptions to development standards of <i>Gosford Local Environmental Plan 2014</i>).
Current Use	Commercial; Dwelling House
Integrated Development	No
Submissions	Fifty – four (54)

Variations to Policies

Policy	Clause / Description	Variation
Gosford Local Environmental Plan 2014	Clause 4.3(2) (Height of Buildings)	<ul style="list-style-type: none"> Maximum height of 10m is permitted. The approved development on site exceeds the 10m height control, by providing a roof to Cinema 2 of 10.8m (RL 14.2m AHD), representing a variation of 8%. The proposed development has a maximum height of 11.5m associated with the roof of Cinema 2 (an increase of 700mm and a maximum RL 14.9m AHD), resulting in a 1.5m or 15% variation with the development standard. The approved height of the residential component of the development remains unchanged and compliant with cl. 4.3(2) of GLEP 2014.

The Site

The subject land comprises Lot 140 DP 9359 and Lot 651 DP 16791, No's. 69 and 71 Avoca Drive, Avoca Beach. The site has an area of 1,802.10m² and is irregular in shape, with a frontage of 43.94m to Avoca Drive, 40.98m to Burns Street, 40.23m Vine Street/Vale Avenue, and 58.83m to Hunter Park (refer to Figure's 1-4).

The site is flat with a slight falling grade from Avoca Drive (RL 4.95m AHD) towards the rear eastern boundary at Vine Street (RL 2.75m AHD).

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

No.69 Avoca Drive, Avoca Beach is occupied by a commercial premise known as the Avoca Beach Theatre. A part one and two storey theatre building is located on Lot 651. The building contains the theatre itself, as well as the box office, toilets, projection room, storage rooms and first floor office. An awning extends out over the footpath at the entry to the theatre off Avoca Drive. The area to rear (east) of the theatre across to Vine Street is presently vacant.

No.71 Avoca Drive, Avoca Beach is occupied by three outbuildings (metal, weatherboard and fibro respectively) and a single storey weatherboard garage with a metal roof at the rear of the property towards Vine Street. A lawn area containing two shade sails used for the outdoor viewing of films is located in the north-west corner of this allotment immediately adjacent to Avoca Drive.

The site has road frontages to three sides, with all three street frontages kerb and guttered. In addition, the Vine Street frontage contains 90 degree angle parking up to the boundary of the site.

A paved forecourt is provided within the road reserve in front of the theatre on Avoca Drive, And a footpath is adjacent to the southern side of the building on the northern side of Burns Street (within Lot 650 DP 1120404). Vehicular access to the garage is provided off Vine Street.



Figure 1 - Aerial photograph of the subject site (edged in black)

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DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 2 – Avoca Drive frontage of the site



Figure 3 – Avoca Drive and Burns Street frontages of the site



Figure 4 – Avoca Drive and Burns Street frontages of the site

The site is zoned R2 Low Density Residential under the provisions of *Gosford Local Environmental Plan 2014* (GLEP 2014) (refer to Figure 5).

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DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 5 - Zoning of the site (edged in black) and adjoining properties

Surrounding Development

Hunter Park adjoins the northern site boundary. Directly south of the site, on the opposite side of Burns Street is a public reserve, known as South End Park. Adjacent to the eastern site boundary, located at No.'s 1-5 Vine Street, Avoca Beach, is a residential flat building. Properties located to the west of the site, on the opposite side of Avoca Drive, comprise both single storey dwellings and multi – unit residential development.

History

Development Application No. 42661/2012 (Part 1)

Consent was granted on 18 April 2017 by the Land and Environment Court (LEC), comprising:

- Demolition of the existing cottage, shed, outbuildings and shade sails on Lot 140 and removal of the disused speakerbox and ramp from the rear of the existing theatre on Lot 651, as well as the staircase and ancillary storage rooms on the northern side of the theatre;
- Preparation of the site, including removal of existing trees and the undertaking of earthworks and excavation for the basement; and
- Construction of a part two, part three storey building to the north and east of the existing theatre to provide one mixed use commercial and residential building containing four cinemas and associated foyers and facilities; terrace; cafe/gallery and five apartments.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

Development Application No. 42661/2012 (Part 2)

Consent was modified on 24 November 2017, comprising:

- Modification to the waste storage area and changes to the storage room and stair access at the basement floor level.
- Modifications to the 'back of house' areas adjacent to Cinema 3/4, modification to the stair, foyer, kitchen and extension of the roof to the first floor deck.
- Minor change to Unit No.'s 1 – 3.

The Part 2 consent also included a reduction in the width of the roof void to Cinema 2, being setback from Avoca Drive an additional 2m, noting the maximum height of this roof form remained unchanged at RL 14.2m AHD.

The Proposed Development

The current modification application was lodged on 9 August 2018.

On 17 September 2018, the modification application was amended in order to provide for a single staff toilet on Level 1.

On 22 October 2018, the modification application was further amended (Revision E) so as to return the height of the main entry foyer roof on Avoca Drive to its originally approved height. These amendments were as a result of consultation with Council staff and in response to concerns raised in the notification period. The applicant is seeking to modify the consent for Development Application No. 42661/2012 under s. 4.56 of the EP&A Act as follows:

- Increase the height of the roof ridge of Cinema 2 by 700mm.
- Internal reconfiguration of all residential units resulting in a minor increase in the residential gross floor area (being 23.36m²).
- Amendment to the description of the proposal contained within **Condition 1.1A** and plans and supporting documents referenced in **Condition 1.1** to include the following modifications:
 - Basement:
 - Internal reconfiguration of waste areas (residential and commercial).
 - Adjustment of the car park floor levels.
 - Ground Floor:
 - Provision of a backstage area to Cinema 1 to incorporate a change room and storage area.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- Relocate Cinema 3 to the area originally approved as an outdoor terrace on the northern façade of the development, resulting in an additional 57m² commercial gross floor area.
- Internal reconfiguration of the entry foyer area.
- First Floor:
 - Increase the useable area of outdoor terrace on the northern façade of the development.
- Second Floor:
 - Minor increase in roof areas over the extended outdoor terrace on the northern façade of the development (first floor).

Approved renders of the proposal are provided below:



Figure 6 – Render of Avoca Drive elevation



Figure 7 – Render of Vine Street and Hunter Park elevations

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DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 8 - Render of Vine Street and Burns Street elevation

Note: Whilst not sought by the applicant, typographical errors in the numbering of the conditions will be corrected. It is noted the content of affected conditions will remain unchanged.

Consideration

The proposal is required to be assessed having regard to the following matters.

Section 4.56(1) of the EP & A Act enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

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

Comment

A qualitative and quantitative analysis between the development as originally consented to and the proposed modification is required, and the modification must render the altered development "essentially" or "materially" the same.

Figure 9 indicates the following quantitative (key numerical differences), qualitative changes (i.e. non numerical factors including visual impact, traffic impact and changed land uses) and changes to material and essential features of the approved and subsequent modification applications:

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

Quantitative Assessment				
Item	Part 1	Part 2	Part 3	Change
Gross Floor Area	1,612.16m ²	1,588.68m ²	1,712.63m ²	+100.47m ² Variation from Pt 2: Increase in floor area of 123.95m ²
Floor Space Ratio	0.89: 1	0.88:1	0.95:1	+ 0.06:1 Variation from Pt 2: + 0.07:1
Building Height	9.9m (residential) 10.8m (commercial)	No change (residential) No change (commercial)	No change (residential) 11.5m (commercial)	No change (residential) + 0.7 metres (commercial)
Car Parking Spaces	14 spaces	No change	No change	No change
No. of Cinemas/ Seating	4 cinemas (603 seats) + 10 wheelchair	4 cinemas (601 seats) + 11 wheelchair	4 cinemas (601 seats) + 15 wheelchair	- 2 cinema seats +5 wheelchair seats
Number of Units	5	5	5	No change
Qualitative Assessment				
Traffic Impact	The proposed modification will not increase the traffic impact associated with the development as originally approved. The proposed modifications are supported by Council's Development Engineer and Council's Waste Officer.			
Visual Impact / External Appearance	Acceptable within the context of site, despite the increase in height.			
Material and essential Features	Fundamental characteristics of the mixed use development remain unchanged.			
Amenity Impact to surrounding properties	There are no environmental impacts arising from the proposed works that have an adverse effect on the environment, or on the amenity of any adjoining properties			

Figure 9 – Qualitative and Quantitative Analysis

The applicant has provided the following information to support the s.4.56 application to demonstrate that the proposal is substantially the same development as previously approved by the LEC:

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

'In considering whether a development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted, the existing approved development should be considered in its entirety and compared with the proposed modified development in its entirety. There are legal tests to be satisfied before a modification application can be considered on its merits. There are examples of where the Court has found that modifications to the approved development can be significantly different in important respects but still be substantially the same as that which was approved.

(i) Firstly, a proposal can be regarded as a modification if it involves 'alteration without radical transformation' (Sydney City Council v Ilene (1984)). The proposed modifications to Development Consent 42661/2012 – Part 2 for alterations and additions to the existing Avoca Beach Picture Theatre do not involve a radical transformation of the approved development, for the following reasons:

- The proposed modified development remains for the same use of the land as originally granted under Consent 42661/2012 and as previously modified under Consent 42661/2012 – Part 2, namely mixed use development comprising four (4) cinemas; cafe; five residential units; and basement car parking. The existing theatre building is retained.
- The proposed modified development involves making minor internal layout and consequential minor elevation changes within the approved building footprint and building envelope and does not significantly transform the bulk and scale or external physical dimensions of the approved development, other than provide for a minor increase in cinema roof height.
- The proposed modified development does not involve any change to the approved maximum building height of the approved residential units.
- The proposed modified development involves only a minor increase in the maximum building height of the approved cinema component of the approved development (+700mm or 6.48%). There is no significant change to the approved roof form.
- The proposed modified development only involves a minor increase in gross floor area (1,712.83m²) in comparison to the previously modified development (1,588.68m²) (i.e. +124.15m² or 7.81%). (**Note:** The GFA of the originally approved development under the Gosford Planning Scheme Ordinance was 1,801.96m²).

(ii) Secondly, consideration must be given as to whether the modification proposed to the consent remains substantially the same when compared to the development as currently approved and the development as proposed to be modified. In *Mojo projects (No.2) Pty Ltd v North Sydney Council* (1999) NSWLEC 280, Bignold J made the following comments:

"The relevant satisfaction required by s 96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

The proposed consent modifications detailed in this Statement of Environmental Effects can be reasonably considered to be substantially the same as that which was originally approved, for the following reasons:

- The proposed modified development remains the same use of the land as originally granted under Consent 42661/2012, namely mixed use development comprising four (4) cinemas; café; five residential units; and basement car parking.*
- The proposed consent modifications do not significantly change to the bulk and scale or external physical dimensions of the approved development and maintain both the approved building footprint and building envelope.*
- The proposed modifications to the approved consent conditions (as detailed in section 4.4 of this Statement) are not substantive and are merely directed to referencing the modified set of architectural drawings submitted with this section 4.56 application.*

The proposed modified development is therefore essentially or materially the same as the originally approved development (Consent 42661/2012) and the previously modified development (Consent 42661/2012 – Part 2) and consequently, the council is able to approve this application for modification of Development Consent No. 42661/2012 – Part 2 under S.4.56 of the Act.

It is concluded, the proposed modifications can be approved under s.4.56 of the EP & A Act as they result in substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified. As detailed elsewhere in this report, there are no environmental impacts arising from the proposed modifications that have an adverse effect on the environment, or on the amenity of any adjoining properties. In addition, the proposed modifications will not detract from the buildings overall design.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

(b) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, and

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment

The modification application was notified in accordance with Chapter 7.3 - Notification of Development Proposals of Gosford Development Control Plan 2013 (GDCP 2013) from 23 August 2018 until 13 September 2018.

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person

Comment

All previous submitters were notified of the subject modification application on 21 August 2018. The modification application was notified from 23 August 2018 until 13 September 2018.

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

Comment

The modification application was notified from 23 August 2018 until 13 September 2018, with 54 submissions received objecting to the proposal. Consideration of the issues raised in these submissions is provided elsewhere in this report.

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

Comment

It is considered that the proposed modifications will have no significant impact upon the properties in the near vicinity of the site, and the quantum and quality of the proposed modifications are substantially the same as was originally approved.

Further consideration is provided below with regard to the relevant planning provisions referred to in s. 4.15 of the EP & A Act.

Submissions

The modification application was notified in accordance with Chapter 7.3 - Notification of Development Proposals of GDCP 2013 from 23 August 2018 until 13 September 2018, with a total of 54 submissions received objecting to the proposal.

Consideration of the issues raised in these submissions is provided below:

- ***The proposed development provides inadequate car parking on site which will result in traffic congestion.***

Comment

The proposed modifications will not increase the traffic impact associated with the development as originally approved. The number of cinemas (4), car parking spaces (14) and residential units (5) remain as approved. Furthermore, the number of cinema seats has been reduced from 603 to 601. Furthermore, the proposed modifications are supported by Council's Development Engineer and Council's Waste Officer.

- ***The proposed modifications result in a 7% increase in floor space.***

Comment

The provisions of cl. 4.4 within GLEP 2014 establish a maximum floor space ratio (FSR) for buildings. Clause 4.4 (2) of GLEP 2014 provides that development on the subject land shall not exceed a maximum floor space ratio of 1:1. The proposed modified development complies, having a floor space ratio of 0.95:1.

- ***The proposed development does not adequately address flooding.***

Comment

The land has been classified as being under a "flood planning level". Having regard to Clause 7.2 (3) (a) – (e) of GLEP 2014, Council's Development Engineer has raised no objection subject to the continued imposition of conditions, as originally approved relating to the following:

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- **Condition 2.9** require certain engineering works within the development site;
- **Condition 2.11** requires the provision of a flood mitigation report confirming industry best practice strategies and mitigation measures to reduce the risk to life and property associated with the residential building's main access via a floodway;
- **Condition 5.11** requires a registered surveyor to confirm prior to the issuing of any Occupation Certificate, that the finished floor level of the car park and the finished crest level to the car park are in accordance with the design levels;
- **Condition 5.12A** requires a suitably qualified engineer to certify that automatic flood gates have been installed in accordance with the manufacturer's instructions, and that they are operating as designed; and
- **Condition 5.12** requires flood mitigation strategies in accordance with the "Flood Mitigation" report, are to be installed and/or constructed prior to the premises opening.
- ***The proposed increase in height of the development (1.5m above the GLEP 2014 height limit of 10m) will result in the further obstruction of views from neighbouring properties.***

Comment

Clause 4.3 (2) of GLEP 2014 provides that development on the subject land shall not exceed a maximum building height of 10m. The approved development on site exceeds the 10m height control, by providing a roof to Cinema 2 of 10.8m (RL 14.2m AHD), representing a variation of 8%. Figure 10 illustrates the southern elevation of the development, as approved.

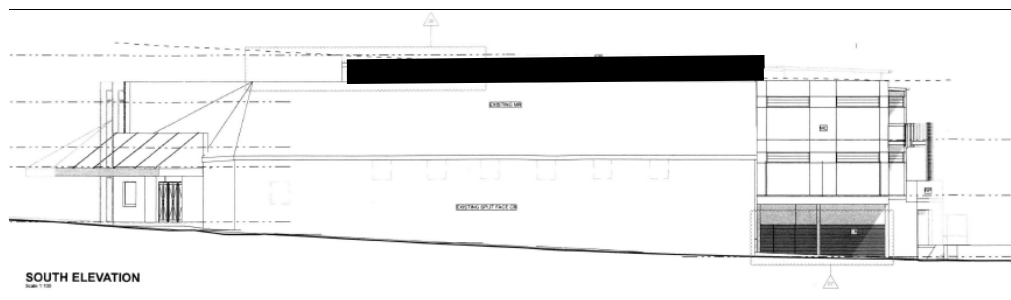


Figure 10 - Southern Elevation of the approved development (cinema 2 roof projection highlighted in black)

The modification application proposes an increase of the approved development's maximum roof height to Cinema 2 by 700mm (11.50m/RL 14.90m AHD), representing a variation of 15% relating only to the roof of the cinema component of the development. It is noted the approved height of the residential component of the development remains unchanged. Figure 11 illustrates the southern elevation of the development, currently proposed.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

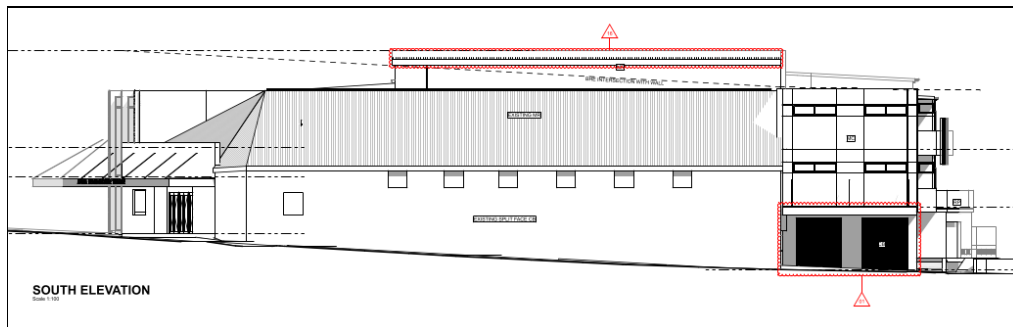


Figure 11 - Southern Elevation of the proposed development (Part 3) (additional height Cinema 2 roof edged in red)

Submissions were received from surrounding residents in relation to potential view loss from neighbouring properties associated with the increase in roof height by 700mm to accommodate Cinema 2.

In *Tenacity Consulting P/L v Warringah Council* [2004] NSW LEC140, the Land and Environment Court established a planning principle for assessment of view loss impact on adjoining properties. The impact to view corridors as a result of the proposed modifications has taken into consideration the parameters of this planning principal.

In undertaking the required view loss analysis, site inspections were carried out, and the expert view loss evidence, provided in the Land and Environment Court of New South Wales court proceedings associated with the original determination, was reviewed.

The assessment undertaken pertaining to private domain view loss associated with the proposed modifications is provided elsewhere in this report (**refer to cl. 4.3 Height of Buildings of GLEP 2014**). It is concluded that that there will be no significant view loss associated with the increase in roof height by 700mm to accommodate Cinema 2 which would justify refusal of the modification application.

- ***The proposed modifications will further restrict solar access to neighboring properties.***

Comment

Shadow diagrams for 21 June (midwinter) and 21 March (equinox) have been submitted which illustrate the overshadowing generated by the proposal between 9am and 3pm. All shadows cast during these periods fall upon adjoining roadways, with a minor encroachment of shadows to the car parking area and vegetation bordering South End Park.

It is not considered the usability of South End Park will be unreasonable compromised by this minor overshadowing. At no time does overshadowing from the proposed development impact neighboring residential properties.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- ***The proposed modifications result in an unacceptable urban design outcome.***

Comment

Council's Architect has reviewed the modification application and supports the proposal without conditions.

- ***The proposed development will detrimentally impact the heritage significance of the existing theatre.***

Comment

The subject site is not listed in Schedule 5 Environmental Heritage (Part 1 Heritage Items) of GLEP 2014.

Council's Architect has reviewed the modification application and supports the proposal without conditions.

Notwithstanding, **Condition 2.16** remains in place and requires an Interpretation Plan be prepared by a suitably qualified heritage consultant. The Interpretation Plan is to be submitted to Council for approval. Approved measures shall be detailed in the application for the Construction Certificate, including:

- A Photographic archival record of the Theatre is to be undertaken by a suitable qualified professional prior to commencement of construction works. Approval by Council must be confirmed in writing prior to construction;
- A report is to be prepared by a practicing structural engineer detailing the structural adequacy of the Theatre building to withstand the proposed excavation works. This report must include any measures required to be incorporated to ensure that no damage will occur during the course of works. The report must be submitted to Council and relevant adjoining property owners prior to the issue of any construction certificate; and
- An amended landscape plan is required. Approval by Council must be confirmed in writing prior to construction.

- ***The proposed modifications reduce wheelchair spaces from 15 to 3.***

Comment

This statement is incorrect. The current modification application increases wheelchair spaces within the cinemas from 11 to 15.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- ***The proposed modifications will negatively impact property values.***

Comment

This concern is speculation and is not a matter for consideration under Section 4.15 of the EP&A Act. In addition, there is no evidence to substantiate this claim.

- ***The proposed development will exceed the capacity of existing infrastructure.***

Comment

Local government infrastructure includes water supply, sewage treatment, local roads, stormwater management and parks. As a result of the subject development, infrastructure within the municipality will be improved via contribution levies and civil works in the roadway adjacent. The existing infrastructure in this location is considered to be adequate for the proposed development.

- ***Concerns noted with the Land and Environment Court proceedings associated with DA 42661 (Part 1) in that the height poles erected on site were incorrect.***

Comment

This statement is incorrect.

Five (5) height poles were erected on site and were verified by Cahill & Cameron, Registered Surveyors, dated 7 June 2016. Two (2) of the height poles were erected in the location of Cinema 2, to a height of RL 14.25m AHD and RL 14.10m AHD.

These height poles were viewed by the Commissioner and parties to the Land and Environment Court proceedings and were referenced in the expert view loss evidence provided.

- ***The proposed modifications are not capable of being determined by Council, any modification must be referred to the Land and Environment Court.***

Comment

This statement is incorrect.

Section 4.56 (1) of the EP & A Act enables a consent authority, being Council in this instance, to modify a development consent granted by the Land and Environment Court upon application being sought by the applicant.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- ***The community does not want a cinema in this location, nor a church.***

Comment

Clause 2.5 of GLEP 2014 identifies additional permitted uses for particular land as described or referred to in Schedule 1 of GLEP 2014. The proposed development is listed in Schedule 1 – Additional permitted uses in GLEP 2014, where cl. 1(2) identifies development for the purposes of a residential flat building, an entertainment facility, an information and education facility and a restaurant or cafe is permitted with development consent.

- ***The proposal represents an over development of the site.***

Comment

It is considered the proposed modified development does not significantly alter the bulk and scale or architectural presentation of the approved development.

Submissions from Public Authorities

There were no public authorities required to be consulted in relation to the proposal.

Internal Consultation

The application was referred to the following internal officers and the following comments have been provided:

Architect

Council's Architect has reviewed the application and supports the proposed modifications without conditions.

Building

Council's Building Officer has reviewed the application and supports the proposed modifications without conditions.

Engineering

Council's Development Assessment Engineer has reviewed the application and supports the proposed modifications without conditions.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

Waste Services (Garbage)

Council's Waste Services Officer has reviewed the application and supports the proposed modifications without conditions. However, it is acknowledged that **Conditions 2.13 – 2.15** of Development Application No. 42661/2012 remain in place and must be addressed prior to the issuing of any Construction Certificate.

Ecologist

Council's Ecologist has reviewed the application and supports the proposed modifications without conditions.

Ecologically Sustainable Principles

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles. The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed modifications have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts. The proposed development is considered satisfactory in relation to climate change.

Assessment

Having regard for the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP & A Act) and other statutory requirements, Council's policies and Section 10.7 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information.

Provisions of Relevant Instruments/Plans/Policies*Rural Fires Act*

The site is identified as "bushfire prone land" on Council's bushfire maps (refer to Figure 12).

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

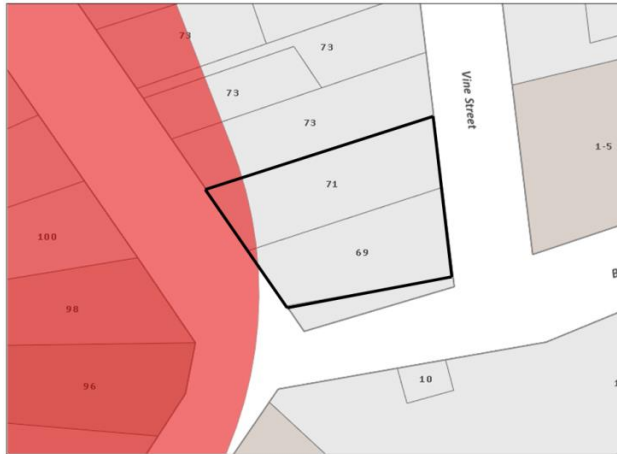


Figure 12 - Bushfire Prone Land (site edged in black)

Having regard to Section 4.14 of the EP & A Act, the development is required to address the requirements of the *Rural Fires Act 1997* (RF Act 1997) and the document *Planning for Bushfire Protection*, published 2006, by the New South Wales Rural Fire Service.

The original development application was referred to the New South Wales Rural Fire Service for consideration, where no objection was raised. The minor nature of the proposed modifications did not require a further referral to New South Wales Rural Fire Service.

Draft Central Coast Local Environmental Plan 2018

The *Draft Central Coast Local Environmental Plan 2018* (Draft CCLEP 2018) is being exhibited until 27 February 2019. The application has been assessed under the provisions of the Draft CCLEP 2018 in respect to zoning, development standards and special provisions.

The zoning of the subject site remains R2 Low Density Residential, where the proposed development remains permissible with the obtainment of development consent via cl.12 in Schedule 1 of Draft CCLEP 2018. The assessment concluded the proposal is consistent with the Draft Plan.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate.

The proposal is considered to be consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

State Environmental Planning Policy (Coastal Management) 2018

The provision of *State Environmental Planning Policy (Coastal Management) 2018* requires Council consider the aims and objectives of the SEPP when determining an application within the Coastal Management Areas. The Coastal Management Areas are areas defined on maps issued by the NSW Department of Planning and Environment and the subject property falls within the mapped coastal management areas. The relevant matters have been considered in the assessment of this application. The application is considered consistent with the stated aims and objectives.

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

The proposal is subject to the requirements of *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65). Subclause 30(2)(b) of SEPP 65 provides that the consent authority should take into consideration the design quality of the proposed development.

Given the minor nature of the proposed modification to the residential units, a Design Verification Statement was not supplied, nor requested by Council. In any instance, it is considered the minor internal changes to the residential units demonstrate consistency with the design quality principles and will not result in any variations further to that originally approved.

Central Coast Council's Community Strategic Plan 2018-2028 'One - Central Coast'

Central Coast Council's Community Strategic Plan 2018-2028 'One - Central Coast' is a 10 year plan developed by Council through engagement with the community to help set the proprieties and confirm strategies and activities that best achieve the community's desired outcomes for the future.

The proposed redevelopment of the site is consistent with all relevant objectives in 'One-Central Coast' in that upon completion the housing mix of the locality will be increased. Furthermore, the development is generally consistent with the locality, provides for additional population accommodation within walking distance of the shops, services and public transport, and will not adversely impact residential amenity nor create additional demands upon public infrastructure further to that envisaged by the R2 Low Density Residential zone.

Central Coast Regional Plan 2036

The subject site is included in the Central Coast Regional Plan 2036 as an 'urban area' and is located in close proximity to the 'strategic centre' of Erina and 'regional city' of Gosford. Refer to Figure 13.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

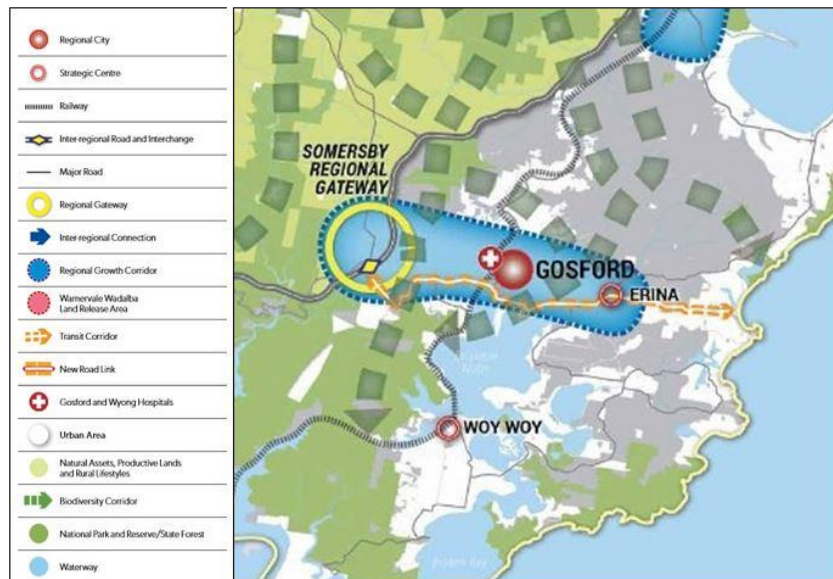


Figure 13 - Central Coast Regional Plan 2036

An assessment of all relevant provisions of the Central Coast Regional Plan 2036 has been carried out to ensure the consent authorities own assessment of the compatibility of the proposed development with the surrounding environment is complete.

The proposed modifications are consistent with all relevant Directions under the *Central Coast Regional Plan 2036* in that upon completion the housing mix of the locality will be increased. Furthermore, the provides for additional population accommodation within walking distance of the shops, services and public transport, and will not adversely impact residential amenity nor create additional demands upon public infrastructure.

Gosford Local Environmental Plan 2014 (GLEP 2014)

Zoning & Permissibility

The subject site is zoned R2 LOW DENSITY RESIDENTIAL under *Gosford Local Environmental Plan 2014* (GLEP 2014).

Clause 2.5 of GLEP 2014 identifies additional permitted uses for particular land as described or referred to in Schedule 1 of GLEP 2014. The proposed development is listed in Schedule 1 – Additional permitted uses in GLEP 2014, where cl. 1(2) identifies development for the purposes of a residential flat building, an entertainment facility, an information and education facility and a restaurant or cafe is permitted with development consent. The modifications to the approved works under Development Application No. 42661/2012 are therefore permissible with the consent of Council.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)Development Standards

An assessment of the proposed development against the relevant planning controls is detailed below.

Development Standard	Required	Proposed	Compliance with Controls	Variation %	Compliance with Objectives
cl. 4.3 (Height of Buildings)	10m	11.5m	No	15%	Yes
cl. 4.4 (Floor Space Ratio)	1.:1	0.95:1	Yes	NIL	Yes

Figure 14 - GLEP 2014 Development Standards

4.3 Height of Buildings

Clause 4.3 (2) of GLEP 2014 provides that development on the subject land shall not exceed a maximum building height of 10m. The approved development on site exceeds the 10m height control, by providing a roof to Cinema 2 of 10.8m (RL 14.2m AHD), representing a variation of 8%.

The modification application proposes an increase of the approved development's maximum roof height to Cinema 2 by 700mm (11.50m/RL 14.90m AHD), representing a variation of 15% relating only to the roof of the cinema component of the development. It is noted the approved height of the residential component of the development remains unchanged.

A modification application can be approved even though it would contravene a development standard, and no cl.4.6 variation is required. The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) identify a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application. Section 4.55 and s.4.56 of the EP & A Act has a broad power to approve, subject to its own stand-alone tests (such as the substantially the same test, and a requirement to consider all relevant s.4.15 matters).

In view of the above, and in order to demonstrate the merit associated with the increase of the approved development's maximum roof height to Cinema 2 by 700mm (11.50m/RL 14.90m AHD), consideration is provided with regard to cl. 1(3) of Schedule 1 in GLEP 2014, the objectives of the R2 Low Density Residential zone contained within cl. 2.3(2) of GLEP 2014, of the objectives of the height development standard contained within cl. 4.3 (1) of GLEP 2014.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

Clause 1(3) of Schedule 1 in GLEP 2014 provides the following:

- (3) *Development for the purposes of an entertainment facility may exceed the maximum height shown for the land on the Height of Buildings Map if the consent authority is satisfied that any part of the building that exceeds that height is an integral part of the design of the building in its context.*

The Statement of Environmental Effects, prepared by Doug Sneddon Planning Pty Ltd, dated August 2018, provides the following justification relating to this additional roof height:

- *To achieve preferred sight lines in Cinema 02, the bottom of the screen should be 1700mm above the floor. The screen height is based on an established ratio to width, allowing for curtain asking either side. Masking to the top of the screen for tracking, allowing for the curve of the ceiling, together with the required acoustic separation ceiling zone, requires the ridge of Cinema 02 to be raised from RL 14.20 – RL 14.90 (700mm – 7% increase). The radius of the curved roof has been increased to minimise the rise.*
- *During sight line site inspections of properties in the vicinity of the proposed development, it was established photographically that only one property might be considered affected by the theatre development. Images show that the proposed roofline of Cinema 02 is lost behind existing vegetation when viewed from the subject property. An increase of 0.7m will have no effect on established views.*
- *Consideration of the information should indicate that the proposed variations are within approval parameters and any effect on established view lines can be discounted.*

In order for Cinema 2 to achieve preferred sight lines its roof needs to be raised. Achieving preferred site lines is an integral part of design of any building that will accommodate entertainment. In this regard, it is considered the proposed modification satisfies Clause 1(3) of Schedule 1 in GLEP 2014.

Clause 2.3 (2) of GLEP 2014 provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect to land within the zone. Notwithstanding that this is a modification application (not a development application), the following assessment demonstrates that the proposed modified development is consistent with the applicable objectives of the R2 Low Density Residential zone applying to the subject land:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment

The approved and proposed modified development provides for medium density residential development, as permitted under GLEP 2014 – Schedule 1.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

Comment

The approved and proposed modified development provides cinema facilities and services to meet the day to day needs of residents for entertainment.

- *To ensure that development is compatible with the desired future character of the zone.*

Comment

The approved and proposed modified development are consistent with the desired future character and development context of the subject land and the scenic quality of the locality intended by the site specific development provisions of Schedule 1 (cl.1) of GLEP 2014.

- *To encourage best practice in the design of low-density residential development.*

Comment

The approved and proposed modified development provides for medium density residential development, as permitted under GLEP 2014 – Schedule 1.

In granting Development Application No. 42661/2012, the Land and Environment Court determined the design of the proposal provided a high standard of urban design and architectural quality. The proposed modifications do not involve any significant change to the approved residential design.

- *To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.*

Comment

The subject land does not possess any biodiversity values requiring protection and the approved development provides for socially and economically sustainable development. The proposed modifications do not involve any significant change to the approved design.

- *To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.*

Comment

In granting Development Application No. 42661/2012, the Land and Environment Court was satisfied that the design of the proposal did not adversely affect residential amenity or place unreasonable demands on the provision of services. The proposed modifications do not involve any significant change to the approved design.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

In order to demonstrate if the proposal has merit, consideration of the proposed height non-compliance identified within cl.4.3(2) of GLEP 2014 has been provided with regard to the objectives of cl. 4.3(1) (height of buildings) of GLEP 2014:

(a) to establish maximum height limits for buildings.

Comment

The maximum height limit for buildings has been identified for this property.

(b) to permit building heights that encourage high quality urban form.

Comment

In this instance, it is considered that the additional building height proposed does not detract from the attainment of providing quality urban form in accordance with the character of the zone. The design incorporates various design elements, which activate the design as viewed from the public domain.

(c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight.

Comment

Shadow diagrams for 21 June (midwinter) and 21 March (equinox) have been submitted which illustrate the overshadowing generated by the proposal between 9am and 3pm. All shadows cast during these periods fall upon adjoining roadways, with a minor encroachment of shadows to the car parking area and vegetation bordering South End Park. It is not considered the usability of South End Park will be unreasonable compromised by this minor overshadowing. In view of the above considerations, no objection has been made with regard to the additional shadows cast by height non-complying elements.

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

Comment

The approved and proposed modified development provides for a medium density residential development, as permitted by Schedule 1 of GLEP 2014. In granting Development Application No.42661/2012, the LEC was satisfied that the design of the proposal acceptable urban design and architectural quality. The proposed modifications do not involve any significant change to the approved residential design and it is considered the increase in height of Cinema 2 will not detract from providing an appropriate built form and land use intensity.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- (e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area.

Comment

Council has received several submissions to the proposed modifications, particularly as they relate to a loss of views from neighbouring properties associated with the increase in roof height by 700mm to accommodate Cinema 2. The impacts to view corridors are discussed below.

The development site is flanked by residential development to the west and east including dense native evergreen vegetation located in residential gardens to the east and street tree vegetation to the west. Filtered views to areas of open water and landform in the background are available from roadways south and west of the site. The approved development and proposed modifications will provide a contemporary form into the composition of the view from surrounding roadways which is not dissimilar in scale or character of the existing theatre and multi – storey residential development within the immediate context. The view loss associated with the additional roof height is minor from adjoining roadways and will comprise vegetation.

In *Tenacity Consulting P/L v Warringah Council Halics* [2004] NSW LEC140, the Land and Environment Court established a planning principle for assessment of view loss impact on adjoining properties. This planning principle provides:

- 1 Assessment of views to be affected.
- 2 Consider from what part of the property the views are obtained.
- 3 Assess the extent of the impact.
- 4 Assess the reasonableness of the proposal that is causing the impact.

In respect of the step (2), an expectation to retain side views and sitting views would be unrealistic.

In respect of the step (3), the extent of the impact should be assessed for the whole of the property, not just for the view that is affected. The third step should be qualitatively measured on a scale from negligible to devastating.

In respect of the step (4), a development that affects views may be unreasonable if it comes about as a result of non-compliance with planning standards.

The properties that form part of this view loss assessment are identified in Figure 15.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

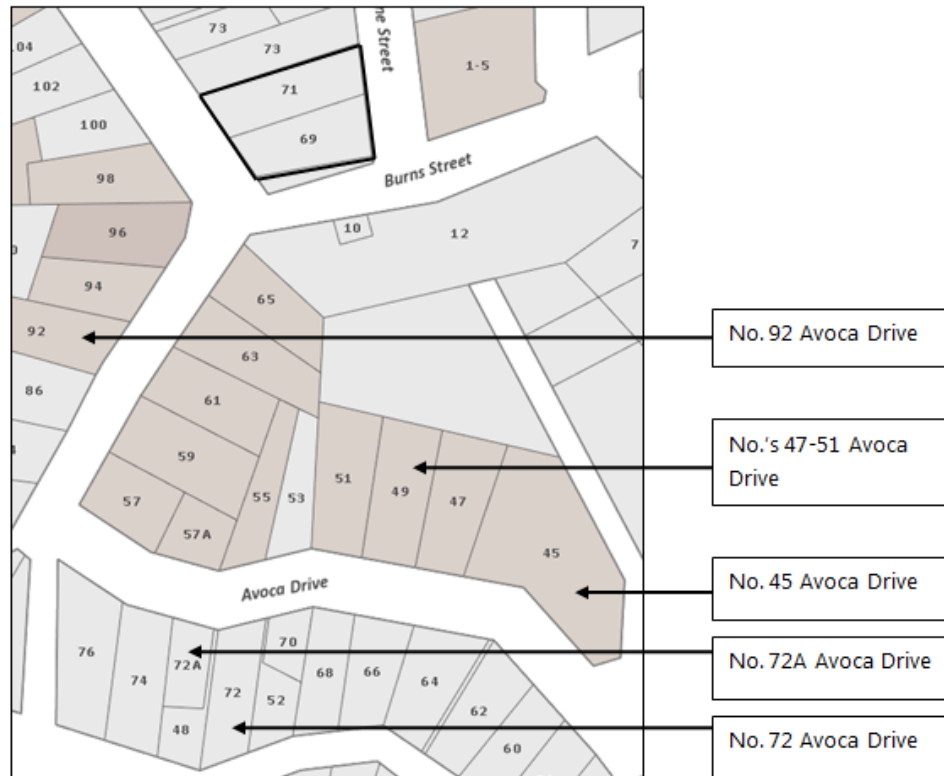


Figure 15 - Properties identified in View Loss Analysis (site edged in black)

In undertaking this view loss analysis, site inspections were carried out, and the expert view loss evidence, provided in the Land and Environment Court of New South Wales court proceedings associated with the original determination, was reviewed. The conclusion of the assessment undertaken pertaining to private domain view loss associated with the proposed modifications is provided below:

- Views from residential units within No. 45 Avoca Drive, Avoca Beach are external views from either the mid – level or upper level balconies. The dwellings do not have existing direct view access to the development site due to either the orientation of the units to views or because of the intervening built form and vegetation (refer to Figure's 16- 21). View loss from this property as a result of the proposed modifications can be discounted.

2.2

DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 16 - View corridor from 7/45 Avoca Drive (mid - level balcony)



Figure 17 - View corridor from 7/45 Avoca Drive (upper - level balcony)



Figure 18 - View corridor from 8/45 Avoca Drive (mid-level balcony)

2.2

DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 19 - View corridor from 8/45 Avoca Drive (upper-level balcony)



Figure 20 - View corridor from 9/45 Avoca Drive (upper level balcony)



Figure 21 - View corridor from 9/45 Avoca Drive (mid-level balcony)

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

- Views from No. 2/47 Avoca Drive, Avoca Beach are from a roof terrace from which a minor portion of the south eastern corner of the development may be visible (refer to Figure 22). This minor potential encroachment in the view loss corridor does not block any views to scenic or highly valued items such as Avoca Beach or water. View loss from this property, and No. 49 Avoca Beach Drive, as a result of the proposed modifications, can be discounted.



Figure 22 - View corridor from 2/47 Avoca Drive (rear balcony)

- Views from No. 1/51 Avoca Drive, Avoca Beach are from a rear terrace at the uppermost level of the development, which are visible via a narrow outlook between vegetation at South End Park. The view contains part of the wave zone at the beach which is visible above the existing theatre roof (refer to Figure's 23 and 24).



Figure 23 - View corridor from 1/51 Avoca Drive (rear balcony)

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 24 - View corridor from 1/51 Avoca Drive (rear balcony – zoomed in)

The Part 2 consent included a reduction in the width of the roof void to Cinema 2, being setback from Avoca Drive an additional 2m. Whilst the additional height proposed under the current modification application will result in a loss of vegetated outlook, the wave zone, beach and remainder of the whole view toward North Avoca will be retained in a greater capacity than that was previously approved by the LEC and considered acceptable.

A secondary view from this property is retained from a lower terrace (also at the uppermost level) of 1/51 Avoca Drive (refer to Figure 25 and 26). This outlook is largely obscured by vegetation, however the dominant view of the water and land interface will remain unaffected by the proposed modifications.



Figure 25 - View corridor from 1/51 Avoca Drive (lower rear balcony)

2.2

DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 26 - View corridor from 1/51 Avoca Drive (lower rear balcony – zoomed in)

- No.72A Avoca Drive, Avoca Beach is occupied by an elevated dwelling with a northern first floor level balcony. The existing outlook from this balcony is towards the residential development located at No. 57A Avoca Drive, Avoca Beach, beyond which the existing roof of the Avoca Beach Theatre is visible (refer to Figure 27).



Figure 27 - View corridor from 72A Avoca Drive (first floor balcony)
(Source: www.realestate.com.au)

Figure 28 details a further view of the outlook from the northern balcony of No. 72A Avoca Drive with the upper level ridgeline of the Avoca Beach Surf Life Saving Club (RL 14.84m AHD) located at No. 10 Vine Street, Avoca Beach visible beyond the vegetation line. The increase of the approved development's maximum roof height to Cinema 2 by 700mm will result in a maximum RL 14.90m AHD, 0.6mm higher than the Avoca Beach Surf Life Saving Club.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

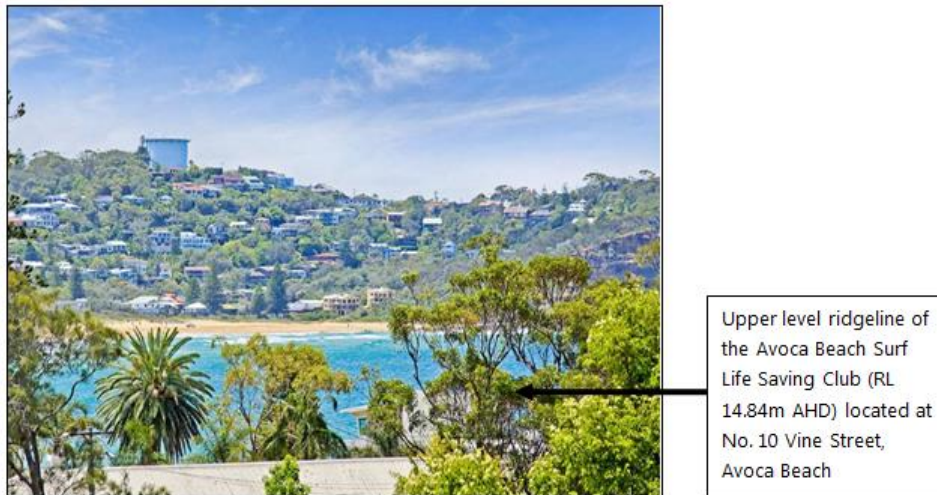


Figure 28 - View corridor from 72A Avoca Drive (first floor balcony)
(Source: www.realestate.com.au)

The approved roof of Cinema 2 will be visible above the roof of the existing Avoca Beach Theatre. The proposed modifications will result in a further loss of view from the northern first floor balcony of No. 72A Avoca Drive comprising built form and a narrow band of water seen heavily filtered through vegetation in the park beyond the development site. However, the wave zone of Avoca Beach and the remainder of the beach visible between Avoca and North Avoca in this view will be retained. Furthermore, the remainder of the outlook from this junction, including a view to the Skillion in Terrigal, will be retained (refer to Figure 29).



Figure 29 - View corridor from 72A Avoca Drive (first floor balcony)
(Source: www.realestate.com.au)

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

It is considered the proposed modifications do not block a significant proportion of views to scenic items or highly values items. The additional view loss from No. 72A Avoca Drive is considered minor and reasonable being that the loss of outlook associated with the proposed modifications are currently heavily filtered by vegetation and built elements. The loss of these filtered views will not adversely impact the retention and interpretation of significant water and land interface views in the distance.

- No. 72 Avoca Drive, Avoca Beach is occupied by an elevated dwelling with a northern orientated first floor level balcony. The existing outlook from this balcony is towards residential development located on the northern side of Avoca Beach Drive beyond which the existing roof of the Avoca Beach Theatre is visible (refer to Figure 30).



Figure 30 - View corridor from 72 Avoca Drive (first floor balcony)
(Source: www.realestate.com.au)

The approved roof of Cinema 2 will be visible above the roof of the existing Avoca Beach Theatre. It is acknowledged that the proposed modifications will result in a further loss of view comprising built form and a narrow band of water seen heavily filtered through vegetation in the park beyond the development site from the northern first floor balcony of No. 72 Avoca Drive. However, the wave zone of Avoca Beach and the remainder of the beach visible between Avoca and North Avoca in this view will be retained.

It is considered the proposed modifications do not block a significant proportion of views to scenic items or highly values items. The additional view loss from No. 72 Avoca Drive is considered minor and reasonable.

- The residential dwellings located in No. 92 Avoca Drive, Avoca Beach (Unit's 3 and 4) currently have a view of water in a north-easterly direction, visible through a narrow opening in vegetation (refer to Figure's 31, 32 and 33).

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

These water views are obtained over the existing theatre roof from both the lower and upper level balconies of No. 3/92 Avoca Drive and the upper level balcony of No. 4/92 Avoca Drive via an oblique viewing corridor. This viewing corridor does not comprise the principal outlook from the three affected balconies. The principal outlooks from No.'s 3/92 and 4/92 Avoca Drive are in an easterly direction towards South End Park.

The lower level terrace of No. 3/92 Avoca Drive does not currently obtain water views over the roof of the existing theatre (refer to Figure 34). The proposed modifications will result in a narrow view of vegetation being lost. Any view loss concern from the lower level terrace of No. 3/92 Avoca Drive, can be discounted.

The lower level balconies of No.'s 3/92 and 4/92 Avoca Drive are adjacent to the principal internal living areas, with the upper level balconies adjacent to a bedroom.

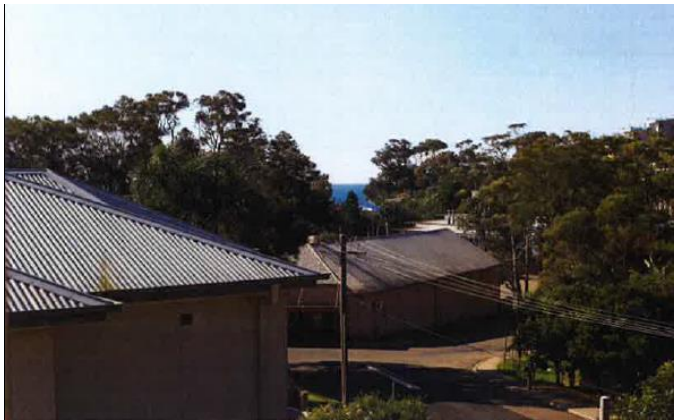


Figure 31 - View corridor from 3/92 Avoca Drive (upper level terrace)



Figure 32 - View corridor from 3/92 Avoca Drive (lower level terrace)

2.2

DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)



Figure 33 - View corridor from 4/92 Avoca Drive (upper level terrace)
(Source: www.realestate.com.au)



Figure 34 - View corridor from 4/92 Avoca Drive (upper level terrace)
(Source: www.realestate.com.au)

The Part 2 consent included a reduction in the width of the roof void to Cinema 2, being setback from Avoca Drive an additional 2m. Whilst the additional height proposed under the current modification application will result in a loss of vegetated outlook, the main view of the ocean in the distance will be retained from all three affected balconies in a greater capacity than that was previously approved by the LEC and considered acceptable. Any view loss concerns from No.'s 3/92 and 4/92 Avoca Drive, can be discounted.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

It is concluded that that there will be no significant view loss associated with the increase in roof height by 700mm to accommodate Cinema 2 which would justify refusal of the modification application.

- (f) *to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.*

Comment:

The proposed modifications do not cause excessive overshadowing to public open space areas.

Based on the considerations provided above, it is concluded the proposed modifications are not without merit and will not hinder the attainment of s.1.3 of the EP & A Act. It is considered there are sufficient grounds to justify a further variation of the development standard to that originally approved and subsequently amended.

4.4 Floor Space Ratio

The provisions of cl. 4.4 within GLEP 2014 establish a maximum floor space ratio (FSR) for buildings. Clause 4.4 (2) of GLEP 2014 provides that development on the subject land shall not exceed a maximum floor space ratio of 1:1. The proposed modified development complies, having a floor space ratio of 0.95:1.

7.2 Flooding Planning

The site is identified as flood affected on Council mapping (refer to Figure 35).

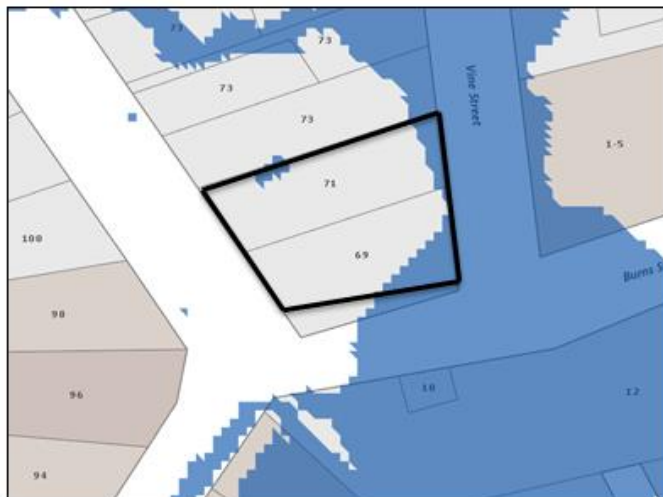


Figure 35 - 1% Flood Extents Mapping (site edged in black)

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

The development remains satisfactory in respect to cl. 7.2 of GLEP 2014 subject to the continued imposition of flood mitigating conditions originally approved and supported by Council's Development Engineer.

Schedule 1 - Clause 1(5) (a) – (g)

Notwithstanding that this is an application under Section 4.56 of the EP & A Act to modify a consent granted by the Land and Environment Court (and is not a development application), the following consideration is given to the proposed modified development in respect to the matters for consideration under GLEP 2014 Schedule 1 - Clause 1 (5):

(5) Before granting development consent to development on land to which this clause applies, the consent authority must take the following into consideration:

(a) whether the development retains the existing theatre building.

Comment

The proposed modified development retains the existing theatre building.

(b) whether the design of the development complements the heritage character of the existing theatre building.

Comment

The proposed modified development does not alter the relationship of the approved development to the character of the existing theatre building.

(c) whether the development provides a high standard of urban design and architectural quality, including the interface between the development and the adjoining public park.

Comment

The proposed modified development maintains the high standard of urban design and architectural quality of the development approved by the Court, noting Council's Architect has raised no objection to the proposed modifications.

(d) whether the design of the development is appropriate for the location of the land on the coast.

Comment

The proposed modified development does not significantly alter the bulk and scale or architectural presentation of the approved development.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

(e) whether adequate car parking is provided.

Comment

The proposed modified development does not generate an additional demand for car parking and does not alter the basement car parking layout or access arrangement of the approved development.

Provisions of any Development Control Plan

Gosford Development Control Plan 2013

An assessment of the proposed development against the relevant chapters of GDCP 2013 is provided below. It is concluded the proposed modifications are appropriate in the locale.

Chapter 2.1: Character

Chapter 2.1 - Character requires development applications to demonstrate consistency or compatibility with development objectives contained within the relevant "Statements of Desired Character". The subject land is located within Character Place "Avoca 9 – Village Centre". The proposed modified development is considered compatible with the following statements of desired character:

- *Scenic potential and amenity of this prominent village of community and recreation facilities, combining recreation-retail businesses, community buildings, open spaces and parking areas, should be enhanced for the benefit of residents and holidaying visitors.*

Comment

Both the approved and proposed modified development provide a recreation/entertainment for local and city-wide communities and for tourists/visitors in a manner which retains the original theatre and provides for an appropriate interface with the public domain generally and the adjoining Hunter Park.

- *Building works should maximise public access and recreation activities along all visible street and park frontages, reflecting a modestly-scaled seaside theme with extensive sunscreened verandahs or upper-storey balconies. Structures with local historical value should be preserved and enhanced. Colour schemes and commercial signs should promote the qualities of a coastal community village, rather than corporate sponsorship.*

Comment

Both the approved and proposed modified development provides for public access and recreational activities along visible street and park frontages, in a manner reflecting the categories of use and the site specific building bulk and scale controls applicable to the

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

subject land and the materials/colour selection originally approved under Development Application No. 42661/2012.

Chapter 2.2: Scenic Quality

The subject site's landscape unit is identified as Geographic Unit No. 6 – South Coastal. It is considered the proposed modifications satisfy the development objectives for this area in that they will not further erode the the landform and vegetation characteristics of the area, thereby maintaining visual integration.

Chapter 6.3: Erosion and Sediment Control

The approved erosion and sediment control measures proposed are considered satisfactory. Compliance will be continued to be endorsed via conditions.

Chapter 6.4: Geotechnical Requirements

The subject site is not located in an identified landslip area.

Chapter 6.7: Water Cycle Management

The proposed modified development does not involve any significant roof extensions or increase in impervious areas to that of the originally approved development. In this regard, Council's Development Engineers have confirmed the proposed modified development does not require any additional stormwater management measures to those previously approved.

Chapter 7.1: Car Parking

The proposed modified development does not generate any additional demand for car parking and does not involve any modification of the car parking layout or vehicle access arrangements previously approved.

Chapter 7.2: Waste Management

The Waste Management Plan accompanying the development application is supported by Council's Waste Services Division (Garbage), subject to the imposition of conditions requiring compliance.

Likely Impacts of the Development

a) *Built Environment*

The proposed built form is considered acceptable in the context of the site.

There will be no amenity impacts as a result of the variations to cl.4.3 (Height of Buildings) under GLEP 2014 that would warrant further modification of the development application.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

b) Natural Environment

The proposed modifications are satisfactory in relation to impacts on the natural environment as identified throughout this report.

c) Economic Impacts

The proposed modifications will continue to contribute to the supply of housing needs in the locality and is considered to be satisfactory from an economic perspective.

d) Social Impacts

No social impacts will arise from the approval of this modification application.

Suitability of the Site for the Development

A review of Council's records has identified the following constraints:

- Coastal Zone: The provisions of *State Environmental Planning Policy (Coastal Management) 2018* require Council consider the aims and objectives of the SEPP when determining an application within the Coastal Management Areas. The subject property falls within the mapped coastal management areas. The relevant matters have been considered in the assessment of this application. The proposed modifications are considered consistent with the stated aims and objectives of *State Environmental Planning Policy (Coastal Management) 2018*.
- Bushfire: The subject site is mapped as being bushfire affected. In this regard, the original development application contained a bushfire assessment addressing the requirements of the *Rural Fires Act 1997* and the document *Planning for Bushfire Protection*, published in 2006 by the New South Wales Rural Fire Service. The original development application was referred to the New South Wales Rural Fire Service for consideration, where no objection was raised. The minor nature of the proposed modifications did not require a further referral to New South Wales Rural Fire Service.
- Flooding: The land has been classified as being under a "flood planning level". Having regard to Clause 7.2 (3) (a) – (e) of GLEP 2014, the proposal is supportable subject to the continued imposition of conditions, as originally approved.

There are no constraints that would render the site unsuitable for the development of the site.

The Public Interest

The approval of the application is considered to be in the public interest.

2.2 DA/42661/2012 - Part 3 - Modification to Avoca Beach Theatre (contd)

Other Matters for Consideration*Contributions*

The nature of the proposed modifications do not alter the contributions as originally imposed. **Condition 2.20** remains in place requiring compliance with the Voluntary Planning Agreement signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited, dated 22 January 2007:

- In accordance with Recital E and cl. 4(a) of the 2006 Voluntary Planning Agreement, payment of the total sum of \$500,000 for the public purpose of the provision of public amenities, namely, the construction and enhancement of car parking facilities near the development in South End Park, Avoca and the embellishment and beautification of the adjoining public open space known as Hunter Park, Avoca all as depicted on the plan annexed to the 2006 Voluntary Planning Agreement and marked with the letter "B"; and
- In lieu of developer contributions, payment of an amount of \$10,296 for the provision of public amenities by Council ("the Contribution Amount"). The Contribution Amount will be increased on each of 1 January, 1 March, 1 July and 1 October in each year from the date of this Agreement [being the date of the 2006 Voluntary Planning Agreement] until the Contribution Amount is paid by the same percentage increase as the percentage change, if any, in the Consumer Price Index in the 3 months prior to the relevant review date.

Water and Sewer Contributions

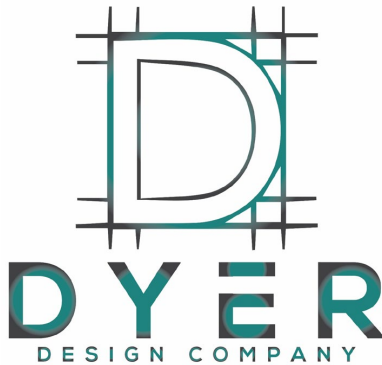
The nature of the proposed modifications does not alter the water and sewer contributions as originally imposed.

Conclusion

The Development Application has been assessed against the heads of consideration of s.4.15 and s.4.56 of the EP & A Act and all other relevant instruments and policies. The proposed modifications are considered reasonable and therefore it is recommended that Council grant approval to Development Application No. 42661/2012 Part 3.

Attachments

- | | | |
|---|-----------------------------|-----------|
| 1 | Draft Conditions of Consent | D13497923 |
| 2 | Development Plans | D13472984 |



Ken Dyer

56 Adelaide Ave
Umina Beach
NSW 2257

M – 0437 202 257
E – ken_dyer@bigpond.com

7th May 2024

Robert Eyre
Principal Development Planner
Residential Assessments
Central Coast Council
PO Box 20
Wyong, NSW 2259

Review of variation to previous approval drawings: Avoca Beach Theatre Site – DA/42661/2012

Further to your email request dated 31/05/24 with documents, please find attached my independent design review of the above-mentioned variation to approved drawings.

We have limited this review to variations nominated in the Statement of Environmental Effects. We have not made any comments around the validity of this application as a modification.

Documents Reviewed

- Initially Approved Plans through Land & Environment Court
- Approved Modifications Part 3 to initial approved plans
- Current proposed modification Architectural Plans
- Statement of Environmental Effects

Design Review

1. Building Height;

The originally approved development on site exceeds the 10m height control by approximately 42%. Subsequent amendments permitted an increase of 700mm and a maximum RL 14.9m AHD associated with the roof of Cinema 2, resulting in a further variation to the development standard.

The extent of the modified building height to accommodate the roof form changes as described below is 245mm or 5.07% above the currently approved building height (RL14.9m) which is considered minor and will be largely not perceivable when viewed from the street.

The proposed roof form has changed as follows:

- The roof being extended over the residential unit balconies facing Vine Street to align the balcony edge;
- The curved roof over Cinema 2 being replaced with a single fall skillion roof, and slightly raised to accommodate the height of the cinema screen;

The overall revised roof form provides a much more unified design approach with a consistent parapet line to reduce the perceived bulk of the development. The building form is well articulated, presenting strong elements expressing the various differing functions. The strong skillion roof provides deep recessive cover to the residential balconies to add to the light and shade of built form in line with the ADG requirements.

2. Floor Space Ratio;

The site is identified as being subject to a maximum Floor Space Ratio (FSR) of 1:1. The currently approved development's FSR is 0.95:1. The proposed modifications increase the FSR to 1.09:1, which is a variation of 9% to the development standard. As outlined in SEE, the changes resulting in the increased FSR are:

- The "enclosure" of the approved level 1 deck due to the added terrace screening for weather protection – resulting this area now being counted as GFA;
- The reconfiguration of the residential units and extension of the north east balcony edge;
- The inclusion of the ancillary office space above the existing Theatre into the gross floor area calculation.

It is to be noted that none of these changes involve an increase in the approved overall building footprint. As indicated in the SEE the main extent of the FSR increase is due to the enclosure of the approved level 1 deck with terrace screening for weather protection, and the inclusion of the ancillary office space on level 1 into the GFA calculation. The approved setback of the level 1 deck/terrace area from the northern boundary remains consistent with the approved northern boundary setback.

3. Revised form & Materials;

The external appearance of the building is well considered and very well-articulated on the elevations. The composition has a variety of building elements defining both vertical and horizontal elements as well as functions of the spaces.

The façade has recessing and protruding elements that vary the scale and creates interest in the building. The design has good proportions and a balanced composition of elements, reflecting the internal layout and structure.

The proposal uses a variety of materials, colours and textures to reflect the high-quality design outcome.

4. Summary;

The proposed modifications will not cause any adverse environmental effects beyond those that have already been considered and approved under the original consent. As previously mentioned, building setbacks and landscaping remain consistent with that approved.

The proposed amendments to the approved FSR and building height does not significantly alter the visual relationship of the approved development to that of the existing character of the area and views enjoyed by surrounding developments.

Given the above brief review and consideration of the detailed submission; it is considered that sufficient planning grounds exist to support the proposed modification application.

Should you require any additional information, do not hesitate to contact the undersigned.

Sincerely,



Ken Dyer
Architect (B.Arch)
NSW Reg No. 5838

DYER DESIGN COMPANY

Trading for Dyer Family Trust
ABN 67 787 548 438

Item No: 3.1**Title:** DA/42661/2012/E - 69 Avoca Drive, Avoca Beach - Alterations & Additions to existing Theatre**Department:** Environment and Planning**Central Coast**
Local Planning Panel

16 May 2024 Local Planning Panel Meeting

Reference: DA/42661/2012/D - D15558924**Author:** Robert Eyre, Principal Development Planner. Residential Assessments**Manager:** Ailsa Prendergast, Unit Manager. Residential Assessments (Acting)**Executive:** Luke Sulkowski, Director Environment and Planning (Acting)**Summary**

An application has been received for modifications to an approved mixed-use development at No.'s 69 – 71 Avoca Drive, Avoca Beach.

The application has been examined having regard to the matters for consideration detailed in s.4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The modification application is required to be reported to Council in accordance with Council's adopted *Policy for Determining Development Applications Subject to Significant Public Objections* as a total of 332 submissions were received at Council associated with the proposal.

Applicant	Johnson & Johnson Real Estate Pty Ltd
Owner	Norbet Enterprises Pty Ltd
Application No	DA 42661/2012 Part 3
Description of Land	LOT: 140 DP: 9359, LOT: 651 DP: 16791, 71 Avoca Drive AVOCA BEACH, 69 Avoca Drive AVOCA BEACH
Proposed Development	s. 4.56 – Modifications to approved mixed use development.
Site Area	1,802.10m ²
Zoning	R2 LOW DENSITY RESIDENTIAL
Existing Use	Avoca Theatre; Dwelling House
Employment Generation	Yes
Submissions	59 Against and 273 submissions were in support.
Estimated Value	\$8,281,607

3.1

Recommendation

- 1 That the Local Planning Panel grant consent to [DA/42661/2012/E – 69 Avoca Drive, Avoca Beach – Proposed Alterations and Additions to existing Theatre, subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.**
- 2 The consent be modified by:**
 - a. The amendment of conditions 1.1A, 1.1, 2.2, 2.7, 2.13.**
 - b. The addition of conditions 1.5, 2.22, 2.9, 5.23, 5.24.**
- 3 That Council advise those who made written submissions of the Panel's decision.**
- 4 That Council advise relevant external authorities of the Panel's decision.**

Precis:

Proposed Development	The applicant is seeking to modify the consent for Development Application No. 42661/2012 under s. 4.56 of the <i>Environment Planning and Assessment Act 1979</i> , comprising both internal and external changes.
Permissibility and Zoning	The subject site is zoned R2 Low Density Residential under the provisions of <i>Central Coast Local Environmental Plan 2022</i> (CCLEP 2022.) Clause 7.18 of CCLEP 2022 identifies additional permitted uses with consent. Additional permitted uses include entertainment facility, residential flat building, restaurant, and café.
Relevant Legislation/ Policies	<p>The following planning policies and control documents are relevant to the development and were considered as part of the assessment:</p> <ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979</i> – Sections 4.15 and 4.56 • <i>Local Government Act 1993</i> – Section 89 • <i>State Environmental Planning Policy</i> (Building Sustainability Index: BASIX) 2004 • <i>State Environmental Planning Policy</i> (Resilience and Hazards) 2021 • <i>State Environmental Planning Policy</i> (Housing) 2021 • <i>Central Coast Local Environmental Plan 2022</i> • <i>Central Coast Development Control Plan 2022</i> • <i>Gosford Local Environmental Plan 2014</i> • <i>Gosford Development Control Plan 2013</i> • <i>Environmental Planning & Assessment Act 1979</i> – Section 4.65 and 4.66 (Existing Use)

3.1

	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Regulation 2021 – Clause 42 (Existing Use)</i> • <i>Protection of the Environment Operations Act 1997</i> • <i>Roads Act 1997</i> • <i>Water Management Act 2000</i> • <i>Apartment Design Guide. Tools for improving the design of residential apartment development (ADG)</i> • <i>Central Coast Regional Plan 2036 (CCRP 2036)</i> • <i>Gosford City Council Climate Change Policy.</i> • <i>Central Coast Council's Community Strategic Plan 2018-2028 'One Central Coast'.</i>
Legislative Clauses Requiring Consent Authority Satisfaction	<ul style="list-style-type: none"> • Section 4.15 of <i>Environmental Planning & Assessment Act 1979</i> - Evaluation. • Clause 8A (2)(d) of the <i>Local Government Act 1993</i> • Clause 28 (Determination of development applications) of <i>State Environmental Planning Policy (SEPP) No 65 – Design Quality of Residential Apartment Development.</i> • Clause 6 (Building to which Policy applies) of <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</i>
Current Use	Commercial; Dwelling House and Theatre
Integrated Development	No
Submissions	Three hundred and thirty-two (332). (Two hundred and seventy- three (273) in support. Fifty-nine (59) objections)

Variations to Policies*

Policy	Clause / Description	Variation
Central Coast Local Environmental Plan 2022	Clause 4.3(2) (Height of Buildings)	<ul style="list-style-type: none"> • Maximum height of 10m is permitted. • The original approved height was 10.8m (RL 14.2m) which was a variation of 0.8m or 8% with the development standard. • The approved development has a maximum height of 11.5m (an increase of 700mm and a maximum RL 14.9m AHD), resulting in a 1.5m or 15% variation with the development standard. • The proposed modification has a maximum height of 11.745m (an increase of 0.245m to the current approval and 1.745m or 17.45% variation to the development standard.

3.1

	Clause 4.4 (2) Floor Space Ratio (FSR)	<ul style="list-style-type: none"> • Maximum 1:1 is permitted. • The original approval had a FSR of 1:1. • The current approval has a FSR of 0.95:1. • The proposed modification has a FSR of 1.04:1 which is a variation to the development standard of 4%.
--	--	--

* **Note:** the above is provided as a summary of the changes as Clause 4.6-Variations to a development standard is not applicable to a s4.56 application. Further assessment of the modifications is provided in this report.

In considering the additional height FSR, there is established case law that a variation to development standards is not required for a modification under section 4.55. (NSW Court of Appeal *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998), and the Land & Environment Court *Gann v Sutherland Shire Council* (2008))

However, Council is still required to undertake an assessment of the variation and its impact under s4.15 of the EPA Act, 1979.

Background

Development Application No. 42661/2012 (Part 1)

Consent was granted on 18 April 2017 by the Land and Environment Court (LEC), comprising:

- Demolition of the existing cottage, shed, outbuildings and shade sails on Lot 140 and removal of the disused speaker box and ramp from the rear of the existing theatre on Lot 651, as well as the staircase and ancillary storage rooms on the northern side of the theatre;
- Preparation of the site, including removal of existing trees and the undertaking of earthworks and excavation for the basement; and
- Construction of a part two, part three storey building to the north and east of the existing theatre to provide one mixed use commercial and residential building containing four cinemas and associated foyers and facilities; terrace; cafe/gallery and five apartments.

Development Application No. 42661/2012 (Part 2- now part A)

Consent was modified on 24 November 2017, comprising:

- Modification to the waste storage area and changes to the storage room and stair access at the basement floor level.
- Modifications to the 'back of house' areas adjacent to Cinema 3/4, modification to the stair, foyer, kitchen and extension of the roof to the first-floor deck.
- Minor change to Unit No.'s 1 – 3.

3.1

The Part 2 consent also included a reduction in the width of the roof void to Cinema 2, being setback from Avoca Drive an additional 2m, noting the maximum height of this roof form remained unchanged at RL 14.2m AHD.

The consent (Part 3-now part B) was modified on 8 April 2019 to 'Modify Bin Store, Basement Car Park Internal Changes to Cinemas & Residential Units, and external modification to Cinema Roof'. This modification is the latest set of approved plans. **(Refer attachment 2)**

An application to modify the consent (Part C) was withdrawn on 26 August 2022.

The consent (Part D) was modified on 12 September 2022 to amend conditions 2.1 and 3.7 to permit demolition prior to the issue of a Construction Certificate.

Physical Commencement

The consent was granted for 5 years on 18 April 2017. Due to the extension granted to consents under the Co-vid provisions the consent was extended by 2 years to 18 April 2024.

The consent has physically commenced by the demolition of the existing house prior to 18 April 2024 which was permitted under condition 2.1 of the consent. The consent is still current and has not lapsed.

3.1



Figure 1A - Site of demolished house 22/03/2024

Amended Application/Renotification

The current application (Part E) was lodged on 11 October 2022. The proposed amendments had a further height increase of 0.845m to the current approved plans and a FSR of 1.09:1. Council raised concerns with the additional height and floor space. The applicant subsequently submitted amended plans which reduce the height increase to 0.245m and FSR to 1.04:1.

The following assessment is based on the amended plans dated 14/09/2023. **(Refer attachment 1)**

Chapter 1.2 of CCDCP 2022 sets out in respect of applications to modify a consent that;

Public notification of applications lodged under s.4.55(2) will generally not be required unless Council or staff with the appropriate delegated authority is of the opinion it may impact on an adjoining property and submissions were received to the original application.

The amended plans were not required to be re-advertised/notified under the provisions of Chapter 1.2 of CCDCP 2022 as the changes/amendments were reductions/improvements to the application and had no additional impacts on the surrounding properties. The amendments were also in response to a number of issues raised in the public submissions,

3.1

particularly the height increase which has been significantly reduced by 600mm to that originally proposed and exhibited.

The Site

The subject land comprises Lot 140 DP 9359 and Lot 651 DP 16791, No's. 69 and 71 Avoca Drive, Avoca Beach. The site has an area of 1,802.10m² and is irregular in shape, with a frontage of 43.94m to Avoca Drive, 40.98m to Burns Street, 40.23m Vine Street/Vale Avenue, and 58.83m to Hunter Park (refer to Figure's 1-4).

The site is flat with a slight falling grade from Avoca Drive (RL 4.95m AHD) towards the rear eastern boundary at Vine Street (RL 2.75m AHD).

No.69 Avoca Drive, Avoca Beach is occupied by a commercial premise known as the Avoca Beach Theatre. A part one and two storey theatre building is located on Lot 651. The building contains the theatre itself, as well as the box office, toilets, projection room, storage rooms and first floor office. An awning extends out over the footpath at the entry to the theatre off Avoca Drive. The area to rear (east) of the theatre across to Vine Street is presently vacant.

No.71 Avoca Drive, Avoca Beach is occupied by three outbuildings (metal, weatherboard and fibro respectively) and a single storey weatherboard garage with a metal roof at the rear of the property towards Vine Street. A lawn area containing two shade sails used for the outdoor viewing of films is located in the north-west corner of this allotment immediately adjacent to Avoca Drive.

The site has road frontages to three sides, with all three street frontages kerb and guttered. In addition, the Vine Street frontage contains 90-degree angle parking up to the boundary of the site.

A paved forecourt is provided within the road reserve in front of the theatre on Avoca Drive, And a footpath is adjacent to the southern side of the building on the northern side of Burns Street (within Lot 650 DP 1120404). Vehicular access to the garage is provided off Vine Street.

3.1



Figure 1 - Aerial photograph of the subject site (edged in black)



Figure 2 – Avoca Drive frontage of the site



Figure 3 – Avoca Drive and Burns Street frontages of the site

3.1



Figure 4 – Vine Street frontage of the site

Surrounding Development

Hunter Park adjoins the northern site boundary. Directly south of the site, on the opposite side of Burns Street is a public reserve, known as South End Park. Adjacent to the eastern site boundary, located at No.'s 1-5 Vine Street, Avoca Beach, is a residential flat building. Properties located to the west of the site, on the opposite side of Avoca Drive, comprise both single storey dwellings and multi – unit residential development.

Current Status

The Proposal

The applicant is seeking to modify the consent for Development Application DA/42661/2012 under section 4.56(1) of the EP&A Act by amendment of approved plans.

The amendments include:

Carpark/basement level

- Plant room added.
- Disabled car parking space relocated.
- Car park access amended. Entry ramp is removed due to flood gate for flood mitigation.
- Waste storage area amended to comply with current Council requirements.

Ground Floor

- Stair to foyer and cinema entries amended.
- Stepped wall adjacent to the entry replaced with glazed connection between existing theatre and new entry.

3.1

- Cinema 3 stage adjusted and seating reduced from 114 seats plus 4 accessible seats to 54 seats plus 4 accessible seats.
- Relocation of kitchen from first floor to ground floor.
- Cinema 4 seating rotated and seating increased from 28 seats plus 3 accessible seats to 32 seats plus 3 accessible seats.
- Ground floor cinema seating (theatres 3 & 4) reduced from 142 seats plus 7 accessible seats to 86 seats plus 7 accessible seats. No change to cinema 1 seating.
- Ticket and candy bar layout amended.
- Residential entry and vertical circulation amended.
- Units 1 and 2 layout amended, balcony adjusted.
- At grade paved area to front of building.

First Floor

- Units 3 and 4 layout amended, balcony adjusted.
- First floor amenities relocated next to residential lift and stair.
- Cinema 2 seating adjusted and reduced from 148 seats plus 4 accessible seats to 54 seats.
- First floor total cinema seating reduced from 148 seats plus 4 accessible seats to 113 seats plus 4 accessible seats.
- Kitchen and bar relocated, terrace screening added for weather protection, residential foyer amended.

Second Floor

- Residential foyer added.
- Unit 5 layout amended/balcony adjusted.

Roof

- Roof height and shape amended.
- Solar panels added to satisfy BASIX requirements.

Seating

- Total seating reduced from 616 seats to 462 seats, a reduction of 154 seats.

3.1



Figure 5 - Proposed Avoca Drive View Perspective

Applicable Planning Controls

The following planning policies and control documents are relevant to the development and were considered as part of the assessment.

- Environmental Planning & Assessment Act 1979 – Sections 4.15 and 4.56
- Local Government Act 1993 – Section 89
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy No 65 (Design Quality of Residential Flat Buildings)
- State Environmental Planning Policy (Housing) 2021
- Central Coast Local Environmental Plan 2022
- Central Coast Development Control Plan 2022
- Gosford Local Environmental Plan 2014
- Gosford Development Control Plan 2013
- Environmental Planning & Assessment Act 1979 – Section 4.65 and 4.66 (Existing Use)
- Environmental Planning & Assessment Regulation 2021 – Clause 42 (Existing Use)
- Protection of the Environment Operations Act 1997
- Roads Act 1997
- Water Management Act 2000

Draft Environmental Planning Instruments

There are no draft planning instruments which apply to the proposal.

3.1

Permissibility

The subject site is zoned R2 Low Density Residential under *Central Coast Local Environmental Plan 2022*. The proposed development was permissible with consent under the additional land uses permitted under the previous Clause 2.5 of the GLEP 2014.

The proposed development is identified as permissible under the additional land uses permitted under Clause 7.18 of the current CCLEP 2022.

Land to the north, east and south is zoned RE1 Public Recreation. Land to the west, excluding Avoca Drive, is zoned R1 General Residential.



Figure 6 - Zoning of the site (edged in black) and adjoining properties.

State Environmental Planning Policies**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The application is supported by an amended BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate.

The proposal is considered to be consistent with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The proposed modification does not impact BASIX requirements.

State Environmental Planning Policy (Resilience and Hazards) 2021

The relevant provisions of the SEPP are addressed as follows:

3.1

Chapter 2 Coastal Management

The aims of Chapter 2 are to be considered when determining an application within the Coastal Management Areas. The Coastal Management Areas are defined on maps issued by the NSW Department of Planning and Environment.

The site is located within the Coastal Environment Area as identified on these maps and subject to the provisions of Section 2.10 of the SEPP.

The development is not likely to have an adverse impact on the matters referred to in clause 2.10. The development is not considered likely to cause increased risk of coastal hazards on the site or other land and the site is not subject to the coastal management program for the purposes of Division 5. A summary of considerations is included below.

Section 2.10 - Development on land within the coastal environment area

In accordance with clause 2.10(1) development consent must not be granted unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

Matters for Consideration	Compliance
<i>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment</i>	The proposal is not likely to cause adverse impacts on the biophysical, hydrological, or ecological environment.
<i>(b) coastal environmental values and natural coastal processes</i>	The proposal will not impact on the geological and geomorphological coastal processes.
<i>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014, in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1</i>	The proposal will not result in an adverse impact on the water quality of the marine estate and does not drain to a sensitive lake contained in Schedule 1.
<i>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms</i>	The proposal will not result in an adverse impact on native vegetation or fauna, undeveloped headlands, and rock platforms.
<i>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</i>	The site does not have frontage to any foreshore, beach, headland or waterways.
<i>(f) Aboriginal cultural heritage, practices and places</i>	There are no identified aboriginal cultural heritage items on the site.
<i>(g) the use of the surf zone.</i>	Not applicable. No frontage to any

3.1

	beach/surf zone.
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(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

There have been no adverse impacts identified in the consideration of Section 2.10(1) that would engage the further considerations under Section 2.10(2).

Section 2.11 - Development on land within the coastal use area

Matters for Consideration	Compliance
(1). Development consent must not be granted to development on land that is within the coastal use area unless the consent authority— (a) has considered whether the proposed development is likely to cause an adverse impact on the following—	
i) existing, safe access to and along the foreshore, beach, headland, or rock platform for members of the public, including persons with a disability,	The proposal is not located on a foreshore, beach, headland, or rock platform and does not restrict access.
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	The proposal does not overshadow, or cause wind funnelling or loss of views from public places to any foreshore.
iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The proposal is well set back from the ocean frontage and has no impact on the visual and scenic quality of the coast or coastal headlands.
iv) Aboriginal cultural heritage, practices and places,	No impact on aboriginal or heritage items.
(v) cultural and built environment heritage, and	The site and adjoining sites do not contain any heritage items. The proposal is consistent with the likely future character and cultural identity of the area.
(b) is satisfied that—	

3.1

<p>i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p> <p>ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</p>	<p>Council is satisfied that the proposal has been designed to avoid any adverse impacts in (a) above.</p>
<p>(c) has considered the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p>	<p>The proposal has considered the bulk, scale and size of the development on the adjoining and surrounding built environment. The proposal does not impact other land in the coastal use area.</p>

Chapter 4 Remediation of Land

Clause 4.6 of Chapter 4 requires that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The site has previously been used for residential and theatre purposes. There are no known previous uses that would lead to the site being contaminated or unsuitable for the proposed use.

The development and the land are not otherwise mentioned in Section 4.6(4) and accordingly the provisions of Section 4.6(2) are not engaged by the proposal and consent may be granted. The proposal is considered consistent with the provisions of Chapter 4 of the SEPP.

Council can be satisfied that the proposed development complies with the provisions of Chapter 2 Coastal Management and Chapter 4 Remediation of Land of *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The relevant matters have been considered in the assessment of this application. The application is considered consistent with the stated aims and objectives.

State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy 65 (Design Quality of Residential Flat Buildings) was repealed by Section 3 of SEPP (Housing) 2021 effective from 14 December 2023. Chapter 4 of

3.1

SEPP (Housing) applies to development applications made but not determined before 14 December 2023.

The current application was lodged on 11 October 2022 when SEPP 65 and the ADG applied. The internal changes to the units result in a reduction from 5 three-bedroom apartments to 5 two bedroom apartments.

The amended plans have been designed by a registered architect and the application was accompanied by a Design Verification Statement and Architectural Design Statement. **(Refer attachments 1, 5, 6 and 7).**

The Statements identify that 100% of the apartments will have cross ventilation and 2 hours of solar access during the wintertime.

It is considered the proposal meets the design requirements of the SEPP 65/SEPP (Housing)/ADG and is substantially the same development.

Central Coast Local Environmental Plan 2022 (CCLEP 2022)

The proposal has been assessed in accordance with the relevant development standards of CCLEP 2022. The proposed modification is consistent with the provisions of the CCLEP 2022.

Zoning & Permissibility

The subject site is zoned R2 Low Density Residential under *Central Coast Local Environmental Plan 2022*. The proposed development was permissible with consent under the additional land uses permitted under the previous Clause 2.5 of the GLEP 2014.

The proposed development is identified as permissible under the additional land uses permitted under Clause 7.18 of the CCLEP 2022.

The proposed modification to Development Application No. 42661/2012 are consistent with the approved uses and therefore permissible with the consent of Council.

Development Standards

An assessment of the proposed development against the relevant planning controls is detailed below.

Development Standard	Required	Approved	Proposed	Compliance with Controls	Variation %	Compliance with Objectives
cl. 4.3 (Height of Buildings)	10m	11.5m	11.745m	No	17.45%	Yes
cl. 4.4 (Floor	1.:1	0.95:1	1.04:1	No	4%	Yes

3.1

Space Ratio						
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Figure 7 - CCLEP 2022 Development Standards

4.3 Height of Buildings

Clause 4.3 (2) of CCLEP 2022 provides that development on the subject land shall not exceed a maximum building height of 10m. The approved development on site exceeds the 10m height control, by 1.5m, representing a variation of 15%.

The modification application proposes an increase of the approved development's maximum roof height 245mm (11.745m/RL 15.145m AHD), representing a variation of 17.45% relating mainly to the roof of the cinema and unit 5 component of the development.

A modification application can be approved even though it would contravene a development standard, and no cl.4.6 variation is required. The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) identify a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application. Section 4.55 and s.4.56 of the EP & A Act has a broad power to approve, subject to its own stand-alone tests (such as the substantially the same test, and a requirement to consider all relevant s.4.15 matters).

In view of the above, and in order to demonstrate the merit associated with the increase of the approved development's maximum roof height 245mm (11.745m/RL 15.145m AHD), consideration is provided with regard to the objectives of the R2 Low Density Residential zone contained with cl. 2.3(2) of CCLEP 2022, the objectives of the height and FSR development standards contained within cl. 4.3 (1) and 4.4(1) of CCLEP 2022.

Clause 2.3 (2) of CCLEP 2022 provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect to land within the zone. Notwithstanding that this is a modification application (not a new development application), the following assessment demonstrates that the proposed modified development is consistent with the applicable objectives of the R2 Low Density Residential zone applying to the subject land which are:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage best practice in the design of low-density residential development.
- To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services.
- To maintain and enhance the residential amenity and character of the surrounding area.

Comment

3.1

Shadow diagrams for have been submitted which illustrate the overshadowing generated by the amended proposal between 9am and 3pm is minor. **(Refer attachment 10)**. All shadows cast during these periods fall upon adjoining roadways, with a minor encroachment of shadows to the car parking area and vegetation bordering South End Park. It is not considered the usability of South End Park will be unreasonable compromised by this minor overshadowing. In view of the above considerations, no objection has been made with regard to the additional shadows cast by height non- complying elements.

The approved and proposed modified development provides for a medium density residential development, as permitted by Clause 7.18 of CCLEP 2022. In granting Development Application No.42661/2012, the LEC was satisfied that the design of the proposal acceptable urban design and architectural quality. The proposed modifications do not involve any significant change to the approved residential design, and it is considered the increase in minor height of will not detract from providing an appropriate built form and land use intensity.

In granting Development Application No. 42661/2012, the Land and Environment Court determined the design of the proposal provided a high standard of urban design and architectural quality. The proposed modifications do not involve any significant change to the approved residential design.

- *To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.*
- *To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.*

To demonstrate if the proposal has merit, consideration of the proposed height non-compliance identified within cl.4.3(2) of CCLEP 2022 has been provided with regard to the objectives of cl. 4.3(1) (height of buildings) of CCLEP 2022:

- (a) to establish a maximum height of buildings to enable appropriate development density,

Comment

The maximum height limit for buildings has been identified for this property.

- (b) to ensure that the height of buildings is compatible with the character of the locality.

Comment

In this instance, it is considered that the additional building height proposed does not detract from the attainment of providing quality urban form in accordance with the character of the zone. The design incorporates various design elements, which activate the design as viewed from the public domain. The proposed modifications do not substantially change the building and have been upgraded to provide solar panels in accordance with ESD principles.

3.1

4.4 Floor Space Ratio

The provisions of cl. 4.4 within CCLEP 2022 establish a maximum floor space ratio (FSR) for buildings. Clause 4.4 (2) of GLEP 2014 provides that development on the subject land shall not exceed a maximum floor space ratio of 1:1. The proposed modified development complies, having a floor space ratio of 0.95:1.

A modification application can be approved even though it would contravene a development standard, and no cl.4.6 variation is required. The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) identify a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application. Section 4.55 and s.4.56 of the EP & A Act has a broad power to approve, subject to its own stand-alone tests (such as the substantially the same test, and a requirement to consider all relevant s.4.15 matters).

In view of the above, and in order to demonstrate the merit associated with the increase of the approved development's maximum roof height 245mm (11.745m/RL 15.145m AHD), consideration is provided with regard to the objectives of the R2 Low Density Residential zone contained with cl. 2.3(2) of CCLEP 2022, the objectives of the height and FSR development standards contained within cl. 4.3 (1) and 4.4(1) of CCLEP 2022.

Clause 2.3 (2) of CCLEP 2022 provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect to land within the zone. Notwithstanding that this is a modification application (not a new development application), the following assessment demonstrates that the proposed modified development is consistent with the applicable objectives of the R2 Low Density Residential zone applying to the subject land which are:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage best practice in the design of low-density residential development.
- To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services.
- To maintain and enhance the residential amenity and character of the surrounding area.

Comment

The approved and proposed modified development provides for a medium density residential development, as permitted by Clause 7.18 of CCLEP 2022. In granting Development Application No.42661/2012, the LEC was satisfied that the design of the proposal acceptable urban design and architectural quality. The proposed modifications do not involve any significant change to the approved residential design and it is considered the

3.1

increase in minor height of will not detract from providing an appropriate built form and land use intensity.

In granting Development Application No. 42661/2012, the Land and Environment Court determined the design of the proposal provided a high standard of urban design and architectural quality. The proposed modifications do not involve any significant change to the approved residential design.

- *To promote ecologically, socially, and economically sustainable development and the need for, and value of, biodiversity in Gosford.*
- *To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.*

To demonstrate if the proposal has merit, consideration of the proposed FSR non-compliance identified within cl.4.4(2) of CCLEP 2022 has been provided with regard to the objectives of cl. 4.4(1) (FSR) of CCLEP 2022:

1. The objectives of this clause are as follows—
 - a) to establish standards for the maximum development density and land use intensity,
 - b) to ensure the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,
 - c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
 - d) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.

Clause 5.21 Flood Planning

The site is identified as flood affected on Council's mapping. (Refer figure 7)

The development remains satisfactory with regard to Clause 5.21 of CCLEP 2022 subject to the continued imposition of flood mitigation conditions as amended by Councils Development Engineer.

3.1



Figure 8 - 1% Flood Extent

Council's Development Engineer advises:

A flooding report was completed by Bewsher Consulting in 2016 to address the extent and impact of flooding on the development. The current DA consent is based on this report. The report determined the 1 in 100 year design flood to be 3.58m AHD and PMF design flood to be 3.99m AHD.

The residential flood planning level (FPL) is the 100 year ARI flood level plus 0.5m for freeboard for all habitable floor levels, the FPL for the development is 4.1m AHD. All habitable floor levels for the development are above the FPL.

The residential flood planning levels for the carparking is the 100 year ARI flood level without freeboard i.e. 3.6m AHD. The proposed basement carpark crest of 3.2m AHD is below the required flood level as is the service area access from, a flood gate is proposed to be installed to seal the basement from ingress of flood waters from the crest level (3.6m AHD) to the FPL (4.1m AHD).

(Refer amended conditions 2.2 and 2.9)

3.1

Clause 7.1 Acid sulfate soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in clause 7.1 of *Central Coast Local Environmental Plan 2022* have been considered. The site contains Class 5 Acid Sulfate Soils. In this instance, the proposal works are not considered to impact on Acid Sulfate Soils.

Clause 7.18

The Central Coast Local Environmental Plan 2022 was notified on 24 June 2022 and came into effect 1 August 2022.

The additional land uses identified under Clause 2.5 of GLEP 2014 have been transferred to clause 7.18 of CCLEP 2022.

Clause 7.18 of CCLEP 2022 states:

7.18 Certain development at Avoca Drive, Avoca Beach

- (1) This clause applies to Lot 140, DP 9359 and Lot 651, DP 16791, Avoca Drive, Avoca Beach, identified as "Avoca Beach Theatre" on the [Key Sites Map](#).
- (2) Development for the following purposes is permitted with development consent on land to which this clause applies—
 - (a) entertainment facilities,
 - (b) residential flat buildings,
 - (c) restaurants or cafes.
- (3) Development consent must not be granted to development referred to in subclause (2) unless the design of the development has been reviewed by a design review panel.
- (4) In deciding whether to grant development consent, the consent authority must consider the following—
 - (a) whether the development retains the existing theatre building,
 - (b) whether the design of the development complements the heritage character of the existing theatre building,
 - (c) whether the design of development achieves a high standard of urban design and architectural quality, including in relation to the interface between the development and the adjoining public park,
 - (d) whether the design of the development is appropriate for the location of the land on the coast,
 - (e) whether adequate car parking is provided,
 - (f) whether the development provides measures to conserve water usage and increase water efficiency,
 - (g) if applicable, the outcome of the review by the design review panel.
- (5) Subclause (3) does not apply to development if the Planning Secretary provides a written statement to the consent authority stating that the Planning Secretary considers the development is of a minor nature.

3.1

(6) A building on land to which this clause applies resulting from development for the purposes of entertainment facilities may exceed the maximum height shown on the [Height of Buildings Map](#) if the consent authority is satisfied the part of the building that exceeds the maximum height is an integral part of the design of the building.

(7) In this clause—

design review panel means a panel of 2 or more persons established by the consent authority for the purposes of this clause.

Under CCLEP 2022:

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.

A Design Review Panel has not been established by Council and the proposed modifications are considered to be substantially the same development approved by the Land and Environment Court.

Clause 7.18 (4) - (a) to (f).

Notwithstanding that this is an application under Section 4.56 of the Environmental Planning and Assessment Act 1979 to modify a consent granted by the Land and Environment Court (and not a new development application), the following consideration is given to the proposed modification in respect of the matters listed above in Clause 7.18 (4).

(a) whether the development retains the existing theatre building.

Comment

The proposed modified development retains the existing theatre.

(b) whether the design of the development complements the heritage character of the existing theatre building.

Comment

The proposed modified development does not alter the relationship of the approved development to the character of the existing theatre building.

(c) whether the development provides a high standard of urban design and architectural quality, including the interface between the development and the adjoining public park.

Comment

The proposed modification maintains the high standard of urban design and architectural quality approved by the Court, noting that Council's architect has not raised objections to the proposed modifications.

(d) whether the design of the development is appropriate for the location of the land on the coast.

3.1

Comment

The proposed modification does not significantly alter the bulk and scale or architectural presentation of the proposed development.

(e) whether adequate car parking is provided.

Comment

The proposed modification does not generate demand for additional car parking. The basement car parking is retained. The proposed modification reduces the seating capacity by 154 seats.

(f) whether the development provides measures to conserve water usage and increase water efficiency.

Comment.

The proposed measures approved are retained.

Central Coast Development Control Plan 2022

The original proposal was assessed under the provisions of GDCP 2013. The current proposal is subject to the provisions of CCDCP 2022. The relevant chapters are assessed below.

Chapter 2.14 Site Waste Management

The approved development by the Land and Environment Court permitted bulk commercial and 240l residential bins to be placed on the kerb in Burns Street for pick up.

This would reduce the footpath width beside the theatre and create a potentially dangerous traffic situation with waste trucks stopping near the Avoca Drive intersection.

To resolve this situation, widening of Burns Street is proposed as a condition of consent to provide a protected waste/parking bay in Burns Street adjacent to the waste storage area within the basement car parking area.

This will require widening of Burns Street. **(Refer figure 9).**

This is supported by Council's waste services and development engineer. **(Refer amended conditions 2.2, 2.9 and 2.13)**

3.1



Figure 9 - Proposed works in Burns Street

Chapter 2.17 Character and Scenic Quality

The proposed modifications do not change or further impact the character or scenic quality of the area.

Consultation

Public Exhibition

The application was notified from 21 October 2022 to 11 November 2022 with 332 public submissions received.

Of these 273 submissions were in support of the proposed development and 59 submissions objected to the proposed development.

The following is a summary of the issues.

In Support

- **The proposal will provide more entertainment and other services to the Central Coast community and support tourism.**

Comment

3.1

The proposal will provide additional entertainment and commercial facilities which are permitted under CCLEP 2022.

- **The new building looks wonderful and blends in with social and environmental surroundings.**

Comment

The proposed building is unique. The planning controls permit a building of greater height and floor space than generally permitted on R2 zoned land due to the history of the site.

- **The proposal will create a world class entertainment precinct for the Central Coast and local community.**

Comment

The proposal provides a unique facility with 4 cinemas which may attract tourists as well as local people.

- **The proposal will enable a wide range of activities.**

Comment

The proposal and current approval is for cinemas, café, and units.

Reasons for Objection

- **There were problems reading the documents on Council's website and making submissions.**

Comment

Any problems with Council's system were rectified early.

- **The proposed modifications are not substantially the same development and should not be approved due to environmental impacts. The proposal increases height, bulk and scale, reduces parking, and is out of character with the area. A new application must be submitted.**

Comment

The proposed modification has reduced the height, FSR, bulk and scale to that originally lodged and exhibited.

The proposed modifications are now considered to have minor environmental impact and the proposal is considered to be substantially the same development. While there is a minor increase in height and floor space this is not significant, and the proposal is substantially the same development.

- **The height, FSR, bulk and scale are greater and have additional impact on the adjoining park.**

Comment

3.1

The increase in height and FSR compared to the original approval is 4%. This is due to changes to the roof shape, installation of services including solar panels on the roof and internal changes to the layout which also results in a reduction in cinema seating. The reduction in cinema seating should result in a decrease demand for parking and impact on the adjoining streets and park.

- **The amendment is a substantial change to what was approved in 2017. There is a significant increase in height and bulk which is out of character for the area. There are no other 3 or more storeys in the area.**

Comment

The increase in bulk and FSR compared to the original approval is 4%. This is due to changes to the roof shape, installation of services including solar panels on the roof and internal changes to the layout which also results in a reduction in cinema seating by 191 seats.

- **The placement of services on the high point of the roof adds to the height and view loss generally.**

Comment

The screening around the roof top services has been removed/lowered and the proposed height increase is now reduced from 845mm to 0.245m on part of the building.

- **The proposal moves closer to Vine Street and has a vertical wall.**

Comment

The setback to Vine Street varies due to the location of the basement driveway entry and balconies on the units above which have been amended to address the internal layout. The setback varies and is generally about 2.2m. The eastern elevation to Vine Street is not a vertical wall and is articulated by varying setbacks to walls and edge of balconies.



Figure 10 - Original East Elevation

3.1

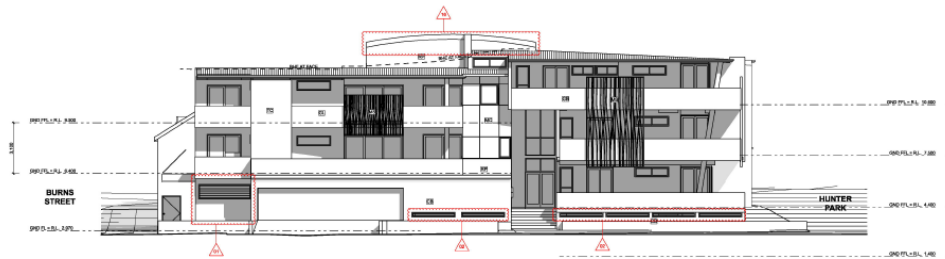


Figure 11 - Current Approved East Elevation

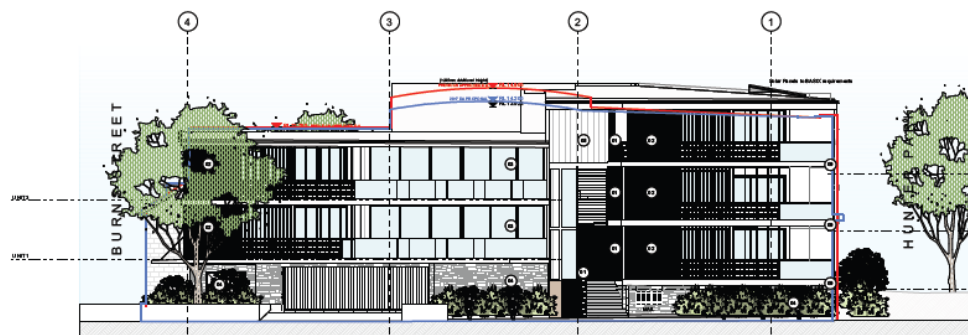


Figure 12 - Proposed East Elevation (Vine Street)

- The reduction in car parking spaces and increase in traffic. The proposal results in the loss of 3-4 car spaces.

Comment

The loss of car parking in Vine Street due to external works required under the consent is necessary to provide entry to the basement car parking area. This is not significant. A condition of consent requires the construction of Burns Street which will provide additional parking spaces. (Refer condition 2.2)

- The large number of submissions in support do not refer to the proposed amendments and have been lodged in support of the owners.

Comment

There is a large number of submissions in support for the retention of the theatre. A number submissions (both in support and objection) do not confine their comments to the proposed modification but to the development generally. All submissions are required to be taken into consideration and appropriate weight given to the issues raised.

- The third change is not substantially the same development. The height and Vine Street frontage should be restricted to the size of the 2018 consent.

3.1

Comment

The change proposed is not significant and has minimal environmental impact. The proposal is substantially the same development.

- **Radically different plans which take away ocean views with increased height.**

Comment

The proposed plans are not radically different and there is no significant additional view loss from surrounding properties, particularly now the proposed plans have reduced the height increase from 845mm to 245mm.

- **Increased risk of pedestrian/traffic safety.**

Comment

The reduction in seating capacity should not result in an increase in pedestrian/vehicle conflict or increase in safety risks. The new requirement for increased construction in Burns Street will mitigate the safety issues identified in the pickup of waste bins from the kerbside in Burns Street.

- **The site is located within an area subject to drainage and flooding problems.**

Comment

This matter was previously dealt with by the Land and Environment Court and previous modifications. Council's engineers support the proposal subject to conditions. The amended plans and engineering conditions have addressed the flooding and drainage issues in the area and the servicing of waste from the site. **(Refer amended conditions 2.2, 2.9 and 2.13)**

- **No plans to increase infrastructure.**

Comment

The conditions of consent require substantial works to be carried out around the site. The planning agreement provides for a payment of \$500,000.00 prior to the issue of a Construction Certificate for community works in the locality.

- **Building is too close to Boundary and Avoca Beach. Approved building was aesthetically pleasing. New building is an eyesore and impacts streetscape.**

Comment

The proposal does not significantly change boundary setbacks. The elevations are amended to reflect the internal changes and there is a reduction in cinema seating.

- **Proposal will generate noise to surrounding residents.**

Comment

This is a submission to the original application. The proposed modification will decrease the seating by 154 seats which will result in a lesser maximum number of patrons which can

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attend the site at any one time. This should result in less noise generation and impact to surrounding residences.

- **There is concern with applicant's statement that cinemas will not be purely used as cinemas but transformed into other uses such as function rooms, live venues, music events/stages. The acoustic and traffic assessment did not address these uses. The development is more now a commercial development rather than a cinema.**

Comment

The consent granted is for demolition, 4 cinemas, café, 5 residential units and basement car parking. The consent (**condition 1.1A**) does not include function rooms, stages or live music events.

The definition of entertainment facility includes theatre, cinema, music hall, concert hall, dance hall and the like. Any other proposed use other than that as a cinema must be for a permissible use and would require a new development application. Speculation on what the building may be used for is not a valid matter for consideration.

- **The removal or absence of footpath paving in Vine Street.**

Comment

The proposed development has a frontage to Vine Street on the eastern side. Vine Street contains the public car parking area servicing Avoca Beach. Access to the basement car parking area is from Vine Street.

Condition 2.2 e requires the construction of a 1.5m wide concrete footpath across the full frontage of the site in Vine Street.

- **Overdevelopment. Increase in height and floor space over development standard and previous approvals.**

Comment

The proposed modifications are considered to have minor environmental impact and the proposal is considered to be substantially the same development. While there is a minor increase in height and floor space this is not significant, and the proposal is considered to be substantially the same development.

- **The development will destroy the historic appearance. The proposal is bigger than expected and not fitting in with the Avoca Beach character.**

Comment

The building is not a heritage item under the CCLEP 2022. The provisions of Clause 7.18 of the CCLEP 2022 permit the proposal with consent.

- **The proposed 4 cinemas, piano bar, café, commercial kitchen and 14 car parking spaces are unacceptable. There are already too many cinemas on the Central**

3.1

Coast. Will the owners of other restaurants/businesses be compensated when people cannot access their premises. Avoca does not need 4 cinemas.

Comment

The number of cinemas on the Central Coast and the economic viability of the other cinemas is not a matter for consideration in the assessment of a development application.

- **The impact on Hunter Park and community groups who use the park.**

Comment

The proposed modifications have no additional impact on Hunter Park and the groups who use the park. This is essentially an objection to the original application.

It should be noted that the works required in Burns Street will be confined to within the existing road reserve and will not intrude into the park.

- **No construction management plan has been submitted. The impact on the area and surrounding businesses and residents during construction needs to be addressed.**

Comment

A Construction Management Plan (CMP) is required to be prepared under **condition 3.7** of the consent.

Submissions from Public Authorities

There were no public authorities required to be consulted in relation to the proposal.

Internal Consultation

The application was referred to the following internal officers and the following comments have been provided:

Architect

Council's Architect has reviewed the application and advises:

This is a further amendment to an approved application. It proposes the retention of the existing Avoca Beach theatre, demolition of the existing cottage, shed and outbuildings and its incorporation into a new mixed development containing four additional cinemas and associated facilities, café, gallery and a five- unit residential flat development with parking for the residential units.

The application was subject to Clause 49DN of the Gosford Planning Scheme Ordinance and SEPP 65 and the Residential Flat Design Code (RFDC).

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Assessment

The original application was approved subject to Clause 49 DN of the Gosford Planning Scheme Ordinance.

Clause 49 DN requires the following issues to be considered:

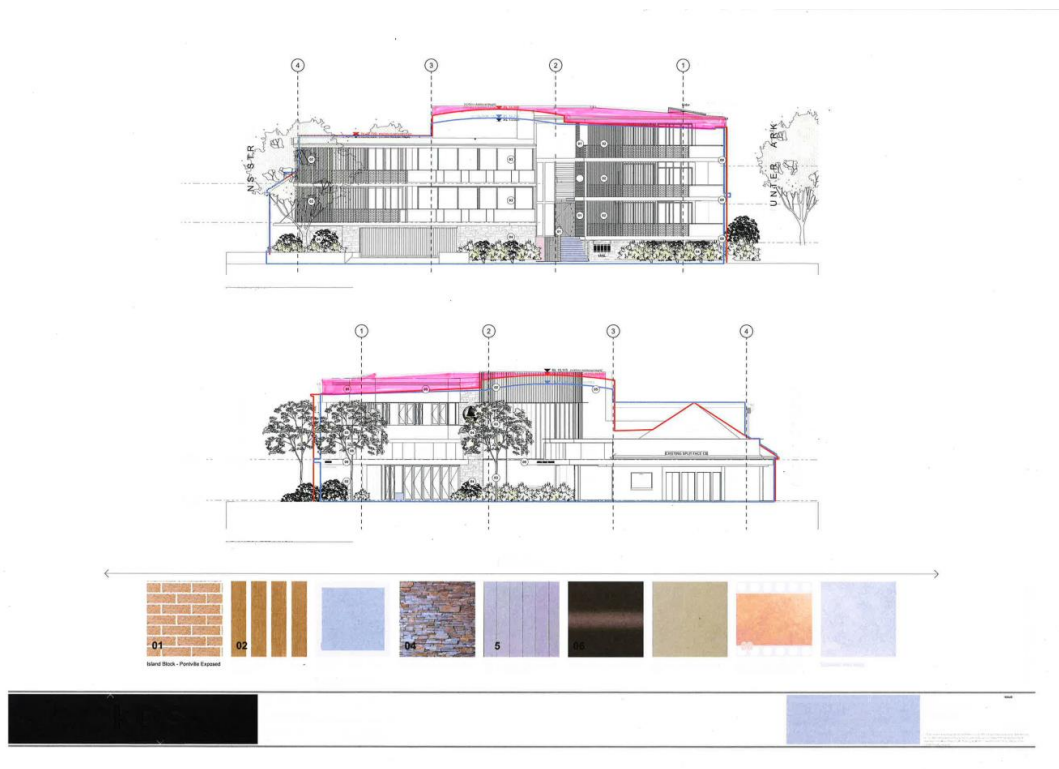
(4) The maximum height for a building erected on the land to which this clause applies is 10 metres, except as provided by subclause (5).

(5) The consent authority may consent to development that exceeds the maximum height specified in subclause (4) if it is satisfied that any part of a building that is to exceed the maximum height:

- (a) is to be used for cinema or theatre purposes, and*
- (b) is an integral part of the design of the building.*

The current amended proposal continues to be significantly non-compliant with the controls. As the attached drawing shows, the area shaded in pink shows the roof of the upper level units continues to be between 1m and 1.1m or 10% to 11% above the previously approved level and the 10m height control.

It is acknowledged the applicant has reduced the non-complying height of the plant room and solar panels.



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The proposed non-complying area is not for cinema or theatre purposes, is inconsistent with the original approval and detrimental impacts on adjoining sites resulting from non-compliance cannot be supported.

The amended application claims a reduction in FSR of 1.09:1 to 1.04 or 4% non-compliance. When combined with the non-complying height indicates the application is an over development of the site and could only be considered if the application complies fully with the previously approved height.

Non-complying height results in significant detrimental impacts on views from surrounding properties. The proposal must fully comply with the maximum height shown in the approved drawings.

Issues relating to view loss due to non-compliance are specifically mentioned in Tenacity Consulting v Warringah Council [2004] NSWLEC 140,

Step Four – “Assessment of 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”.

Conclusion

Despite considering that any view loss resulting from non-compliance is unreasonable, the assessment produced by Dr Pollard (**Refer attachment 5**) does show that the view loss is minor. It is considered that in this instance, refusal of the application would be unlikely to be supported by the Land and Environment Court and therefore the current amended application should be supported by Council.

Engineering

Council's Development Assessment Engineer has reviewed the application and supports the proposal subject to conditions. The engineering assessment has resolved the flooding and waste servicing issues.

Waste Services

The approved plans granted by the Land and Environment Court show a waste storage area in the basement level with residential and commercial bulk bins being wheeled from the basement to the kerbside in Burns Street for pick-up. Assessment of the approved plans reveal that this would create a traffic hazard/safety risk by the stopping of waste vehicles and time to service the bulk bins. Due to floor levels grades a waste truck is unable to enter the basement car parking area.

The solution is to require reconstruction/widening of Burns Street to provide a layby for the stopping/loading of waste trucks and parking. By the widening of Burns Street the footpath

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width alongside the theatre is maintained and not reduced. (**Refer amended condition 2.2 b).** This solution is supported by Council's Waste Services.

This arrangement requires the signposting of the pick-up area as a loading zone during restricted hours and approval by the Traffic Committee (**Refer condition 2.2 i)**

It is acknowledged that **Conditions 2.13 – 2.15** of Development Application No. 42661/2012 remain in place and must be addressed prior to the issuing of any Construction Certificate.

Ecologically Sustainable Principles

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles. The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed modifications have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts. The proposed development is considered satisfactory in relation to climate change.

Central Coast Regional Plan 2036

The subject site is included in the Central Coast Regional Plan 2036 as an 'urban area' and is located in close proximity to the 'strategic centre' of Erina and 'regional city' of Gosford.

An assessment of all relevant provisions of the Central Coast Regional Plan 2036 has been carried out to ensure the consent authorities own assessment of the compatibility of the proposed development with the surrounding environment is complete.

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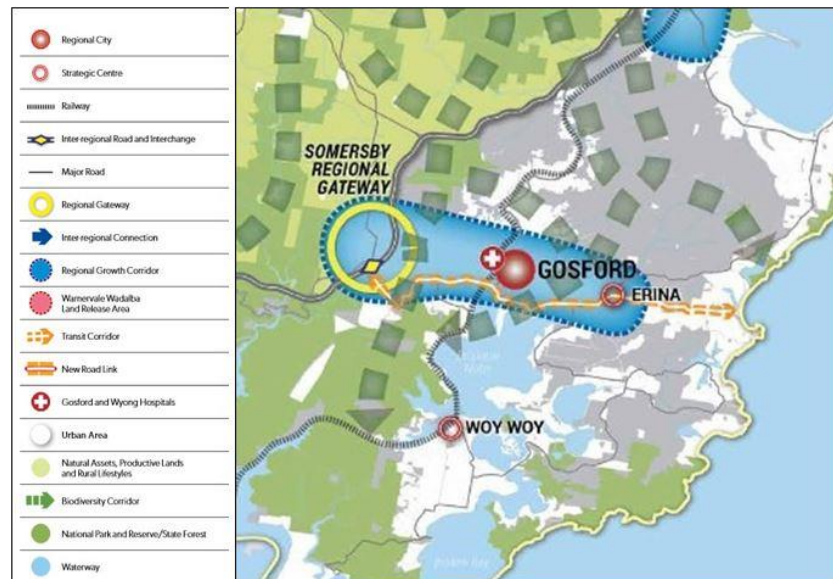


Figure 13 - Extract Central Coast Regional Plan

The proposed modifications are consistent with all relevant Directions under the *Central Coast Regional Plan 2036* in that upon completion the housing mix of the locality will be increased. Furthermore, the provides for additional population accommodation within walking distance of the shops, services and public transport, and will not adversely impact residential amenity nor create additional demands upon public infrastructure.

Other Matters for Consideration

4.56 Modification by consent authorities of consents granted by the [Court](#)

(cf previous s 96AA)

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—
 - (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
 - (b) it has notified the application in accordance with--
 - (i) the regulations, if the regulations so require, and
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

3.1

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

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

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.

(3) The regulations may make provision for or with respect to the following--

(a) the period after which a consent authority that has not determined an application under this section, is taken to have determined the application by refusing consent,

(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,

(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

The proposal is required to be assessed having regard to the following matters.

Section 4.56(1) of the EP & A Act enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

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

Comment

A qualitative and quantitative analysis between the development as originally consented to and the proposed modification is required, and the modification must render the altered development "essentially" or "materially" the same.

3.1

Figure 11 indicates the following quantitative (key numerical differences), qualitative changes (i.e. non numerical factors including visual impact, traffic impact and changed land uses) and changes to material and essential features of the approved and subsequent modification applications.

It is considered the proposal is substantially the same development for which the consent was originally granted and as modified.

Item	Original DA	Part A	Part B	Part D	Proposed Part E	Difference Original to Part E
GFA	1801.96m ²	1588.68m ²	1712.63m ²	No change	1874.40m ²	+72.44m ² or 4%
FSR	1:1	0.88:1	0.95:1	No change	1.04:1	+0.04:1 or 4%
Building Height	RL14.2m	No Change	RL 14.9m	No Change	RL 15.145m	+0.945m
Car Parking Spaces	14	14	14	14	14	Nil
Cinema Seating	4 cinemas- 613	4 cinemas- 614	4 cinemas- 616	No change	4 cinemas- 462	-151
Residential Units	5	5	5	No change	5	Nil

Figure 14 - Comparison Table

(b) and (c) *it has notified the application in accordance with the relevant DCP and notified or attempted to notify people who previously made submissions.*

Comment

The application was notified in accordance with the provisions of CCDCP 2022 and a total of 332 submissions received, including 273 in support of the proposal.

(d)
it has considered any submissions made concerning the proposed modification.

Comment.

The issues raised in the public submissions have been assessed. Refer '**External Consultation**' section in this report.

3.1

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

Comment

The matters referred to in section 4.15(1) as are of relevance to the development and proposed modification have been taken into consideration as outlined in this report.

View Impact

Council has received several submissions to the proposed modifications, particularly as they relate to a loss of views from neighbouring properties associated with the increase in part of the roof height by 845mm. The amended plans have reduced the increase to 245mm, a reduction of 600mm to that in the notified plans. The amended plans are now more consistent with the plans approved under the Part B modification. For this reason the previous view impact assessment under Part B has been utilised and updated in the current assessment. **(Refer also attachment 4- View Impact Analysis)**

The impacts to view corridors are discussed below.

The development site is flanked by residential development to the west and east including dense native evergreen vegetation located in residential gardens to the east and street tree vegetation to the west. Filtered views to areas of open water and landform in the background are available from roadways south and west of the site. The approved development and proposed modifications will provide a contemporary form into the composition of the view from surrounding roadways which is not dissimilar in scale or character of the existing theatre and multi – storey residential development within the immediate context. The view loss associated with the additional roof height is minor from adjoining roadways and will comprise vegetation.

In *Tenacity Consulting P/L v Warringah Council Halics* [2004] NSW LEC140, the Land and Environment Court established a planning principle for assessment of view loss impact on adjoining properties. This planning principle provides:

- 1 Assessment of views to be affected.
- 2 Consider from what part of the property the views are obtained.
- 3 Assess the extent of the impact.
- 4 Assess the reasonableness of the proposal that is causing the impact.

In respect of the step (2), an expectation to retain side views and sitting views would be unrealistic.

In respect of the step (3), the extent of the impact should be assessed for the whole of the property, not just for the view that is affected. The third step should be qualitatively measured on a scale from negligible to devastating.

3.1

In respect of the step (4), a development that affects views may be unreasonable if it comes about as a result of non-compliance with planning standards.

The properties that form part of this view loss assessment are identified in Figure 14.



Figure 15 - Properties identified in View Loss Analysis (site edged in black)

In undertaking this view loss analysis, site inspections were carried out, and the expert view loss evidence, provided in the Land and Environment Court of New South Wales court proceedings associated with the original determination, and information submitted with this application, were reviewed. The conclusion of the assessment undertaken pertaining to private domain view loss associated with the proposed modifications is provided below:

- Views from residential units within No. 45 Avoca Drive, Avoca Beach are external views from either the mid – level or upper-level balconies. The dwellings do not have existing direct view access to the development site due to either the orientation of the units to views or because of the intervening-built form and vegetation. **(Refer to Figure's 16-21).** View loss from this property as a result of the proposed modifications is negligible.

3.1



Figure 16 - View corridor from 7/45 Avoca Drive (mid - level balcony)



Figure 17 - View corridor from 7/45 Avoca Drive (upper - level balcony)

3.1



Figure 18 - View corridor from 8/45 Avoca Drive (mid-level balcony)



Figure 19 - View corridor from 8/45 Avoca Drive (upper-level balcony)



Figure 20 - View corridor from 9/45 Avoca Drive (upper level balcony)

3.1



Figure 21 - View corridor from 9/45 Avoca Drive (mid-level balcony)

- Views from No. 2/47 Avoca Drive, Avoca Beach are from a roof terrace from which a minor portion of the south-eastern corner of the development may be visible (**refer to Figure 22**). This minor potential encroachment in the view loss corridor does not block any views to scenic or highly valued items such as Avoca Beach or water. View loss from this property, and No. 49 Avoca Beach Drive, as a result of the proposed modifications is negligible.

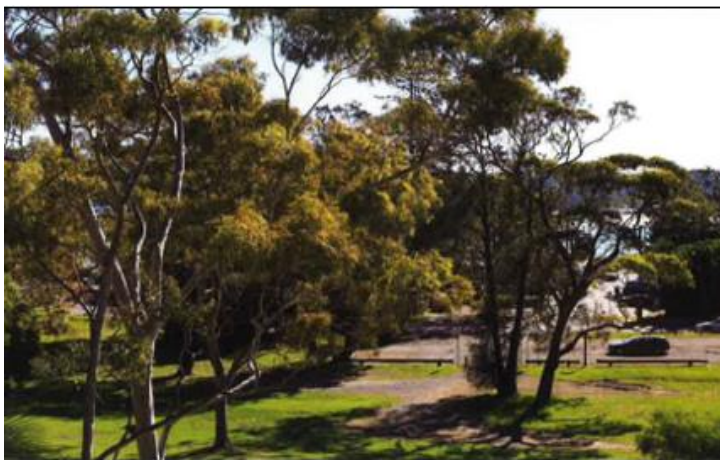


Figure 22 - View corridor from 2/47 Avoca Drive (rear balcony)

- Views from No. 1/51 Avoca Drive, Avoca Beach are from a rear terrace at the uppermost level of the development, which are visible via a narrow outlook between vegetation at South End Park. The view contains part of the wave zone at the beach which is visible above the existing theatre roof (**refer to Figure's 23 and 24**).

3.1



Figure 23 - View corridor from 1/51 Avoca Drive (rear balcony)



Figure 24 - View corridor from 1/51 Avoca Drive (rear balcony – zoomed in)

The Part 2 (now part A) consent included a reduction in the width of the roof void to Cinema 2, being setback from Avoca Drive an additional 2m. Whilst the additional height proposed under the previous modification application will result in a loss of vegetated outlook, the wave zone, beach and remainder of the whole view toward North Avoca will be retained in a greater capacity than that was previously approved by the LEC and considered acceptable.

A secondary view from this property is retained from a lower terrace (also at the uppermost level) of 1/51 Avoca Drive (**refer to Figure 25 and 26**). This outlook is largely obscured by vegetation, however the dominant view of the water and land interface will remain unaffected by the proposed modifications.

3.1



Figure 25 - View corridor from 1/51 Avoca Drive (lower rear balcony)



Figure 26 - View corridor from 1/51 Avoca Drive (lower rear balcony – zoomed in)

- No.72A Avoca Drive, Avoca Beach is occupied by an elevated dwelling with a northern first floor level balcony. The existing outlook from this balcony is towards the residential development located at No. 57A Avoca Drive, Avoca Beach, beyond which the existing roof of the Avoca Beach Theatre is visible (**refer to Figure 27**).

3.1



Figure 27 - View corridor from 72A Avoca Drive (first floor balcony) showing approved building in green and proposed modification in red outline.
(Source: Dr P Pollard-View Impact Assessment))

Figure 28 details a further view of the outlook from the northern balcony of No. 72A Avoca Drive with the upper-level ridgeline of the Avoca Beach Surf Life Saving Club (RL 14.84m AHD) located at No. 10 Vine Street, Avoca Beach visible beyond the vegetation line. The increase of the approved development's maximum roof height by 245mm will result in a maximum RL 15.145m AHD, 0.825mm higher than the Avoca Beach Surf Life Saving Club.

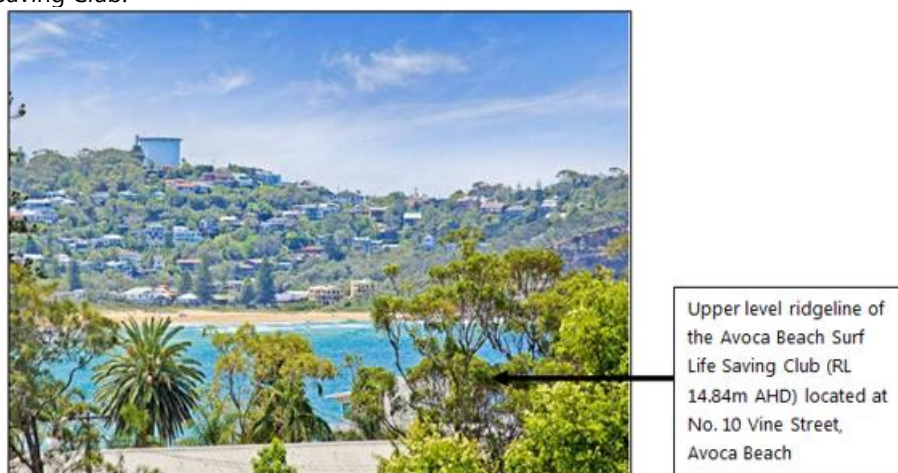


Figure 28 - View corridor from 72A Avoca Drive (first floor balcony)
(Source: www.realestate.com.au)

3.1

The approved roof of Cinema 2 will be visible above the roof of the existing Avoca Beach Theatre. The proposed modifications will result in a further loss of view from the northern first floor balcony of No. 72A Avoca Drive comprising built form and a narrow band of water seen heavily filtered through vegetation in the park beyond the development site. However, the wave zone of Avoca Beach and the remainder of the beach visible between Avoca and North Avoca in this view will be retained. Furthermore, the remainder of the outlook from this junction, including a view to the Skillion in Terrigal, will be retained (**refer to Figure 29**).



Figure 29 - View corridor from 72A Avoca Drive (first floor balcony)
(Source: www.realestate.com.au)

It is considered the proposed modifications do not block a significant proportion of views to scenic items or highly values items. The additional view loss from No. 72A Avoca Drive is considered minor and reasonable being that the loss of outlook associated with the proposed modifications are currently heavily filtered by vegetation and built elements. The loss of these filtered views will not adversely impact the retention and interpretation of significant water and land interface views in the distance.

- No. 72 Avoca Drive, Avoca Beach is occupied by an elevated dwelling with a northern orientated first floor level balcony. The existing outlook from this balcony is towards residential development located on the northern side of Avoca Beach Drive beyond which the existing roof of the Avoca Beach Theatre is visible (**refer to Figure 30**).

3.1



Figure 30 - View corridor from 72 Avoca Drive (first floor balcony)
(Source: www.realestate.com.au)

The approved roof of Cinema 2 will be visible above the roof of the existing Avoca Beach Theatre. It is acknowledged that the proposed modifications will result in a further loss of view comprising built form and a narrow band of water seen heavily filtered through vegetation in the park beyond the development site from the northern first floor balcony of No. 72 Avoca Drive. However, the wave zone of Avoca Beach and the remainder of the beach visible between Avoca and North Avoca in this view will be retained.

It is considered the proposed modifications do not block a significant proportion of views to scenic items or highly values items. The additional view loss from No. 72 Avoca Drive is considered minor and reasonable.

- The residential dwellings located in No. 92 Avoca Drive, Avoca Beach (Unit's 3 and 4) currently have a view of water in a north-easterly direction, visible through a narrow opening in vegetation (**refer to Figure's 31, 32 and 33**).

These water views are obtained over the existing theatre roof from both the lower and upper-level balconies of No. 3/92 Avoca Drive and the upper level balcony of No. 4/92 Avoca Drive via an oblique viewing corridor. This viewing corridor does not comprise the principal outlook from the three affected balconies. The principal outlooks from No.'s 3/92 and 4/92 Avoca Drive are in an easterly direction towards South End Park.

The lower-level terrace of No. 3/92 Avoca Drive does not currently obtain water views over the roof of the existing theatre (**refer to Figure 31**). The proposed modifications will result in a narrow view of vegetation being lost. Any view loss concern from the lower-level terrace of No. 3/92 Avoca Drive, is negligible.

The lower-level balconies of No.'s 3/92 and 4/92 Avoca Drive are adjacent to the principal internal living areas, with the upper level balconies adjacent to a bedroom.

3.1



Figure 31 - View corridor from 3/92 Avoca Drive (upper level terrace)



Figure 32 - View corridor from 3/92 Avoca Drive (lower level terrace)



Figure 33 - View corridor from 4/92 Avoca Drive (upper level terrace)
(Source: www.realestate.com.au)

3.1



Figure 34 - View corridor from 4/92 Avoca Drive (upper level terrace)
 (Source: www.realestate.com.au)

The Part 2 (now part A) consent included a reduction in the width of the roof void to Cinema 2, being setback from Avoca Drive an additional 2m. Whilst the additional height proposed under the current modification application will result in a loss of vegetated outlook, the main view of the ocean in the distance will be retained from all three affected balconies in a greater capacity than that was previously approved by the LEC and considered acceptable. Any view loss concerns from No.'s 3/92 and 4/92 Avoca Drive, is negligible due to the proposed modifications.

Shadow Impact

It is concluded that that there will be no significant view loss associated with the increase in part of the roof height by 245mm which would justify refusal of the modification application.

The proposed modifications do not cause excessive overshadowing to public open space areas.

Likely Impacts of the Development

a) Built Environment

The proposed built form is considered acceptable in the context of the site.

There will be no amenity impacts as a result of the variations to cl.4.3 (Height of Buildings) under CCLEP 2022 that would warrant further modification of the development application.

3.1

b) Natural Environment

The proposed modifications are satisfactory in relation to impacts on the natural environment as identified throughout this report.

c) Economic Impacts

The proposed modifications will continue to contribute to the supply of housing and tourist facilities in the locality and is considered to be satisfactory from an economic perspective.

d) Social Impacts

No additional social impacts will arise from the approval of this modification application.

Suitability of the Site for the Development

A review of Council's records has identified the following constraints:

- Coastal Zone
- Bushfire
- Flooding

The proposal is supportable subject to the continued imposition of conditions, as originally approved and amended. There are no constraints that would render the site unsuitable for the modified development of the site.

Planning Agreements

The proposed development is subject to a planning agreement (ECMD 3080720) dated 15 September 2006 which requires contributions for community facilities. **(Refer Condition 2.20)**

At its meeting held 19 October 2020, Council resolved the following:

1108/20 That any motions put before Council for the remainder of this term of Council that have financial implications require the Chief Executive Officer to provide a report on how those additional costs will be met.

The following statement is provided in response to this resolution of Council. The development is subject to a planning agreement which requires a contribution to external works prior to the issue of a Construction Certificate. The money received under the legal agreement must be used by Council within the period specified under the agreement or refunded.

Condition 2.20 states:

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2.20 In accordance with the Voluntary Planning Agreement (ECM Doc No 3080720 – incorporating the Voluntary Planning Agreement executed between the parties dated 15 September 2006) signed by Gosford City Council, and Norman Augustus McDonald Hunter and Norbet Enterprises Pty Limited dated 22 January 2007 (the terms of which are incorporated herein as if fully set out herein), compliance with the following:

- In accordance with Recital E and clause 4(a) of the 2006 Voluntary Planning Agreement, payment of the total sum of \$500,000 for the public purpose of the provision of public amenities, namely, the construction and enhancement of car parking facilities near the development in South End Park, Avoca and the embellishment and beautification of the adjoining public open space known as Hunter Park, Avoca all as depicted on the plan annexed to the 2006 Voluntary Planning Agreement and marked with the letter "B"; and
- In lieu of Section 94 Contributions, payment of an amount of \$10,296 for the provision of public amenities by Council ("the Contribution Amount"). The Contribution Amount will be increased on each of 1 January, 1 March, 1 July and 1 October in each year from the date of this Agreement [being the date of the 2006 Voluntary Planning Agreement] until the Contribution Amount is paid by the same percentage increase as the percentage change, if any, in the Consumer Price Index in the 3 months prior to the relevant review date.

The above contribution amounts are to be paid prior to the issue of any Construction Certificate.

Any Construction Certificate is not to be issued by a certifying authority until the developer has provided the certifying authority with a copy of a receipt issued by Council that verifies that the contributions have been paid in accordance with the wording of this condition. A copy of this receipt is to accompany the documents required to be submitted by the certifying authority to Council under Clause 104 of the Environmental Planning and Assessment Regulation 2000.

Development Contribution Plan

Contributions may be applicable to development which is subject to Central Coast Regional Section 7.12 Contributions Plan. Development contributions are only levied where the proposal meets the cost of works thresholds and not subject to any exemption under this plan.

In this case contributions are not applicable as the development was approved prior to CP 7.12 and is subject to a planning agreement which requires contributions. **(Refer Condition 2.20)**

3.1

The Public Interest

The approval of the application is considered to be in the public interest.

Political Donations

During assessment of the application there were no political donations were declared by the applicant, applicant's consultant, owner, objectors and/or residents.

Conclusion

Based on the considerations provided above, it is concluded the proposed modifications are not without merit and will not hinder the attainment of objectives under s.1.3 of the EP & A Act. It is considered there are sufficient grounds to justify a further variation of the development standard to that originally approved and subsequently amended.

The proposed development is considered to be substantially the same development and the proposed modifications are not considered to have significant additional impacts on surrounding properties or the environment.

The Development Application has been assessed against the heads of consideration of s.4.15 and s.4.56 of the EP & A Act and all other relevant instruments and policies. The proposed modifications are considered reasonable and therefore it is recommended that Council grant approval to Development Application No. 42661/2012/E.

Recommendation

- 1** *That the Local Planning Panel grant consent to [DA/42661/2012/E – 69 Avoca Drive, Avoca Beach – Proposed Alterations and Additions to existing Theatre, subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.*
- 2** *The consent be modified by:*
 - c. The amendment of conditions 1.1A, 1.1, 2.2, 2.7, 2.13.*
 - d. The addition of conditions 1.5, 2.22, 2.9, 5.23, 5.24.*
- 3** *That Council advise those who made written submissions of the Panel's decision.*
- 4** *That Council advise relevant external authorities of the Panel's decision.*

Goal I: Balanced and sustainable development

R-13: Ensure land use planning and development is sustainable and environmentally sound and considers the importance of local habitat, green corridors, energy efficiency and

3.1

stormwater management.

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Attachments

1	Approved Plans DA42661 L140 DP9359 H71 Avoca Drive AVOCA BEACH Part 3	ECMD24899443
2	Draft conditions/reasons - Avoca Beach Theatre 69 & 71 Avoca Drive, AVOCA BEACH - DA/42661/2012/E - Central Coast Council	D16143009
3	UPDATED View Impact Analysis[1] PAN-268705 - 69 Avoca Drive AVOCA BEACH - Avoca Theatre - 69 & 71 Avoca Drive AVOCA BEACH - DA/42661/2012/E	D15643909
4	PUBLIC Apartment Design Guide Report - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367102
5	PUBLIC Architectural Design Statement - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367082
6	PUBLIC Design Verification Statement - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367081
7	PUBLIC Landscape Plan - 69 Avoca Dr, AVOCA BEACH NSW 2251 - PAN-268705 - DA/42661/2012/E	D15367079
8	Statement of Environmental Effects - DA/42661/2012/E - 69 Avoca Dr, Avoca Beach	D16122723
9	Shadow Diagram Comparison - D 12E - 69 Avoca Dr, Avoca Beach	D16189147

Item No: 2.1
Title: DA/2048/2023 - 22 Clairvoux Road Wamberal -
Alterations and Additions (Existing Dwelling)
Department: Environment and Planning

Central Coast
Local Planning Panel

22 August 2024 Local Planning Panel Meeting

Reference: DA/2048/2023 - D16255377
Author: Amy Magurren, Senior Development Planner. Residential Assessments
Section Manager: Ailsa Prendergast, Section Manager. Residential Assessments
Unit Manager: Andrew Roach, Unit Manager. Development Assessment

Summary

An application has been received for alterations and additions to an existing dwelling located at 22 Clairvoux Road Wamberal. The application has been examined having regard to the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The development application is required to be reported to the Local Planning Panel due to the development exceeding the "Height of Buildings" development standard specified and calculated under Clause 4.3 of the *Central Coast Local Environmental Plan 2022 (CCLEP 2022)* by more than 10%. The current height standard for the site is 8.5m and the development proposes a maximum height of 9.58m for the central roof form facing Clairvoux Road (a variation of 1.08m or 12.7% variation).

One (1) submission was received in relation to the application.

The application is recommended for approval.

Applicant	Slater Architects
Owner	Mr Steve Fort & Mrs Kerrie Fort
Application No	DA/2048/2023
Description of Land	Lot C in DP 103618
Proposed Development	Alterations and Additions
Site Area	929.5m ²
Zoning	R2 Low Density Residential
Existing Use	Residential Dwelling
Employment Generation	No
Estimated Value	\$212,391.00

Recommendation

- 1 ***The Central Coast Local Planning Panel accept that the Applicants Clause 4.6 written request demonstrates that compliance with the Height of Buildings development standard is unreasonable in the circumstances of the case because of the minimal environmental impact that would arise from the noncompliance with the Height of Buildings standard.***

Compliance with the Height of Buildings development standard would be unreasonable in the circumstances of this application because the existing exceedance to the Height of Buildings standard already granted for the existing dwelling has been maintained and the proposed additions do not increase the overall height of the building, nor do they have an unreasonable impact to the surrounding development.

Further, the panel consider that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.

- 2 ***That the Local Planning Panel grant consent to DA/2048/2023- 22 Clairvoux Road Wamberal for alterations and additions to an existing dwelling subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.3***
- 3 ***The Local Planning Panel assume the concurrence of the Secretary of the Department of Planning to permit the non-compliance with the development standard under clause 4.6 of the Central Coast Local Environmental Plan 2022, in accordance with the provisions of clause 55 of the Environmental Planning and Assessment Regulation 2021.***
- 4 ***That Council advise those who made written submissions of the Panel's decision.***

Precis:

Proposed Development	Alterations and additions to an existing residential dwelling (primarily removal and replacement of an existing section of roof form and internal alterations).
Permissibility and Zoning	<p>The subject site is zoned R2 Low Density Residential under the provisions of the Central Coast Local Environmental Plan 2022 (Central Coast LEP 2022).</p> <p>The existing development is defined as a "dwelling house" which is defined under Central Coast LEP 2022 as:</p> <p><i>dwelling house</i> means a building containing only one dwelling.</p> <p>The proposed development is best defined as alterations and additions to an existing residential dwelling and is permissible with consent in the current zone.</p>
Current Use	Residential Dwelling
Integrated Development	No
Submissions	<p>The development application was notified (in accordance with the provisions of Central Coast LEP 2022 from the 10th November 2023 to 24th November 2023.</p> <p>There was one (1) submission received.</p>

Variations to Policies

Proposed variations to Central Coast Local Environmental Plan 2022

Clause	4.3 – Height of Buildings
Standard	Height limit of 8.5m
Departure basis	<p>The proposal seeks a variation to the development standard in accordance with the following:</p> <ul style="list-style-type: none"> • 9.58m building height for the central roof form (1.08m or 12.7% variation) <p>It is noted that the proposed development will maintain the existing ridge level of the roof however proposes a change from a hip to gable presentation. The proposed development does not seek to increase the overall building height, rather replace an existing portion of the roof of the building that will be greater than the current building height control at the front of the development.</p>

The Site

The site is legally described as Lot C in DP 103618 and is commonly known as 22 Clairvoux Road, Wamberal. The overall site has a total site area of 932.5m² by survey with a frontage of 17.905m to Clairvoux Road.

The site is located on the eastern side of Clairvoux Road, at the intersection of the Clairvoux Road and Ocean View Road Wamberal. The topography of the site rises from the kerb of the road at RL15.68 to RL23.58 at the rear of the site, approximately 11.7% slope across the site and is not mapped as being impacted by Bushfire Prone Land.

The site contains an existing residential dwelling. The area is surrounded by residential lots also zoned R2 Low Density Residential, that generally contain a mix of one and two storey residential dwellings dominated by newer (and renovated) dwellings, with some remaining older style dwellings.



Figure 1: Site Locality Plan



Figure 2: The proposed development site from Clairvoux Road

Surrounding Development

The site is bordered to the north by a two-storey residential dwelling located at 122 Ocean View Drive approved under DA/49622/2016.



Figure 3: Existing dwelling located at 122 Ocean View Drive, Wamberal

The site is bordered to the south by a two-storey residential dwelling located at 20 Clairvoux Road constructed prior to 2000, with minor alterations and additions to the roof and terrace occurring in circa 2009 and 2010.



Figure 4: Existing dwelling located at 20 Clairvoux Road, Wamberal

The Proposed Development

The proposed development seeks consent for internal alterations and additions to the existing dwelling house and changes to the existing garage, specifically:

Level 1

- internal alterations;
- open up existing study to become a porch, with new stair entry;
- extend Bedroom 3 by 2m to the east; and
- other minor changes as shown on the architectural plans.

Level 2

- internal alterations;
- change alignment/ windows on northern side, adjacent to dining area;
- extend Master Bedroom by 2m to the east;
- new highlight ensuite window on the southern side;
- minor changes to rear terrace area, including new access doors;
- provide privacy screening to the outer sides of existing terrace areas;
- changes to the window to the living area, and roof form above; and
- replace existing balustrading with frameless glass, new timber batters and underside roof lining.

External

- remove existing garage roof and provide new flat roof and roof garden;
- changes to garage door; and
- changes to paths and retaining walls as shown on the architectural plans.

The existing dwelling house provides 3 separate and staggered building elements facing Clairvoux Road, each with a separate roof element. The northern and southern elements provide open gable roof presentations the front, and the middle element has a hip roof presentation. The change to the middle element above the living area proposes a similar open gable presentation to the elements on either side, which brings consistency to the dwelling's presentation to Clairvoux Road, and the ridgeline of the roof will continue the same level as the existing roof to the west. Based on existing ground levels identified by survey, the new gable roof will have a maximum building height of 9.58m.



Figure 5: Architectural perspective of new roof form

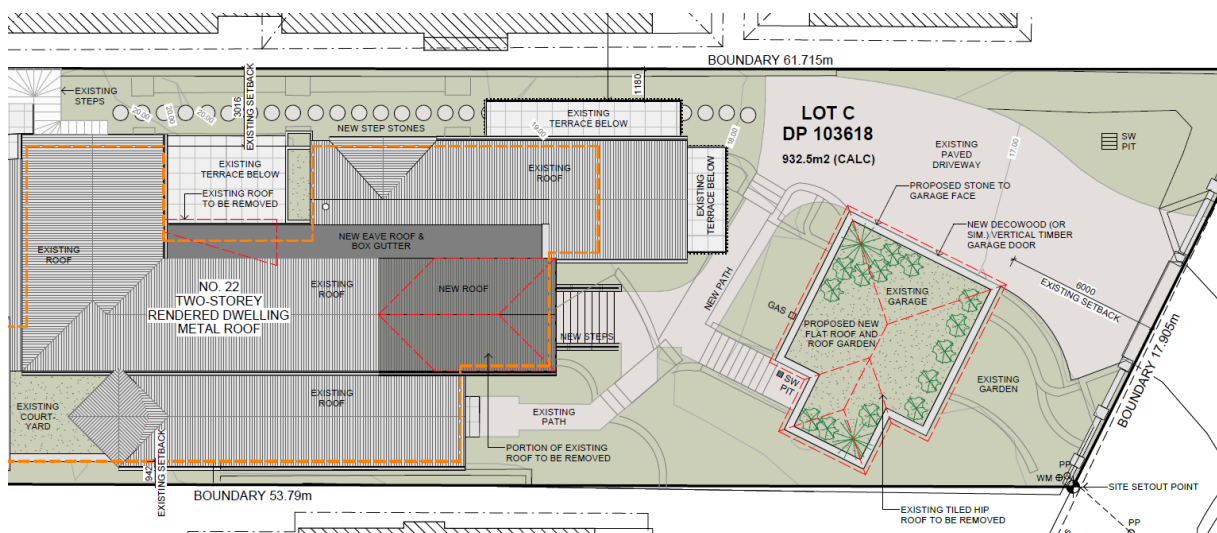


Figure 6: Site plan

History

The application as originally lodged proposed a privacy screen to the outer sides of the existing terrace area on the northern side of the dwelling. During the notification period a submission was received from a neighboring dwelling which indicated their views of the beach and ocean would be significantly impacted as a result of the construction of the privacy screen.

A site inspection was carried out on Wednesday 19th June 2024 to determine the impact to the views of the neighboring property. Assessment of the view considered the proposed development in the context of the Land and Environmental Court Planning Principles for view sharing.



Figure 7: Proposed screen as originally proposed.



Figure 8: View from neighboring dwelling

The neighbouring site has views of the beach and ocean which have been eroded by the construction of the dwelling at 122 Ocean View. However, they have remaining forward views of the beach and ocean through the gap between 22 Clairvoux Road and 122 Ocean View. The screen would be visible from both a standing and sitting position in the living and dining room of the dwelling and would almost completely remove the views of the sand and surf break.

The adjoining wall of 122 Ocean View has been designed without windows and is not impacted by overlooking or privacy from 22 Clairvoux Road, as such there is no need for the

screen to increase the privacy to the dwelling. Additionally, the proposed screen results in a variation of 500mm to the side setback envelope for the northern elevation.



Figure 9: Adjoining wall of dwelling house to the north

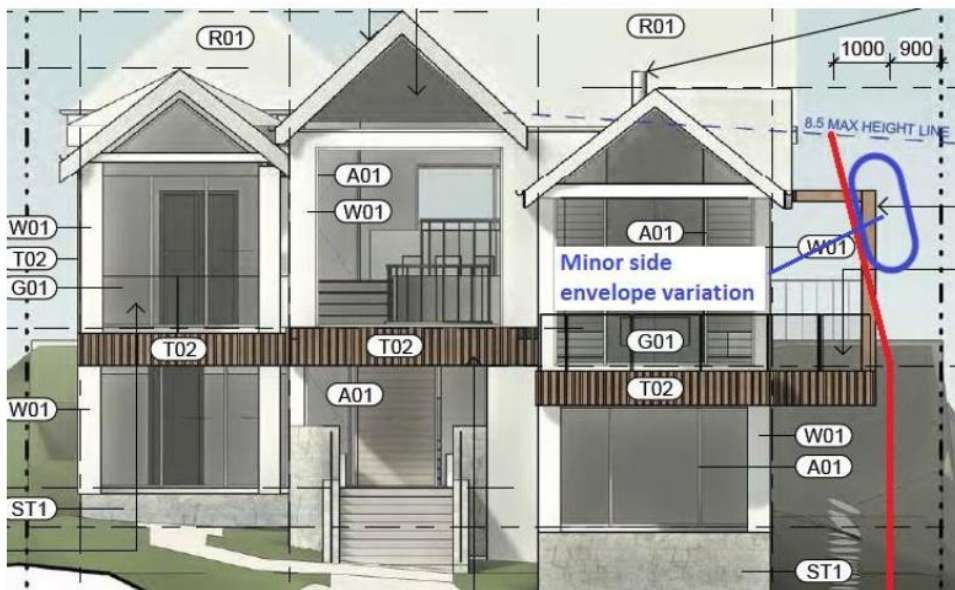


Figure 10: Extent of variation to side setback

Assessment of the impact of the privacy screen concluded that the proposed privacy screen has a significant impact to the views of the neighbouring dwelling and will likely remove the existing views of the beach and water. Given the impact to views arises from a non-compliance in the side setback, the privacy screen was not supported. On the 24th June 2024, the applicant provided amended plans removing the privacy screen component from the development application.

ASSESSMENT:

Having regard for the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 and other statutory requirements, Council's policies and Section 10.7 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

State Environmental Planning Policy (Building Sustainability Index) BASIX 2004

A compliant BASIX certificate achieving the NSW Government's Energy Efficiency targets has been provided in support of the application. The proposal is consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

The Panel can be satisfied that the proposed development satisfies the relevant provisions of SEPP (BASIX) 2004, subject to recommended conditions.

State Environmental Planning Policy (Resilience and Hazards) 2021

The relevant provisions of the SEPP are addressed as follows:

Chapter 2 Coastal Management

The aims of Chapter 2 are to be considered when determining an application within the Coastal Management Areas. The Coastal Management Areas are areas defined on maps issued by the NSW Department of Planning and Environment and the subject property falls within the 'Coastal Environment Area' and 'Coastal Use Area' identified on these maps.

In considering the impact of any development application, the consent authority must have regard to matters within clause 2.10 of the SEPP (for the coastal environment area) and clause 2.11 (for the coastal use area).

The relevant matters have been considered in the assessment of this application. The proposed development is not likely to cause undue impact on the biophysical, hydrological or ecological environment. The values of the natural coastal processes are not likely to be impacted, marine vegetation and fauna habitats will not be disturbed by the proposal and the proposal does not impact on known aboriginal cultural heritage, the surf zone, or existing public spaces. The proposed development will not result in adverse impact on rock shelves, overshadowing, loss of views from public places nor visual amenity.

The Panel can be satisfied that the relevant matters of clause 2.10 for development within the coastal environment and use area and clause 2.11 for development within the coastal use area have been considered in the assessment of this application. The application is considered consistent with the stated aims and objectives.

Chapter 4 Remediation of Land

Clause 4.6 of Chapter 4 requires that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. The current use of the site is residential purposes, and there are no known previous uses that would lead to the site being contaminated or unsuitable for the proposed use.

The Panel can be satisfied that the proposed development is acceptable with regard to Chapter 4 of the SEPP.

Central Coast Local Environmental Plan 2022 (CCLEP 2022)

The subject site is zoned R2 - Low Density Residential under the provisions of CCLEP 2022. The proposed development is best defined as alterations and additions to a 'dwelling house', which is defined under CCLEP 2022 as:

'Dwelling House' means – a building containing only one dwelling.

The development is permissible in the zone, with development consent.

Central Coast Local Environmental Plan 2022 – Zone Objectives

The land is zoned *R2 Low Density Residential* under the provisions of the CCLEP 2022.

The objectives for the R2 zone are:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage best practice in the design of low-density residential development.
- To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services.
- To maintain and enhance the residential amenity and character of the surrounding area.

Following a detailed assessment of the proposed development and with the Applicant's written request to vary a development standard within CCLEP 2022, it is considered that the proposal is consistent with the stated objectives of the zone, providing housing consistent with the character of the area and does not have adverse impacts on the locality.

Central Coast Local Environmental Plan 2022 – Principal Development Standards

The proposal has been assessed in accordance with the relevant development standards of CCLEP 2022.

2.1 DA/2048/2023 - 22 Clairvoux Road Wamberal - Alterations and Additions (Existing Dwelling) (cont'd)

Development Standard	Required	Proposed	Compliance with Controls	Variation %	Compliance with Objectives
Clause 4.3 Height of Buildings	8.5m	9.6m	No	12.9%	Yes
Clause 4.4 Floor Space Ratio	Not mapped	N/A			

Central Coast Local Environmental Plan 2022 - Clause 4.3 - Height of buildings

The proposed development proposes a variation to the maximum permitted height set out under clause 4.3 of CCLEP 2022 and is accompanied by a clause 4.6 written request to vary the development standard.

Central Coast Local Environmental Plan 2022 Clause 4.6 - Exceptions to development standards for Height

The applicant seeks a variation to clause 4.3(2) of CCLEP 2022 in relation to the proposed maximum height of the dwelling. In this regard, the proposal seeks a maximum overall height of 9.58m in lieu of the 8.5m mapped maximum height limit applicable to the allotment. This represents a variation of 12.7%.

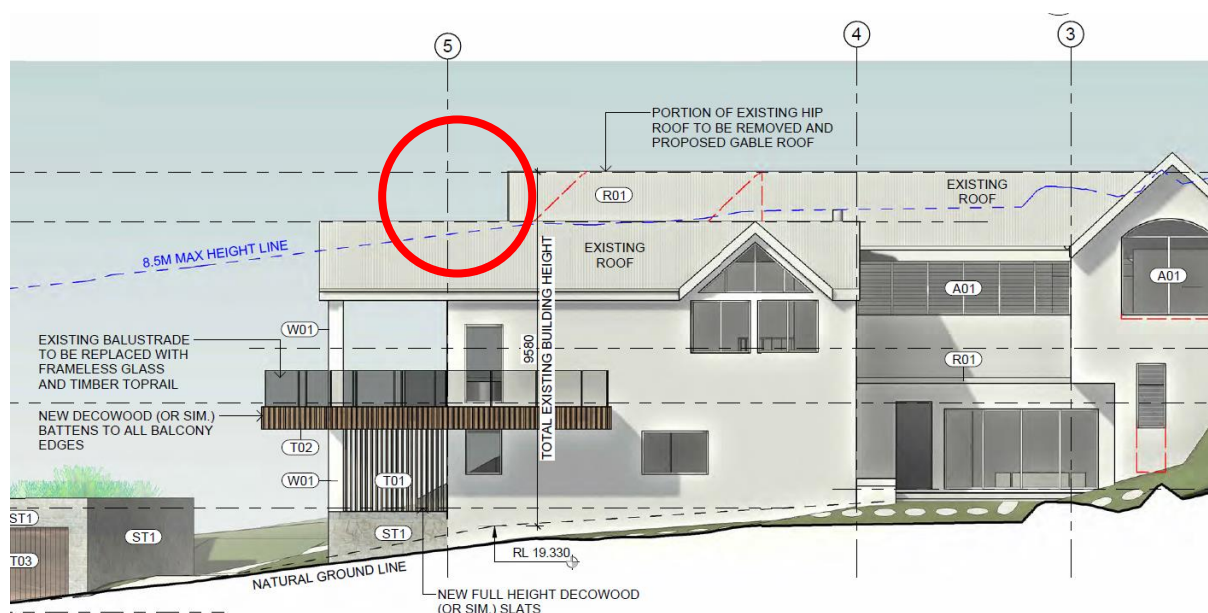


Figure 6: Variation to Building Height development standard (Red)

Clause 4.6 of CCLEP 2022 provides the ability to grant consent to a development application where the variation to a development standard can be adequately justified and where the objectives of clause 4.6 are satisfied, being:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Applicant's Written Clause 4.6 Request

The Applicant has provided a detailed request to vary the mapped height development standard by the proposed 12.7%. In requesting the variation, the applicant has provided the following matters in support of the proposal (the Applicant's full clause 4.6 request is included in Attachment 3).

The basis of the applicants' arguments, as set out in the clause 4.6 request, are:

- *The variation is minor in nature, and relates to a small area of roof which is changing from a hip to gable presentation, and will be consistent with other existing roof elements facing Clairvoux Road;*
- *The site is sloping, with a fall of 6.8m (11.7%) from the rear to front boundaries, and has cross fall as well. The proposed roof change will continue the same ridge level as the existing roof over the centre of the dwelling, and the variation arises as a result of the fall of the land towards the front;*
- *The area of variation will be open in appearance facing Clairvoux Road, with a glazed gable exterior, and will not unreasonably add to building bulk or result in adverse visual impacts;*
- *The variation will improve, and bring consistency to the dwelling's presentation to Clairvoux Road, and will provide an architecturally complementary roof form to the existing roof presentations on either side;*
- *The area of variation is well setback from Clairvoux Road, with a minimum setback of 21m, which reduces visual impacts, and will be located behind the average setback of the dwellings on either side;*
- *The variation is unlikely to result in any privacy, overshadowing or view impacts; and*
- *The proposal is otherwise consistent with the objectives of the R2 Low Density Residential zone and the objectives of the height standard.*

Pre - conditions to be satisfied.

Clause 4.6 (4) of CCLEP 2022 establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions are:

1. Tests to be satisfied pursuant to clause 4.6(4)(a) – this includes matters under clause 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (clause 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to clause 4.6(4)(b) – concurrence of the Planning Secretary.

Clause 4.6(3)

Clause 4.6 (3) of CCLEP 2022 requires consideration of the following:

'Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating –

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

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

In reviewing whether the proposed variation is unreasonable or unnecessary, and whether there are sufficient environmental planning grounds to justify contravening the variation, consideration of the objectives for maximum building height controls are relevant. CCLEP 2022 sets out two objectives pertaining to the building height development standard. The objectives are contained within clause 4.3 (1) (a) and (b). These objectives are replicated below and commentary in respect to compliance or otherwise with each of the objectives in relation to the proposed development:

- a) to establish a maximum height of buildings to enable appropriate development density.*

Comment: The proposed height of the building, whilst exceeding the numerical height limit, is consistent with numerous other dwellings within the vicinity on this steep bayside locality. The proposed dwelling design meets the relevant zone objectives and does not cause any unreasonable level of view loss impacts to the adjoining and surrounding properties. The proposed dwelling design and height will not create any overshadowing to public open spaces and not impact on viewing natural topographical features from surrounding open spaces within the Wamberal locality.

b) to ensure that the height of buildings is compatible with the character of the locality.

Comment: The new dwelling alterations incorporate an open gable roof form and typical windows and will result in a contemporary design. The use of quality materials will encourage a desired urban form in the locality. The proposed dwelling will not result in any appreciable additional overshadowing of the adjoining property in the winter months. The extent of shadowing, considering the orientation of the dwellings within an east-west axis is reasonable as demonstrated on the shadow diagrams.

The height exceedance relates to the continuation of the existing roof form through to the construction of the new section of roof, over the sloping site. The additional roof form is an appropriate transition from the existing to the new and does not in itself unreasonably increase the land use intensity. It is consistent to the height of other buildings on the hillside within this locality and is imperceivable from the street.

Clause 4.6(4)

Clause 4.6 (4) of CCLEP 2022 requires consideration of the following:

'Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

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

(b) the concurrence of the Planning Secretary has been obtained.'

Consideration of Applicant's Submission

The Applicant's submission in accordance with clause 4.6 is attached, and adequately addresses the provisions of clause 4.6(3), as set out above.

Zone Objectives

In reviewing the proposed variation, consideration of the R2 Low Density Residential Zone objectives is also considered necessary.

The R2 Low Density Residential Zone objectives are as follows:

- To provide for the housing needs of the community within a low-density residential environment.

2.1 DA/2048/2023 - 22 Clairvoux Road Wamberal - Alterations and Additions (Existing Dwelling) (cont'd)

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage best practice in the design of low-density residential development.
- To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services.
- To maintain and enhance the residential amenity and character of the surrounding area.

In considering these zone objectives, the following points are considered relevant:

- Dwelling Houses are permissible within the zone and satisfies the zone objective in terms of the provision of low-density residential development.
- The proposed dwelling design is considered in keeping with the existing and desired future character of the area.
- The design of the dwelling incorporates suitable architectural design elements and incorporates sustainable design features.

The proposal meets the relevant zone objectives and does not cause view loss or overshadowing impacts to the adjoining properties. The proposal is consistent with the objectives of the development standard, as noted above, and approval of the development is therefore in the public interest.

Having regard to the site factors, minimal impact on the character of the area and that of the residents, the applicants request to vary the building height development standard is considered reasonable and therefore supported.

Central Coast Local Environmental Plan 2022 - Clause 5.21 Flood Planning

The site is not subject to flood planning controls.

Central Coast Local Environmental Plan 2022 - Clause 7.1 Acid sulfate soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in clause 7.1 of CCLEP 2022 have been considered. The site contains Class 5 Acid Sulfate Soils. In this instance, the proposal works are not considered to impact on Acid Sulfate Soils.

Central Coast Local Environmental Plan 2022 - 7.6 Essential Services

Development consent must not be granted to development unless the consent authority is satisfied that all of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access,
- (f) the collection and management of waste.

The application makes adequate arrangements for the essential services required for the development. Council is satisfied that all of the above services are available to the land to service the development.

Central Coast Development Control Plan 2022

The relevant controls of CCDCP 2022 are considered below:

Chapter 2.1 – Dwelling Houses, Secondary Dwellings and Ancillary Development

Development Standard	Required	Proposed	Compliance with Controls	Compliance with Objectives
2.1.2.1 b Building Height	8.5m.	9.58	No Variation of 12.7%	Yes
2.1.2.1 c Building Height	Building Height shall generally not exceed two storeys.	Two (2) Storeys	Yes	Yes
2.1.2.2 a (ii) Site Coverage	Maximum of 50% site coverage for allotments greater than 450m ² but less than 900m ²	Remains unchanged	Yes	Yes
2.1.2.3 Floor Space Ratio (FSR)	FSR not mapped	N/A	-	Yes
2.1.3.1 a (i) Front Setbacks	Average distance of the 2 neighbouring properties	Remains unchanged and consistent with the neighbouring dwellings	Yes	Yes
2.1.3.1 b (i) Rear Setbacks	3m	Remains unchanged	Yes	Yes
2.1.3.1 c (ii) Side Setbacks	For any part of the building with a height of up to 4.5m—0.9m, and	Remains unchanged	Yes	Yes

Development Standard	Required	Proposed	Compliance with Controls	Compliance with Objectives
	For any part of the building with a height of more than 4.5m—0.9m plus one-quarter of the height of the building above 4.5m			
2.1.3.3.2 a Garage Door Articulation	6m if the lot has a width measured at the building line of 12m or less	Remains unchanged	Yes	Yes
2.1.4.1 Views	Facilitate reasonable view sharing whilst not restricting reasonable development of the site	The proposed development would have no adverse impacts on the primary views of neighbouring properties.	Yes	Yes
2.1.4.2 Visual Privacy	Orientation of windows and terrace areas to not directly overlook private open space areas of adjoining allotments	No adverse amenity or privacy impacts.	Yes	Yes
2.1.4.3 Private Open Space	24sqm for allotments with a width greater than 10m wide at the building line	>24sqm of POS is provided with greater dimensions than 3m. The POS is directly accessible from and adjacent to both the living room and alfresco area.	Yes	Yes
2.1.4.4 Sunlight Access	50% of POS for all dwellings should receive at least 3 hours unobstructed sunlight access between 9am and 3pm	>50% of POS will receive at least 3 hours unobstructed sunlight access between 9am and 3pm	Yes	Yes
	50% of POS on adjoining land should receive at least 3 hours unobstructed sunlight access between 9am and 3pm	>50% of POS on adjoining land will receive at least 3 hours unobstructed sunlight access between 9am and 3pm	Yes	Yes
2.1.5 Car Parking and Access	Provide minimum off street parking facilities – 2 space for dwelling with 4 or more bedrooms. Ensure safe vehicular access to public road Driveway access does not detract from aesthetic qualities of the site	2 spaces are provided within the garage.	Yes	Yes

Development Standard	Required	Proposed	Compliance with Controls	Compliance with Objectives
2.1.6.1 Earthworks	Cut/fill maximum 1m within 1m of boundaries, or 3m if more than 3m from boundary	No cut greater than 1m in depth is proposed.	Yes	Yes
2.1.6.2 (a) Retaining walls and structural support	Retaining walls >600mm and within 1m of boundary or more than 1m above or below existing ground level in any other location – must be designed by a professional engineer	None proposed.	Yes	Yes
2.1.6.3 Drainage	All stormwater drainage collecting must be conveyed by a gravity fed or charged system to a public drainage system, or an inter-allotment drainage system, or an on-site disposal system	The alterations will connect to the existing stormwater system.	Yes	Yes
2.1.7.4 (a) (i) Fencing	Maximum height of 1.8m for side and rear fencing	Remains unchanged	Yes	Yes

Chapter 3.1.2.1 Building Height

The Applicant seeks a variation to the proposed maximum height of the dwelling. In this regard, the proposal seeks a maximum overall height of 9.58m. The variation proposed is 12.7%.

An assessment of the building height has been carried out under the CCLEP 2022. The proposed development will be consistent to the height of other buildings on the hillside. The proposal meets the relevant zone objectives and does not cause view loss impacts or an unreasonable level of overshadowing to the adjoining properties.

It is considered the Applicant's request to vary the development standard would be consistent to the height and scale of other dwellings within the immediate area. In addition, the development would not impose any unreasonable level of detrimental impact on the amenity of residents in nearby dwellings. It has been concluded the steepness of the site contributes to the difficulty in complying with the height controls and comparisons to the height and scale of other dwellings along the hillside provide justification to vary them.

Chapter 2.14 Site Waste Management

A Waste Management Plan has been submitted with the proposal.

The proposal has demonstrated compliance with this chapter of the CCDCP 2022 and associated Waste Control Guidelines. Appropriate conditions are included in the development consent.

Chapter 2.17 Character and Scenic Quality

The site is located within the character area: Wamberal 6: Open Woodland Hillsides of CCDCP 2022. The character statement provides for the desired character as follows:

"These should remain low-density residential areas where the existing scenic quality and amenity of prominent hillsides are enhanced substantially by further "greening" of gardens and street verges in order to screen new development and to complement the open bushland canopy that surrounds most dwellings.

Maintain the semi-natural character of hillsides by retaining existing natural slopes throughout gardens and along street verges, and by conserving bushland trees that are visually-prominent features. Complement the established canopy by planting trees and shrubs that are predominantly indigenous throughout all garden areas and along street verges. Do not plant identified noxious or environmental weeds in any garden that is close to a bushland reserve. Facing all boundaries, emphasise a leafy garden character by avoiding tall retaining walls, elevated structures such as terraces or pools, and steep driveways that would visibly compromise the leafy hillside character.

In areas that are defined as bushfire prone, hazard must not be increased by inappropriate new plantings or structures. Minimise the extent of cleared asset protection zones by fire-resistant siting, design and construction for all new structures plus effective management of gardens. The ideal compromise between desired scenic quality and hazard-reduction would limit clearing to thinning of the canopy to establish breaks between existing trees. Screen or shield all verandahs, windows, roofs and suspended floors to prevent the entry of sparks and flying embers.

Avoid disturbing natural slopes and trees by appropriate siting of structures plus low-impact construction such as suspended floors and decks, rather than extensive cut-and-fill. On the steeper sites, locate parking next to the street in structures that are designed to blend with their desired bushy setting. Avoid the appearance of a continuous wall of development along any street or hillside by locating buildings behind front and rear setbacks similar to their surrounding properties, and providing at least one wide side setback or stepping the shape of front and rear facades.

Minimise the scale and bulk of buildings by stepping floor-levels to follow natural slopes and by using irregular floorplans to create well-articulated forms. For example,

divide floorspace into linked pavilions that are separated by courtyards and capped by individual roofs. Front or rear facades that are taller than neighbouring dwellings should be screened by balconies, verandahs, stepped forms or extra setbacks. Roofs should be gently-pitched to minimise the height of ridges, and flanked by wide eaves to disguise the scale of exterior walls.

Minimise the scale of prominent facades by using extensive windows and verandahs plus a variety of materials and finishes rather than expanses of plain masonry. All dwellings should display a traditional "street address" with verandahs or decks, and living rooms or front doors that are visible from the roadway. Avoid wide garages that would visually-dominate any front façade or block views from a dwelling to the street. Locate and screen all balconies or decks to maintain the existing levels of privacy and amenity that are enjoyed by neighbouring dwellings."

Comment: The proposed dwelling design incorporates these desired character features. The proposed dwelling design is consistent with the desired character of the precinct.

The Likely Impacts of the Development

Built Environment

Given the position of the proposed dwelling on the allotment and comparison of bulk and scale with other dwellings, the proposal is suitable with regard to the context and setting of the subject site and is considered to be in keeping with the character of the area.

A thorough assessment of the proposed development's impact on the built environment has been undertaken in terms of the CCLEP 2022 and CCDCP 2022 compliance. It is considered on balance that the potential impacts are considered reasonable.

Natural Environment

The proposal does not involve any site excavation. Accordingly, the proposal is considered satisfactory in relation to impacts on the natural environment.

Context and Setting

The proposal is located within the R2 Low Density Residential land under CCLEP 2022 and the North Coastal Land Unit under Chapter 2.17 of CCDCP 2022. The proposal provides an updated housing option within a residential zone and is consistent with the objectives of the R2 land use and the North Coastal Land Unit. In addition, the proposal is considered to be consistent with the desired character for future development within the Wamberal 6: Open Woodland Hillsides of CCDCP 2022.

Economic and Social Impacts

The proposal will provide minor economic benefit through the provision of temporary employment during demolition and construction. The application does not require any tree removal to facilitate the development and the private open space remaining within the subject site will retain adequate private open space and landscaping.

The Suitability of the Site for the Development

Section 4.15(c) of the *Environmental Planning and Assessment Act 1979* requires the consent authority to consider the suitability of the development site, being the subject site, for the development as proposed. The proposal slightly modifies the built form to the central portion of the front of the existing dwelling, with minimal impacts to the surrounding built and natural environment able to be mitigated via project design and the application of appropriate conditions of consent. It is considered that the site, given its R2 land zoning under CCLEP 2022 is suitable for the proposal as currently submitted.

Submissions

The development application was notified in accordance with CCDCP 2022 from 10th November 2023 to 24th November 2023.

One (1) submission was received.

A summary of the submissions is detailed below.

1. Impacts to view loss

"The DA applies for a variation to the Central Coast Development Control Plan 2022, in that it seeks a variation to the side setback which will impact our property in denying us a view to the beach. It also seeks a variation to the height restrictions which may impact others and will set a precedence for others to apply for similar variations.

We are neighbours to the property applying for this DA, situated directly besides, but behind them. Our view to the beach is only possible directly beside the corner of the house applying for a screen around their balcony.

The proposed DA will ruin what little is left of our view of the beach taking at a minimum 80-90% of it away."

Comment: The originally proposed screen has been removed from the application due to its impacts to views to the surrounding properties and is discussed above under application history.

Internal Referrals

There were no internal referrals required for this application.

Contributions

The proposed development is not a development type that is subject to Section 7.11 or Section 7.12 development contributions. Therefore, no contributions are applicable.

The proposed development is not subject to water and sewer contributions.

Planning Agreements

The proposal is not subject to a Planning Agreement or Draft Planning Agreement.

Political Donations

During assessment of the application no political donations were declared by the Applicant. Applicant's consultant, owner, objectors and / or residents.

Ecologically Sustainable Principles:

The proposal has been assessed having regard to ecologically sustainable development principles and is consistent with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposal have been considered as part of the assessment of the application.

The assessment has included consideration of such matters as potential rise in sea level; potential for more intense and / or frequent extreme weather conditions including storm events, bushfires, drought, flood, and coastal erosion; as well as how the proposed development may cope, combat and withstand any resultant impacts. The proposed development is considered satisfactory in relation to climate change.

The Public Interest

The proposed development is seen to be in the public interest by providing assurance that the subject land can be developed in proportion to its site characteristics.

Conclusion:








The development application has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and all relevant instruments and policies. The proposed development is considered suitable for the site despite the listed variation for the following reasons,

1. Assessment of the application has concluded the proposed development is permitted with the current *R2 – Low Density Residential* zone under the provisions of the *Central Coast Local Environmental Plan 2022* and meets the objectives for the zone.
2. Assessment of the application has concluded the proposed development meets the objectives related to the building height development standard contained in *Central Coast Local Environmental Plan 2022*.
3. Assessment of the application has concluded the requirements of clause 4.6 (3) and (4) of *Central Coast Local Environmental Plan 2022* have been satisfied and that variation to the maximum building height provisions of the *Central Coast Local Environmental Plan 2022* is warranted.
4. With regard to the variation to development standards, the assessment of the application has concluded that:
 - a. The Applicant's written request for a variation to development standards (height) adequately addresses the matters required to be addressed under clause 4.6(3) of the *Central Coast Local Environmental Plan 2022*; and
 - b. The development is in the public interest because it is consistent with the objectives for development in the zone; and
 - c. The concurrence of the Secretary can be assumed.

The proposal is therefore recommended for approval pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*.

2.1 DA/2048/2023 - 22 Clairvoux Road Wamberal - Alterations and Additions (Existing Dwelling) (cont'd)

Attachments

 1	Draft conditions/reasons - 22 Clairvoux Road, WAMBERAL NSW 2260 - DA/2048/2023 - Draft conditions/reasons - Central Coast Council		D16341455
 2	REVISED - Architectural Plans - PAN-367189 - 22 Clairvoux Rd, WAMBERAL - DA/2048/2023	Provided Under Separate Cover	D16268236
 3	PUBLIC Redacted Statement Environmental Effects - PAN-367189 - 22 Clairvoux Rd, WAMBERAL - DA/2048/2023		D15931801
 4	PUBLIC - Variation Request Clause 4.6 - PAN-367189 - 22 Clairvoux Rd, WAMBERAL - DA/2048/2023		D15906534
 5	PUBLIC - BASIX Certificate - PAN-367189 - 22 Clairvoux Rd, WAMBERAL - DA/2048/2023		D15906515
 6	PUBLIC - Survey - PAN-367189 - 22 Clairvoux Rd, WAMBERAL - DA/2048/2023		D15906529
 7	PUBLIC - Waste Management Plan - PAN-367189 - 22 Clairvoux Rd, WAMBERAL - DA/2048/2023		D15906538

Date: 7 August 2024
Responsible Officer: Amy Magurren
Location: 22 Clairvoux Road, WAMBERAL NSW 2260
 Lot C DP 103618
Owner: K Fort
Applicant: K Fort
Date of Application: 10 October 2023
Application No: DA/2048/2023
Proposed Development: Alterations & Additions (LPP)
Land Area: 929.50
Existing Use: Residential Dwelling

PROPOSED CONDITIONS

The development taking place in accordance with the approved development plans reference number DA/2048/2023 except as modified by any conditions of this consent, and any amendments in red.

1.PARAMETERS OF THIS CONSENT

Approved Plans and Supporting Documentation

- 1.1 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.

Architectural Plan by Slater Architects

Plan No.	Plan Title	Revision	Dated
A000	Cover Sheet	6	24/06/2024
A001	Site Plan & Landscape Plan	6	24/06/2024
A101	Level 1 Plan – Demolition	2	24/06/2024
A102	Level 2 Plan	6	24/06/2024
A103	Level 2 Plan – Demolition	2	24/06/2024
A104	Roof Plan	6	24/06/2024
A200	Elevations	7	24/06/2024
A300	Section 1-1	6	24/06/2024
A301	Section 2-2 & 3-3	5	24/06/2024
A600	Door and Window Schedule	6	24/06/2024
A601	BASIX Certificate	4	24/06/2024
A900	Perspectives	7	24/06/2024
A901	Perspectives	7	24/06/2024
A902	Perspectives	7	24/06/2024
A903	Perspectives	7	24/06/2024

A904	Perspectives	7	24/06/2024
A905	Perspectives	7	24/06/2024
A906	Perspectives	7	24/06/2024
SA001	Site Analysis Plan	4	24/06/2024
SH001	Shadow Diagrams	4	24/06/2024
STW01	Stormwater, Erosion & Sediment Plan	3	24/06/2024

Supporting Documents

Document Title	Prepared by	Dated
BASIX Certificate No A507657	Building Sustainability Assessments	14/09/2023
Waste Management Plan	Slater Architects	August 2023

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.

- 1.1. Carry out all building works in accordance with the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate.
- 1.2. Comply with all commitments listed in the BASIX Certificate for the development as required under Clause 97A of the *Environmental Planning and Assessment Regulation 2000*.

2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

- 2.1. All conditions under this section must be met prior to the issue of any Construction Certificate.
- 2.2. No activity is to be carried out on-site until the Construction Certificate has been issued, other than:
 - a) Site investigation for the preparation of the construction, and / or
 - b) Implementation of environmental protection measures, such as erosion control and the like that are required by this consent
 - c) Demolition.

3. PRIOR TO ISSUE OF ANY SUBDIVISION WORKS CERTIFICATE

- 3.1. All conditions under this section must be met prior to the issue of any Subdivision Works Certificate.

No Conditions

4. PRIOR TO COMMENCEMENT OF ANY WORKS

- 4.1. All conditions under this section must be met prior to the commencement of any works.
- 4.2. Appoint a Principal Certifier for the building work:
 - a) The Principal Certifier (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
 - b) Submit to Council a Notice of Commencement of Building Work form giving at least two (2) days' notice of the intention to commence building work. The forms can be found on Council's website: www.centralcoast.nsw.gov.au
- 4.3. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
 - a) The name, address and telephone number of the Principal Certifier for the work; and
 - b) The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
 - c) That unauthorised entry to the work site is prohibited.
 - d) Remove the sign when the work has been completed.
- 4.4. Submit both a Plumbing and Drainage Inspection Application, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the *Plumbing and Drainage Act 2011* (to be provided by licensed plumber). These documents can be found on Council's website at: www.centralcoast.nsw.gov.au

Contact Council prior to submitting these forms to confirm the relevant fees.

This condition only applies if installation / alteration of plumbing and / or drainage works are proposed (excludes stormwater drainage). This condition does not apply to swimming pool plumbing that does not physically connect / break into the sewer system.
- 4.5. Provide and maintain a garbage receptacle at the work site until the works are completed. The garbage receptacle must have a tight-fitting lid and be suitable for food scraps and papers.
- 4.6. Disconnect, seal and make safe all existing site services prior to the commencement of any demolition on the site. Sewer and water services must be disconnected by a licensed plumber and drainer with a Start Work Docket submitted to Council's Plumbing and Drainage Inspector as the Water and Sewer Authority.

5.DURING WORKS

- 5.1. All conditions under this section must be met during works.
- 5.2. The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

7.00 am and 5.00 pm 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.

- 5.3. Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifier or an officer of Council.
- 5.4. Notify Council when plumbing and drainage work will be ready for inspection(s) and make the work accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.

This condition only applies if installation / alteration of plumbing and / or drainage works are proposed (excludes stormwater drainage).

- 5.5. Place all building materials, plant and equipment on the site of the development during the construction phase of the development so as to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure. Further, no construction work is permitted to be carried out within the road reserve unless the works are associated with a separate approval issued under the provisions of the *Roads Act 1993*.
- 5.6. Re-use, recycle or dispose of all building materials in accordance with the Waste Management Plan submitted with the subject application.
- 5.7. Demolish all buildings and / or building components in a safe and systematic manner in accordance with Australian Standard AS 2601-2001: *The demolition of structures*. Waste materials must be disposed of at a waste management facility.

6. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

6.1. All conditions under this section must be met prior to the issue of any Occupation Certificate.

No Conditions

7. PRIOR TO ISSUE OF ANY SUBDIVISION CERTIFICATE

7.1. All conditions under this section must be met prior to the issue of any Subdivision Certificate.

No Conditions

8. PRIOR TO OCCUPATION OF THE MANUFACTURED HOME

8.1. All conditions under this section must be met prior to Occupation of the Manufactured Home.

No Conditions

9. ONGOING

No Conditions

10. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

ADVISORY NOTES

- Discharge of sediment from a site may be determined to be a pollution event under provisions of the *Protection of the Environment Operations Act 1997*. Enforcement action may commence where sediment movement produces a pollution event.
- The following public authorities may have separate requirements in the following aspects:
 - a) Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments
 - b) Jemena Asset Management for any change or alteration to the gas line infrastructure
 - c) Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements
 - d) Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure
 - e) Central Coast Council in respect to the location of water, sewerage and drainage services.
- Carry out all work under this Consent in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011 No 10* and subordinate regulations, codes of practice and guidelines that control and regulate the development industry
- Dial Before You Dig
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.
- Telecommunications Act 1997 (Commonwealth)
Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application have no pecuniary interest to disclose in respect of the application.

Amy Magurren
Reporting Officer

Ailsa Prendergast
Reviewing Officer

The staff authorised to determine the application have no pecuniary interest to disclose in respect of the application. The report is endorsed and the recommendation contained therein.

Approved



Coastal Planning and Consulting

Planning and Development Services

ABN 39 655 402 547

Statement of Environmental Effects

Proposed Alterations & Additions to Dwelling House

22 Clairvoux Road, Wamberal



September 2023

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Appendix A – Clause 4.6 Variation Request

Appendix B – AHIMS search

Vers 1.0 Final for Submission 15.09.2023

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1. INTRODUCTION

This Statement of Environmental Effects has been prepared on behalf of Steve & Kerri Fort in support of a development application to Central Coast Council for alterations and additions to the existing dwelling house and garage on 22 Clairvoux Road, Wamberal.

The proposal involves internal and external alterations that will complement the existing dwelling house, and the proposal has been designed in response to the site's location and setting, and the nature of development in the surrounding area.

The site is zoned R2 Low Density Residential under Central Coast LEP 2022, and the proposal is permissible with the consent of Council.

This Statement considers the proposal against the provisions of relevant planning instruments and controls, including Central Coast LEP 2022, Central Coast DCP 2022, and relevant state planning controls. The assessment also addresses the matters identified in Council's Development Application Guide and the matters for consideration under Section 4.15 of the *Environmental Planning & Assessment Act, 1979*.

The assessment of the proposal against Central Coast LEP 2022, Central Coast LEP 2022, other planning controls and the heads of consideration under Section 4.15 of the *Environmental Planning & Assessment Act, 1979* concludes that the proposal is permissible, meets the intent and objectives of relevant planning controls and standards, and is unlikely to result in unreasonable impacts on surrounding properties or the environment.

This Statement should be read in conjunction with the supporting information submitted with the development application, including Architectural plans prepared by Slater Architects (14782-DA_RV1_01.09.2023).

2. THE SITE

2.1 Site Location and Description

The site is 22 Clairvoux Road, Wamberal, and the real property description is Lot C DP 103618.

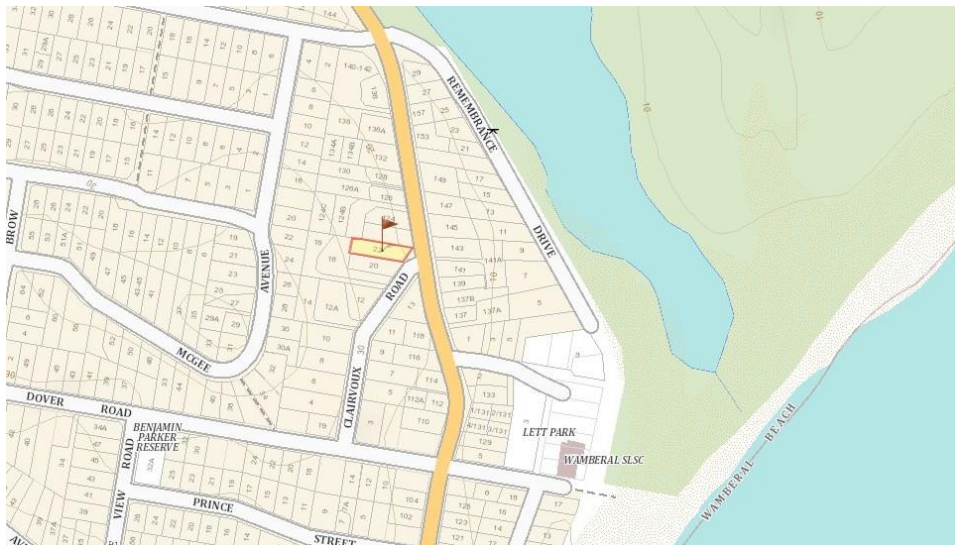


Figure 1 – Locality

Source: SIX Maps



Figure 2 – Site Aerial Photograph

Source: SIX Maps

2.2 Site Features and Existing Development

The site has an area of 932.5m², a frontage of 17.905m to Clairvoux Road, and is located near the intersection of Clairvoux Road and Ocean View Drive.

The site is moderately sloping, with a fall of 6.8m from the rear to front boundaries, which is a slope of 11.7%, and has a cross fall from the south to north.

The site contains an existing two storey dwelling house with a detached double garage at the front, and has pool and alfresco/ terrace areas at the rear.

The site is shown in the following photographs:



Figure 3 – Site Viewed from Clairvoux Road



Figure 4 – Internal site detail

2.3 Surrounding Land and Development

Surrounding land contains large dwelling houses, on similar sized lots to the subject land.

The adjoining property to the north contains a large 2 storey dwelling house, with no side windows facing the subject land, and the adjoining property to the south also contains a large 2 storey dwelling house.

Adjoining properties in Clairvoux Road are shown in the following photographs.



Figure 5 – Adjoining dwelling house to the north



Figure 6 – Adjoining dwelling house to the north



Figure 7 – Adjoining dwelling house to the south



Figure 8 – Side elevation of adjoining dwelling house to the south

3. ZONING AND PLANNING CONTROLS

3.1 Zoning

The land is zoned R2 Low Density Residential under Central Coast LEP 2022, as are surrounding properties, and Ocean View Drive to the east is zoned SP2 Infrastructure (Road).

The zoning of the site and surrounding land is shown in the following figure:

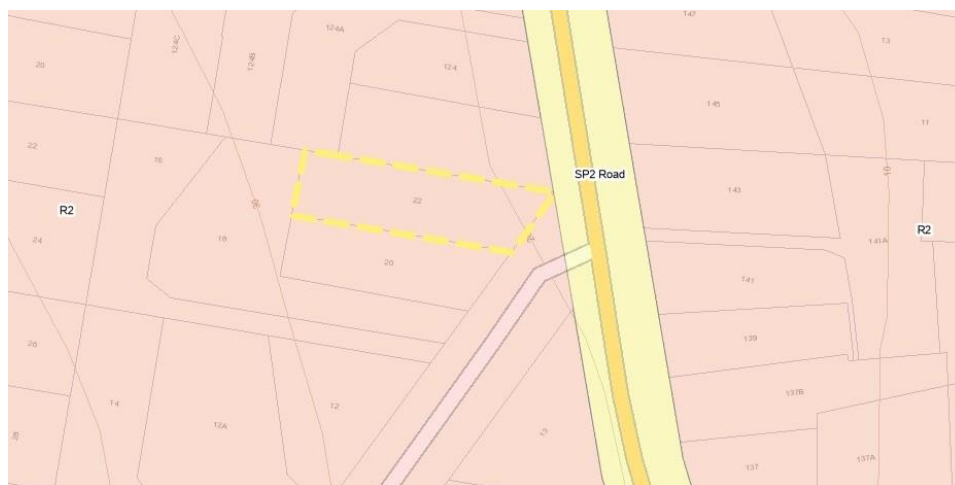


Figure 9 – Land Zoning

(NSW Planning Portal)

3.2 Height of Buildings

The allowed building height for the site is 8.5m.



Figure 10 – Building Height

(NSW Planning Portal)

3.3 Other

The site is not identified on the following Central Coast LEP 2022 maps:

- Floor Space Ratio
- Heritage
- Land Reservation Acquisition
- Additional Permitted Uses
- Urban Release Area
- Lot Amalgamation

The site is mapped as Class 5 Acid Sulfate Soils under Central Coast LEP 2022.

The site is not mapped as being bushfire prone, and is partially mapped as being affected by 1 in 100 year flooding.

The vegetation on the site not mapped on Council's vegetation mapping, or on the NSW Biodiversity Values Map.

The land is subject to the Resilience and Hazards State Environmental Planning Policy, 2021, and is in the mapped *Coastal Use* and *Coastal Environment* areas, and is not mapped as containing, or being within a proximity area to coastal wetlands or littoral rainforest areas.

4. THE PROPOSAL

The proposal is for internal and external alterations and additions to the existing dwelling house, and changes to the existing garage, as shown on the architectural plans prepared by Slater Architects, and including:

Level 1

- internal alterations;
- open up existing study to become a porch, with new stair entry;
- extend Bedroom 3 by 2m to the east;
- provide privacy screening to the outer sides of existing terrace areas; and
- other minor changes as shown on the architectural plans.

Level 2

- internal alterations;
- change alignment/ windows on northern side, adjacent to dining area;
- extend Master Bedroom by 2m to the east;
- new highlight ensuite window on the southern side;
- minor changes to rear terrace area, including new access doors;
- provide privacy screening to the outer sides of existing terrace areas;
- changes to the window to the living area, and roof form above; and
- replace existing balustrading with frameless glass, new timber batters and underside roof lining.

External

- remove existing garage roof and provide new flat roof and roof garden;
- changes to garage door; and
- changes to paths and retaining walls as shown on the architectural plans.

The existing dwelling house provides 3 separate and staggered building elements facing Clairvoux Road, each with a separate roof element. The northern and southern elements provide open gable roof presentations the front (refer Figure 4), and the middle element has a hip roof presentation. The change to the middle element above the living area propose a similar open gable presentation to the elements on either side, which brings consistency to the dwelling's presentation to Clairvoux Road, and the ridge line of the roof will continue the same level as the existing roof to the west. Based on existing ground levels identified by survey, the new gable roof will have a maximum building height of 9.58m.

5. PLANNING CONSIDERATIONS

5.1 Central Coast LEP 2022

Compliance with relevant controls in Central Coast LEP 2022 is set out in the following table:

LEP Control/ Standard	Proposed	Complies
Permissibility	The proposal is for alterations and additions to a dwelling house and ancillary development, which is permissible with consent in the R2 zone.	Yes
R2 Zone objectives <ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To encourage best practice in the design of low-density residential development. To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services To maintain and enhance the residential amenity and character of the surrounding area 	<p>The proposal is for alterations and additions which will be compatible with the existing dwelling house and development on the site, and provides for the housing needs of the community.</p> <p>The design of the proposal responds to existing development on the site, and will complement the existing development architecturally, and is appropriate for the site's location and setting, and the slope of the land.</p> <p>Amenity and character considerations are addressed in detail in Parts 5 and 6 of this Statement, and the proposal will be compatible with surrounding development and the character of the surrounding area.</p>	Yes
Clause 4.3 Height of Buildings Maximum height 8.5m	The proposed alterations and additions are largely within the existing building envelope and footprint, and the change to the roof form above the living area will have a maximum building height of 9.58m at the ridgeline facing Clairvoux Road. The variation is relatively minor, having regard to the existing roof, and a written request to vary the development standard is provided under clause 4.6 of Central Coast LEP 2022, and is included as Attachment A to this Statement.	Refer cl.4.6 variation
Clause 5.21 Flood Planning	The site is mapped as having some areas subject to 1 in 100yr flooding, which appears to be overland flow paths, and the proposal does not include any works likely to impact on flooding or that would be impacted by flooding.	Yes
Clause 7.1 Acid Sulfate Soils	The site is mapped as being Class 5 for acid sulfate soils, and is on elevated land removed from waterways and there are no works proposed that are likely to impact on any acid sulfate soils.	Yes
Clause 7.6 Essential Services	The proposal is for alterations and additions to a dwelling house, and the site and the existing dwelling has access to all required services.	Yes

5.2 Central Coast Development Control Plan 2022

In assessing the proposal against Central Coast DCP 2022, Section 3.42 of the *Environmental Planning & Assessment Act 1979* provides that the purpose of a DCP is to provide guidance, and section 4.15(3A)(b) of the Act provides that DCP standards are to be flexibly applied and non-compliance can be addressed through alternative solutions or addressing how a proposal otherwise achieves the objectives of the standard.

5.2.1 DCP Chapter 2.1 Dwelling Houses, Secondary Dwellings and Ancillary Development

The proposal's compliance with relevant provisions of Chapter 2.1 of Central Coast DCP 2022 is detailed in the table below.

DCP Requirement	Proposed	Complies
2.1.2.1 Building Height Maximum 8.5m (LEP 2022) Not to exceed 2 storeys, however 3 storeys allowed in some circumstances	Building height is a maximum of 9.58m to the ridgeline of the new roof element, and the application seeks a variation to the LEP height standard under clause 4.6 of Central Coast LEP. Accordingly, the variation if supported would also require a corresponding variation to the DCP control which simply restates the LEP height standard. The proposal does not increase or change the number of storeys.	Refer cl.4.6 Variation Request Yes
2.1.2.2 Site Coverage 40% for a lot of between 900m ² and 1500m ²	The proposal will maintain the same site coverage as the existing dwelling.	Yes
2.1.2.3 Floor Space Ratio	There is no floor space ratio applying to the site under either Central Coast LEP or DCP 2022.	N/A
2.1.3.1a Front Setback (i) Av setback of nearest 2 dwelling houses, and if none 4.5m	The proposal maintains the same front setback as the existing dwelling house, and will remain within the average front setback of the dwellings on either side.	Yes
2.1.3.1b Rear Setback	The proposal does not change the existing rear setback.	Yes
2.1.3.1c Side Setback (i) For lots greater than 12.5m width at the building line: 0.9m to a height of 4.5m and then at + 25%	The proposal maintains the same side setbacks as the existing dwelling house, and the changes to the dining area window on Level 2 sit behind the main side walls of the dwelling, and comply with the setback requirements. There is a new visual/ privacy screen proposed on the northern side of the existing terrace area on Level 2 which is partly outside the side building envelope, and this is addressed in 5.2.2.below against the objectives of the control.	Yes, and minor variation for proposed side screen
2.1.3.3 Articulation Zones Garage door articulation (max 6m or 60% of building width, whichever is greater).	The proposal does not change the existing garage door width.	Yes

2.1.4.1 Views 2.1.4.2 Visual Privacy	The proposal is not likely to result in unreasonable impacts on views or privacy for adjoining properties, and a separate assessment of these matters is provided in Part 6 of the Statement.	Yes
2.1.4.3 Private Open Space Areas	The proposal does not materially impact on existing private open space areas, and an additional area is provided through the roof garden above the garage.	Yes
2.1.4.4 Sunlight Access 50% of the required principal private open space on the site, and on adjoining land, to receive at least 3hrs sun mid-winter between 9am and 3pm	The proposal will not materially increase overshadowing compared to the existing dwelling house. Shadow diagrams are provided as part of the submitted architectural plans, and the proposal will retain solar access of at least 3hrs sun mid-winter between 9am and 3pm for at least 50% of the required private open space area on the adjoining property to the south.	Yes
2.1.5 Car Parking and Access Various requirements, including 2 spaces for 4 or more bedrooms in a dwelling	The proposal does not generate additional car parking demand, and the existing double garage will be retained.	Yes
2.1.6 Earthworks, Structural Support and Drainage Maximum excavation 1m within 1m of side or rear boundary, 3m where greater 1m from side or rear boundary Stormwater and Drainage	The proposal does not propose excavation of greater than 1m. The proposal does not materially change existing roof/ hard surface areas, and will utilise the existing stormwater arrangements. Further details and a sediment and erosion control plan is provided on Sheet STW01 of the submitted architectural plans.	Yes Yes
2.1.7 Ancillary Development (Outbuildings)	The changes to the garage will not alter the existing gross floor area or setbacks of the garage, and will lower the height of the garage.	Yes

5.2.2 – DCP variation – Side Setback Envelope

The proposal has a minor variation to the side setback envelope for part of the proposed visual/ privacy screen on the northern side of the Level 2 terrace, and a variation to a maximum of 500mm is sought to the requirements of Part 2.1.3.1b of the DCP. The proposed screen will be partly open, and is intended to provide a visual screen from the terrace area towards the roof and blank walls of the adjoining dwelling house to the north, and also provides for privacy.

The area of variation is shown in the figure over.

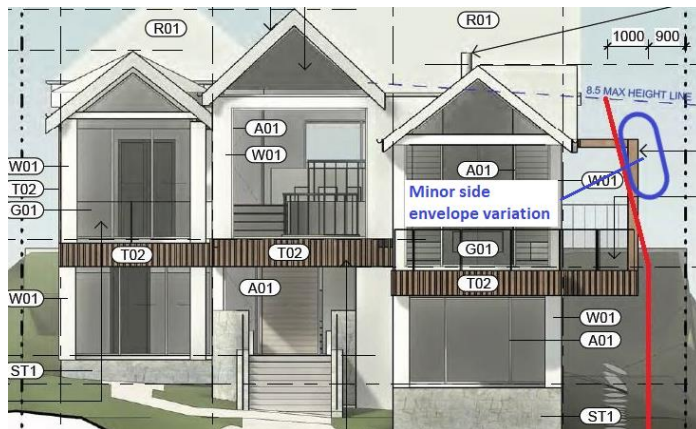


Figure 11 – Side Setback Envelope

An assessment of the variation against the objectives of the control is provided below.

Objective (Part 2.1.3)	Comment
To ensure that setbacks are compatible with adjacent development and complements the character, streetscape, public reserve, or coastal foreshore	The setback of the screen follows the same alignment as the existing balustrade, and will not adversely impact on character, streetscape, any public reserve, or coastal foreshore.
To ensure the visual focus of a development is the dwelling, not the garage	The variations will not adversely impact on the appearance of the dwelling as seen from roads, and will not change the existing relationship between the dwelling and garage.
To protect the views, privacy and solar access of adjacent properties	View, privacy and shadowing impacts of the proposal are addressed in Part 6 of the Statement, and the variation will not impact on the solar access or privacy of adjacent properties. There will be minor view impacts, which are addressed in Part 6 of the Statement
To maintain view corridors to coastal foreshores and other desirable outlooks	There will be minor view impacts, which are addressed in Part 6 of the Statement.
To maintain the scenic and environmental qualities of natural waterbodies and their foreshores and respond to site attributes such as topography	The variation will not impact on the scenic and environmental qualities of natural waterbodies and their foreshores, and the building height where the variation occurs is below the allowed building height for the site.
To provide deep soil areas sufficient to conserve existing trees or accommodate new landscaping	The proposal does not materially impact on existing deep soil zones.

5.2.3 DCP Chapter 2.17 – Character and Scenic Quality

Chapter 2.17 of DCP 2022 contains Scenic Quality and Character Statements to be considered with development applications.

The site is in the Wamberal Open Woodland Hillsides character area, and the relevant character statement describes the desired future character for this area as:

“These should remain low-density residential areas where the existing scenic quality and amenity of prominent hillsides are enhanced substantially by further “greening” of gardens and street verges in order to screen new development and to complement the open bushland canopy that surrounds most dwellings.

Maintain the semi-natural character of hillsides by retaining existing natural slopes throughout gardens and along street verges, and by conserving bushland trees that are visually-prominent features. Complement the established canopy by planting trees and shrubs that are predominantly indigenous throughout all garden areas and along street verges. Do not plant identified noxious or environmental weeds in any garden that is close to a bushland reserve.

Facing all boundaries, emphasise a leafy garden character by avoiding tall retaining walls, elevated structures such as terraces or pools, and steep driveways that would visibly compromise the leafy hillside character.

In areas that are defined as bushfire prone, hazard must not be increased by inappropriate new plantings or structures. Minimise the extent of cleared asset protection zones by fire-resistant siting, design and construction for all new structures plus effective management of gardens. The ideal compromise between desired scenic quality and hazard-reduction would limit clearing to thinning of the canopy to establish breaks between existing trees. Screen or shield all verandahs, windows, roofs and suspended floors to prevent the entry of sparks and flying embers.

Avoid disturbing natural slopes and trees by appropriate siting of structures plus low-impact construction such as suspended floors and decks, rather than extensive cut-and-fill. On the steeper sites, locate parking next to the street in structures that are designed to blend with their desired bushy setting. Avoid the appearance of a continuous wall of development along any street or hillside by locating buildings behind front and rear setbacks similar to their surrounding properties, and providing at least one wide side setback or stepping the shape of front and rear facades.

Minimise the scale and bulk of buildings by stepping floor-levels to follow natural slopes and by using irregular floorplans to create well-articulated forms. For example, divide floorspace into linked pavilions that are separated by courtyards and capped by individual roofs. Front or rear facades that are taller than neighbouring dwellings should be screened by balconies, verandahs, stepped forms or extra setbacks. Roofs should be gently-pitched to minimise the height of ridges, and flanked by wide eaves to disguise the scale of exterior walls.

Minimise the scale of prominent facades by using extensive windows and verandahs plus a variety of materials and finishes rather than expanses of plain masonry. All dwellings should display a traditional “street address” with verandahs or decks, and living rooms or front doors that are visible from the roadway. Avoid wide garages that would visually-dominate any front façade or block views from a dwelling to the street. Locate and screen all balconies or decks to maintain the existing levels of privacy and amenity that are enjoyed by neighbouring dwellings.”

The proposal is for alterations and additions to an existing dwelling house, and changes to the garage, and the use of the land for low-density residential development will remain consistent with existing development on the site and development on surrounding properties.

The proposal does not impact on the existing slope and levels on the land, and does not propose any tree removal. The site is also not bushfire prone.

The proposal is located largely within the footprint and envelope of the existing dwelling house, and the external change to the roof facing Clairvoux Road will complement the balance of the dwelling and will bring architectural consistency to the dwelling's presentation to Clairvoux Road.

The dwelling is well articulated as viewed from Clairvoux Road, and the changes to the living room window facing the street will increase the use of glazing, and will be consistent with the balance and appearance of the existing dwelling. The other design treatments, including glazed balustrades and the use of timber battens will also complement the existing dwelling house.

5.3 State Environmental Planning Policies

Relevant State Environmental Planning Policies (SEPPs) applying to the land are SEPP – Building Sustainability Index (BASIX) and SEPP (Resilience and Hazards) 2021, relevant to coastal management and site contamination considerations.

SEPP BASIX

A BASIX Certificate is submitted with the application that demonstrates that with the commitments contained in the certificate, the proposal will meet or exceed BASIX requirements, and is the proposal is BASIX compliant.

SEPP (Resilience and Hazards) 2021 – Chapter 2 - Coastal Management

The site is subject to this Chapter, and is in the mapped *Coastal Environment* and *Coastal Use* areas, and is not mapped as containing, or being within a proximity area to coastal wetlands or littoral rainforest areas.

A table outlining compliance with the SEPP is provided below:

Consideration	Compliance
Section 2.10(1) Development consent must not be granted to development on land that is within the <u>coastal environment area</u> unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:	
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	The proposal is for a new dwelling house and the proposal is unlikely to result in adverse impacts on the biophysical, hydrological or ecological environment.
(b) coastal environmental values and natural coastal processes	The site is not subject to a <i>coastal building line</i> under Central Coast LEP or DCP and the proposal will not impact on coastal environmental values or natural coastal processes.

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	The existing dwelling is connected to reticulated sewer and stormwater will be managed in accordance with existing stormwater arrangements, and the proposal will not impact on water quality or any sensitive coastal lakes.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	The proposal will not impact on these.
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability	The proposal will not impact on public access to the foreshore.
(f) Aboriginal cultural heritage, practices and places,	An AHIMS search has been undertaken (Attachment B), and the subject land has not been identified as containing or being within 50m of any Aboriginal sites or places
(g) the use of the surf zone	The proposal will not impact on the surf zone
Section 2.10(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1)	The proposal is appropriately designed and sited having regard to the location and setting of the site, the existing dwelling house on the site and the nature of development in the surrounding area, and will not result in adverse impacts referred to in subsection (1).
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact	N/A – no adverse impacts
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	N/A – no adverse impacts
Section 2.11(1)(a) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:	
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability	The proposal will not impact on public access to the foreshore.
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores	The proposal will not result in overshadowing of any foreshore, and will not impact views from public spaces to foreshores.
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands	The proposal will be visible from a distance from coastal areas and will be compatible the existing dwelling house, and other development on the hillsides behind Wamberal Beach. The proposal will be compatible with the scale and presentation of surrounding development

	and will sit below the level of development and the ridgeline to the west.
(iv) Aboriginal cultural heritage, practices and places	An AHIMS search has been undertaken (Attachment B), and the subject land has not been identified as containing or being within 50m of any Aboriginal sites or places
(v) cultural and built environment heritage	The subject land is not identified as containing any items of heritage, archaeological or historic significance.
Section 2.11(1)(b) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority is satisfied that:	
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a)	The proposal is appropriately designed and sited having regard to the location and setting of the site, the existing dwelling house on the site and the nature of development in the surrounding area, and will not result in adverse impacts referred to in paragraph (a).
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact	N/A – no adverse impacts
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact	N/A – no adverse impacts
Section 2.11(1)(c)	
Development consent must not be granted to development on land that is within the coastal use area unless the consent authority has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development:	The proposal will be compatible with the location and visual setting of the site, the existing dwelling on the site, as well as the zoning of the land, the zone objectives, permitted uses in the zone and the desired future character of the area. The proposal complies with relevant LEP and DCP controls, with substantiated minor variations for building height and side setback envelope, and will be compatible with the scale and appearance of other development on the hillsides behind Wamberal Beach.
Section 2.12 – Development within the coastal zone generally	
Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.	The site is not subject to a <i>coastal building line</i> under Central Coast LEP or DCP and the proposal will not cause increased risk of coastal hazards on the land or other land.

SEPP (Resilience and Hazards) 2021 – Chapter 4 - Remediation of Land

This Chapter applies to all development and requires consideration and management of site contamination issues as part of the development assessment process. The site is currently developed for residential purposes, as are surrounding properties, and there is a low likelihood of the site being contaminated or unsuitable for the proposed development.

6. ENVIRONMENTAL AND AMENITY IMPACTS

The proposal is for minor alterations and additions to an existing dwelling house, and environmental and amenity impacts have been considered in the assessment against planning controls in Part 5 of the Statement, and as follows.

6.1 General Environmental Impacts

The proposal has considered a number of general environmental impacts including:

- Noise. The proposal is unlikely to generate additional noise compared to the existing dwelling, and Council will impose conditions of consent relating to the hours of construction activities.
- Waste. The proposal will not increase waste generation compared to the existing dwelling house, and a Waste Management Plan is submitted with the application addressing demolition and construction waste. All demolition will be carried out consistent with AS 2601-1991 The Demolition of Structures, as is a relevant consideration under the Environmental Planning & Assessment Regulation 2000.
- Water Quality. The application will utilise existing stormwater management arrangements, and sediment and erosion control measures will be implemented during demolition and construction in accordance with the submitted plans.
- Air Quality. The proposal is unlikely to impact on air quality, and during construction, measures and conditions are able to be put in place for the management of dust.

6.2 Privacy

The proposal has considered privacy impacts on adjoining properties through the design of the alterations and additions, and includes the provision of new privacy screening.

New privacy screening is proposed to the sides of the Level 1 and 2 terrace areas, facing adjoining properties, which will further reduce any potential privacy impacts compared to the existing dwelling and terrace areas.

On Level 2 there is a new window proposed to the dining area facing north, which expand and be in a similar position to an existing window, and will be setback behind the main northern side elevation of the dwelling, and will be 6.6m from the northern side boundary. There are no windows along the southern elevation of the adjoining dwelling house opposite the window, and the existing dwelling on the adjoining property and raised roof form provide visual separation between the new window and the private open space area and pool area on the adjoining property.

On Level 2 there is a new highlight window to an ensuite facing south, which is unlikely to give rise to any privacy impacts.

6.3 View Impacts

Consideration has been given to the view impacts of the proposal, and having regard to the view sharing planning principle established by the Land and Environment Court in *Tenacity Consulting v Warringah Council*.

The properties with potential for view impacts include properties to the rear, on the hillside above Wamberal, and 1/ 124A Ocean View Drive to the north west.

Properties to the rear

It is unlikely the proposal will impact on any views from properties to the rear, along McGee Avenue and the dual occupancy dwelling at 1/ 124A Ocean View Drive, having regard to the siting of the existing dwelling house and the elevated nature of the properties at the rear. The proposed roof change will sit forward of the existing roof line, and at the same level, and is unlikely to give rise to any view impacts.

2/ 124A Ocean View Drive

2/ 124A Ocean View Drive is a dual occupancy dwelling located to the north-west of the site, and which is likely to have partial ocean views from the rear of the dwelling, including views over the top of the adjoining dwelling to the north (122 Ocean View Drive) and views in between 122 Ocean View Drive and the existing dwelling on the subject land. The proposed roof changes are unlikely to impact on any views from this dwelling, and there will be a minor impact from the proposed visual screen along the northern side of the Level 2 terrace. The proposed screen is likely to block part of the water view from 2/ 124A Ocean View Drive, however it is likely that other water views will remain above the screen, including the horizon, and also water views over the dwelling on 122 Ocean View Drive. In terms of the reasonableness of the impacts, there is likely to be other water views retained and the screen is below the allowed height limit applying to the site. Part of the screen is outside the side setback envelope, however even a complying side setback envelope would be likely to have similar view impacts.

6.4 Overshadowing

Shadow diagrams are provided in the architectural plans, showing shadowing from the existing dwelling and alterations in mid-winter and the March/ September equinox.

The shadow diagrams demonstrate the proposal maintains reasonable shadow impacts in mid-winter, and the proposed roof changes over the living area will lead to negligible additional overshadowing compared to the existing dwelling.

7. SECTION 4.15 CONSIDERATIONS

The following assessment addresses the matters required to be considered under Section 4.15 of the *Environmental Planning & Assessment Act 1979*.

(1) *Matters for consideration—general*

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) *the provisions of:*

(i) *any environmental planning instrument*

Comment: the proposal has been considered against Central Coast LEP 2022 and relevant State Environmental Planning Policies, and complies with relevant requirements, with a minor variation to building height which is consistent with the existing roof level, and has been addressed in accordance with Clause 4.6 of the LEP;

(ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved)*

Comment: There are no draft environmental planning instruments or planning proposals impacting on the land or the proposal.

(iii) *any development control plan*

Comment: the proposal has been assessed against Central Coast DCP 2022, and with complies with relevant requirements with a part variation to the side setback envelope which is addressed against the objectives of the controls in the DCP assessment in Part 5 of the Statement ;

(iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F*

Comment: There is no planning agreement relevant to the subject land or the proposal.

(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates*

Comment: There are no matters prescribed in the regulations that impact on the proposal, and all demolition will be carried out in accordance with AS 2601-1991 The Demolition of Structures.

- (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*

Comment: The proposal is unlikely to result in adverse environmental impacts and will maintain a positive social and economic impact through improvements to the existing dwelling house which will improve its amenity.

- (c) *the suitability of the site for the development*

Comment: The site is suitable for the proposed development and the proposal has been designed in response to the existing dwelling house already on the land.

- (d) *any submissions made in accordance with this Act or the regulations*

Comment: This is a matter for Council to consider once the application is notified.

- (e) *the public interest*

Comment: the proposal will result in development of the site consistent with the zoning of the land, and will be consistent with the existing dwelling already on the site, and development in the surrounding area. The proposal has architectural and design merit, and will improve the appearance and functionality of the existing dwelling.

8. CONCLUSION

In conclusion, the proposal has been designed in response to the circumstances of the site, including existing development, the location and setting of the site and the nature of nearby development. The proposal is consistent with the objectives of the R2 Low Density Residential zone and is permitted under Central Coast Local Environmental Plan 2022, with a variation to building height development that is consistent with the existing roof level, as addressed under Clause 4.6 of the LEP. The proposal will be compatible with the existing dwelling house, the character of the surrounding area and development, and complies with relevant requirements of Central Coast Development Control Plan 2022, with a substantiated variation for the side setback envelope which is addressed against the objectives of the control.

An assessment of the proposal has been carried out pursuant to Section 4.15 of the *Environmental Planning & Assessment Act 1979* which supports the proposal.

Attachment A

Variation to Development Standard under Clause 4.6 Central Coast LEP 2022

The proposal has a minor variation to building height, and a variation is sought to the development standard as allowed under Clause 4.6 of Central Coast LEP 2022.

This written request should be read in conjunction with the Statement of Environmental Effects submitted with the application, and which forms an annexure to this request.

The request for variation has been prepared with consideration of relevant principles set out in various judgements applying to variations to development standards, including *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Relevant Development Standard

Clause 4.3(2) of Central Coast LEP 2022 sets maximum building height through reference to the Height of Buildings Map. The relevant Map identifies the site as having an allowed building height of 8.5m.

Extent of Variation to Development Standard

The existing dwelling house has variable building heights, including existing roof levels above 8.5m. The proposed new gable roof form over the living area will continue the existing roof level, resulting in a height of 9.58m facing Clairvoux Road, which is a variation of 12.7%.

The extent of variation is shown in the following extract from the architectural plans:

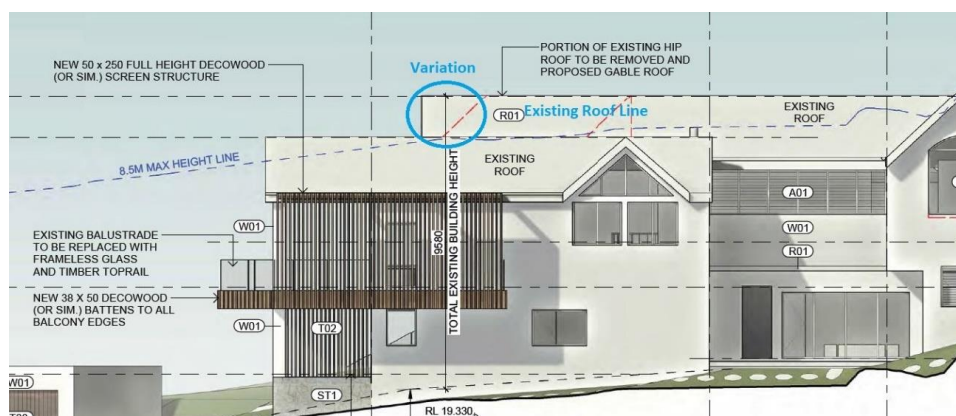


Figure 1 –8.5m Height Plane

(Source: Slater Architects)

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

Compliance with the 8.5m building height for the proposed roof alterations is unreasonable or unnecessary in the circumstances of the case, for the following reasons:

1. The variation is minor in nature, and relates to a small area of roof which is changing from a hip to gable presentation, and will be consistent with other existing roof elements facing Clairvoux Road;
2. The site is sloping, with a fall of 6.8m (11.7%) from the rear to front boundaries, and has cross fall as well. The proposed roof change will continue the same ridge level as the existing roof over the centre of the dwelling, and the variation arises as a result of the fall of the land towards the front;
3. The area of variation will be open in appearance facing Clairvoux Road, with a glazed gable exterior, and will not unreasonably add to building bulk or result in adverse visual impacts;
4. The variation will improve, and bring consistency to the dwelling's presentation to Clairvoux Road, and will provide an architecturally complementary roof form to the existing roof presentations on either side;
5. The area of variation is well setback from Clairvoux Road, with a minimum setback of 21m, which reduces visual impacts, and will be located behind the average setback of the dwellings on either side;
6. The variation is unlikely to result in any privacy, overshadowing or view impacts; and
7. The proposal is otherwise consistent with the objectives of the R2 Low Density Residential zone and the objectives of the height standard.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 the Chief Justice of the Land and Environment Court outlined a number of ways an objection can demonstrate that compliance with a development standard is unreasonable or unnecessary, including by establishing that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard, which is relevant in this case and is addressed below.

Objectives of the development standard (cl. 4.3 Central Coast LEP 2022)

- (a) *to establish a maximum height of buildings to enable appropriate development density*

Comment: The variation applies to a small part of roof only, and does not result in any additional gross floor area or development intensity.

- (b) *to ensure that the height of buildings is compatible with the character of the locality*

Comment: The variation applies to a small part of roof only, which will be consistent with the ridge level of the balance of the roof, and will complement the other roof forms and presentation of the existing dwelling. An assessment has been carried out as part of the Statement of Environmental Effects, and the proposal will be in keeping with the character of existing dwelling and the character of the surrounding locality.

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify a variation to building height as proposed, and with particular reference to the objectives of the *Environmental Planning and Assessment Act 1979* as detailed below.

The proposal will *promote the orderly and economic use and development of land* (Objective 1.3(c) of the Act) by applying appropriate flexibility to enable a development with a minor variation the allowed building height, and which will not adversely impact on the bulk and scale of the development, on the character of the surrounding area or on the amenity of surrounding properties.

Is the proposal in the public interest, being consistent with the objectives of the development standard and the objectives of the R2 Low Density Residential Zone?

Consistency of the proposal with the objectives of the standard are addressed above, and the proposal is consistent with the objectives of the R2 Low Density Residential Zone as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment: The proposal provides improvements to existing housing on the site, and the variation will assist this, and the variation does not increase the intensity of development and the dwelling will continue to be a low density residential development.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: The proposal is for residential and related use, and this objective is not relevant.

- *To encourage best practice in the design of low-density residential development.*

Comment: The minor alterations to the roof form have architectural merit, and will provide a consistent front elevation presentation to Clairvoux Road.

- *To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services*

Comment: The proposal does not propose non-residential uses.

- *To maintain and enhance the residential amenity and character of the surrounding area*
Comment: The variation will not result in adverse impacts on views, privacy or shadowing on adjoining properties, as addressed in the Statement of Environmental Effects.

Conclusion

In conclusion, this written request demonstrates that the variation to the development standard is minor, applying to a small part of roof, and that compliance with the standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the variation. Further, the variation is in the public interest as it is consistent with the objectives of the development standard and the objectives for development within the zone in which the development is proposed to be carried out. On this basis the request satisfies the requirements of clause 4.6 of the LEP and the principles developed through caselaw.

Attachment A

Variation to Development Standard under Clause 4.6 Central Coast LEP 2022

The proposal has a minor variation to building height, and a variation is sought to the development standard as allowed under Clause 4.6 of Central Coast LEP 2022.

This written request should be read in conjunction with the Statement of Environmental Effects submitted with the application, and which forms an annexure to this request.

The request for variation has been prepared with consideration of relevant principles set out in various judgements applying to variations to development standards, including *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Relevant Development Standard

Clause 4.3(2) of Central Coast LEP 2022 sets maximum building height through reference to the Height of Buildings Map. The relevant Map identifies the site as having an allowed building height of 8.5m.

Extent of Variation to Development Standard

The existing dwelling house has variable building heights, including existing roof levels above 8.5m. The proposed new gable roof form over the living area will continue the existing roof level, resulting in a height of 9.58m facing Clairvoux Road, which is a variation of 12.7%.

The extent of variation is shown in the following extract from the architectural plans:



Figure 1 –8.5m Height Plane

(Source: Slater Architects)

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

Compliance with the 8.5m building height for the proposed roof alterations is unreasonable or unnecessary in the circumstances of the case, for the following reasons:

1. The variation is minor in nature, and relates to a small area of roof which is changing from a hip to gable presentation, and will be consistent with other existing roof elements facing Clairvoux Road;
2. The site is sloping, with a fall of 6.8m (11.7%) from the rear to front boundaries, and has cross fall as well. The proposed roof change will continue the same ridge level as the existing roof over the centre of the dwelling, and the variation arises as a result of the fall of the land towards the front;
3. The area of variation will be open in appearance facing Clairvoux Road, with a glazed gable exterior, and will not unreasonably add to building bulk or result in adverse visual impacts;
4. The variation will improve, and bring consistency to the dwelling's presentation to Clairvoux Road, and will provide an architecturally complementary roof form to the existing roof presentations on either side;
5. The area of variation is well setback from Clairvoux Road, with a minimum setback of 21m, which reduces visual impacts, and will be located behind the average setback of the dwellings on either side;
6. The variation is unlikely to result in any privacy, overshadowing or view impacts; and
7. The proposal is otherwise consistent with the objectives of the R2 Low Density Residential zone and the objectives of the height standard.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 the Chief Justice of the Land and Environment Court outlined a number of ways an objection can demonstrate that compliance with a development standard is unreasonable or unnecessary, including by establishing that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard, which is relevant in this case and is addressed below.

Objectives of the development standard (cl. 4.3 Central Coast LEP 2022)

- (a) *to establish a maximum height of buildings to enable appropriate development density*
Comment: The variation applies to a small part of roof only, and does not result in any additional gross floor area or development intensity.



- (b) *to ensure that the height of buildings is compatible with the character of the locality*

Comment: The variation applies to a small part of roof only, which will be consistent with the ridge level of the balance of the roof, and will complement the other roof forms and presentation of the existing dwelling. An assessment has been carried out as part of the Statement of Environmental Effects, and the proposal will be in keeping with the character of existing dwelling and the character of the surrounding locality.

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify a variation to building height as proposed, and with particular reference to the objectives of the *Environmental Planning and Assessment Act 1979* as detailed below.

The proposal will *promote the orderly and economic use and development of land* (Objective 1.3(c) of the Act) by applying appropriate flexibility to enable a development with a minor variation the allowed building height, and which will not adversely impact on the bulk and scale of the development, on the character of the surrounding area or on the amenity of surrounding properties.

Is the proposal in the public interest, being consistent with the objectives of the development standard and the objectives of the R2 Low Density Residential Zone?

Consistency of the proposal with the objectives of the standard are addressed above, and the proposal is consistent with the objectives of the R2 Low Density Residential Zone as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment: The proposal provides improvements to existing housing on the site, and the variation will assist this, and the variation does not increase the intensity of development and the dwelling will continue to be a low density residential development.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: The proposal is for residential and related use, and this objective is not relevant.

- *To encourage best practice in the design of low-density residential development.*

Comment: The minor alterations to the roof form have architectural merit, and will provide a consistent front elevation presentation to Clairvoux Road.

- *To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services*

Comment: The proposal does not propose non-residential uses.



- *To maintain and enhance the residential amenity and character of the surrounding area*
Comment: The variation will not result in adverse impacts on views, privacy or shadowing on adjoining properties, as addressed in the Statement of Environmental Effects.

Conclusion

In conclusion, this written request demonstrates that the variation to the development standard is minor, applying to a small part of roof, and that compliance with the standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the variation. Further, the variation is in the public interest as it is consistent with the objectives of the development standard and the objectives for development within the zone in which the development is proposed to be carried out. On this basis the request satisfies the requirements of clause 4.6 of the LEP and the principles developed through caselaw.

BASIX[®]Certificate

Building Sustainability Index www.basix.nsw.gov.au

Alterations and Additions

Certificate number: A507657

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary

Date of issue: Thursday, 14, September 2023

To be valid, this certificate must be lodged within 3 months of the date of issue.



Planning,
Industry &
Environment

Description of project

Project address	
Project name	19799
Street address	22 Clairvoux Road Wamberal 2260
Local Government Area	Central Coast Council
Plan type and number	Deposited Plan 103618
Lot number	C
Section number	
Project type	
Dwelling type	Separate dwelling house
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and does not include a pool (and/or spa).

Certificate Prepared by



Building
Sustainability Assessments

(ABN: 27 131 950 064)

Ph: 02 4962 3439

Email: enquiries@buildingsustainability.net.au

Revision of Certificates not lodged within 3 months of the date of issue will incur further BASIX issuing fees.

BASIX Certificate number: A507657

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Fixtures and systems	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Lighting			
The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.		✓	✓
Fixtures			
The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.		✓	✓
The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.		✓	✓
The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.		✓	

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Construction			Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Insulation requirements					
The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m2, b) insulation specified is not required for parts of altered construction where insulation already exists.			✓	✓	✓
Construction	Additional insulation required (R-value)	Other specifications			
concrete slab on ground floor.	nil				
suspended floor with open subfloor: concrete (R0.6).	R0.9 (down) (or R1.50 including construction)				
floor above existing dwelling or building.	nil				
external wall: cavity brick	nil				
raked ceiling, pitched/skillion roof: framed	ceiling: R2.24 (up), roof: foil backed blanket (55 mm)	medium (solar absorptance 0.475 - 0.70)			

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Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Windows and glazed doors									
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.							✓	✓	✓
The following requirements must also be satisfied in relation to each window and glazed door:								✓	✓
Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.								✓	✓
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.							✓	✓	✓
For projections described as a ratio, the ratio of the projection from the wall to the height above the window or glazed door sill must be at least that shown in the table below.							✓	✓	✓
Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.								✓	✓
External louvres and blinds must fully shade the window or glazed door beside which they are situated when fully drawn or closed.								✓	✓
Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.								✓	✓
Windows and glazed doors glazing requirements									
Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
W1 Entry	E	3.68	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W2 Bed3	E	8.18	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W3 Ex Ens	N	1.02	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W4 Ex Liv	E	10.56	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or			

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Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
						U-value: 7.63, SHGC: 0.75)			
W5 H/L	E	6.46	0	0	external louvre/blind (adjustable)	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W6 Ex Liv	S	7.13	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W7 Master	E	7.89	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W7 H/L	E	4.93	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W8 Ens	S	3.15	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W9 TV	N	3.36	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W10 Living	W	8.82	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W11 Dining	N	8.76	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W12 Ex Liv	N	2.2	0	0	eave/verandah/pergola/balcony ≥900 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W13 Ex Liv	E	7.47	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W13 H/L	E	2.7	0	0	projection/height above sill ratio ≥0.43	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W14	S	1.48	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			

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Glazing requirements				Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Skylights						
The applicant must install the skylights in accordance with the specifications listed in the table below.				✓	✓	✓
The following requirements must also be satisfied in relation to each skylight:						
Each skylight may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below.						
Skylights glazing requirements						
Skylight number	Area of glazing inc. frame (m2)	Shading device	Frame and glass type			
Ens	0.16	no shading	aluminium, moulded plastic single clear, (or U-value: 6.21, SHGC: 0.808)		✓	✓

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Legend
In these commitments, "applicant" means the person carrying out the development.
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.







Appendix A: Waste Management Plan Template

Information on this form is collected by council for administrative and assessment purposes. It will be used by council staff and other government agencies for the purpose of assessing the application and will be made available for public access. To protect the applicant and the owner(s) privacy, personal details are recorded only on the Part B - Application Detail and Owner(s) Consent form which is not published. It is the applicant's responsibility to ensure other documents do not contain any personal or financial information.

1. PROJECT DETAILS (All Developments)

Address of development

22 CLAIRVOUX ROAD, WAMBERAL NSW 2260

LOT C / DP 103618

Existing buildings and other structures currently on the site

1

Description of proposed development

ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING

This development achieves the waste objectives set out in the DCP. The details on this form are the provisions and intentions for minimising waste relating to this project. All records demonstrating lawful disposal of waste will be retained and kept readily accessible for inspection by regulatory authorities such as council, OEH or WorkCover NSW.

Prepared By
(in Block Letters)

SLATER ARCHITECTS

Date

AUGUST 2023

Part 7: General Controls - Chapter 7.2 - Waste Management

2. DEMOLITION (All Types of Developments)**Address of development:** 22 CLAIRVOUX ROAD, WAMBERAL NSW 2260

Refer to Section 7.2.13 of the DCP for objectives regarding demolition waste.

most favorable



least favorable

	Reuse	Recycling	Disposal	
Type of waste generated	Estimate Volume (m3) or Weight (t)	Estimate Volume (m3) or Weight (t)	Estimate Volume (m3) or Weight (t)	Specify method of on-site reuse, contractor and recycling outlet and /or waste depot to be used
Excavation material	0m ³			Re-used onsite as fill
Timber (specify)		2m ³		Transported to recycling facility as nominated by builder
Concrete	<1m ³			Re-used onsite as fill
Bricks/pavers		4m ³		Transported to recycling facility as nominated by builder
Tiles			1m ³	Landfill as nominated by builder
Metal (specify)		<1m ³		Transported to recycling facility as nominated by builder
Glass			<1m ³	Landfill as nominated by builder
Furniture	n/a			Re-used, sold or to recycling facility or Landfill, as nominated by builder
Fixtures and fittings			<1m ³	Landfill as nominated by builder
Floor coverings			1m ³	Re-used onsite as fill
Packaging (used pallets, pallet wrap)		1m ³		To recycling facility or Landfill, as nominated by builder
Garden organics			0m ³	Landfill as nominated by builder
Containers (cans, plastic, glass)			0.5m ³	Transported to recycling facility as nominated by builder
Paper/cardboard		1m ³		Transported to recycling facility as nominated by builder
Residual waste			1m ³	Landfill as nominated by builder
Hazardous/special waste e.g. asbestos (specify)			n/a	To specialist waste facility as nominated by builder
Other (specify)		0.5m ³	0.5m ³	To recycling facility or Landfill, as nominated by builder

Part 7: General Controls - Chapter 7.2 - Waste Management

3. CONSTRUCTION (All Types of Developments)**Address of development: 22 CLAIRVOUX ROAD, WAMBERAL NSW 2260**

Refer to Section 7.2.14 of the DCP for objectives regarding construction

most favorable



least favorable

	Reuse	Recycling	Disposal	
Type of waste generated	Estimate Volume (m3) or Weight (t)	Estimate Volume (m3) or Weight (t)	Estimate Volume (m3) or Weight (t)	Specify method of onsite reuse, contractor and recycling outlet and/or waste depot to be used
Excavation material	20m ³			Re-used onsite as fill where possible, or moved offsite for re-use if clean
Timber (specify)		1m ³		Transported to recycling facility as nominated by builder
Concrete	<1m ³			Re-used onsite as fill
Bricks		<1m ³		Transported to recycling facility as nominated by builder
Tiles			<1m ³	Landfill as nominated by builder
Metal (specify)		<0.5m ³		Landfill as nominated by builder
Glass			<0.5m ³	Landfill as nominated by builder
Plasterboard (offcuts)			<2m ³	Landfill as nominated by builder
Fixtures and fittings			<1m ³	Landfill as nominated by builder
Floor coverings			<1m ³	Landfill as nominated by builder
Packaging (used pallets, pallet wrap)		1m ³	1m ³	Transported to recycling facility as nominated by builder
Garden organics			0m ³	Re-used off site where practical, otherwise landfill per builder recomm.
Containers (cans, plastic, glass)			0.5m ³	Transported to recycling facility as nominated by builder
Paper/cardboard		1m ³		Transported to recycling facility as nominated by builder
Residual waste			1m ³	Landfill as nominated by builder
Hazardous/special waste (specify)			n/a	To specialist waste facility as nominated by builder

Part 7: General Controls - Chapter 7.2 - Waste Management

4. ONGOING OPERATION (Residential, Multi Unit, Commercial, Mixed Use and Industrial)**Address of development: 22 CLAIRVOUX ROAD, WAMBERAL NSW 2260**

Show the total volume of waste expected to be generated by the development and the associated waste storage requirements.

	Recyclables		Compostables	Residual waste*	Other
	Paper/ cardboard	Metals/ plastics/glass			
Amount generated (L per unit per day)	8.5L	8.5L	1L	10L	-
Amount generated (L per development per week)	60L	60L	7L	70L	-
Any reduction due to compacting equipment	N/A	N/A	N/A	N/A	-
Frequency of collections (per week)	0.5	0.5	0.5	1	-
Number and size of storage bins required	240L		240L	120L	-
Floor area required for storage bins (m2)	1m2		1m2	1m2	-
Floor area required for maneuverability (m2)	2m2		2m2	2m2	-
Height required for maneuverability (m)	2m		2m	2m	-

* Current "non-recyclables" waste generation rates typically include food waste that might be further separated for composting.

Part 7: General Controls - Chapter 7.2 - Waste Management

5. CONSTRUCTION DESIGN (All Types of Developments)

Outline how measures for waste avoidance have been incorporated into the design, material purchasing and construction techniques of the development (refer to Section 7.2.14 of the DCP):

Materials

STANDARD MATERIAL SIZES USED WHERE POSSIBLE IN ORDER TO MINIMISE WASTAGE. THE BUILDING WILL
BE CONSTRUCTED FROM TRIED AND TESTED METHODS AND LONG-LASTING MATERIALS

Lifecycle

MATERIALS TO BE USED WILL BE SELECTED FOR THEIR LONGEVITY AND LOW MAINTENANCE
Detail the appropriate needs for the ongoing use of waste facilities including the transfer of waste between the residents or tenancy units, the servicing of waste location and frequency of waste transfer and collection. If truck access is required then engineering details are required.
RESIDENTS WILL BE RESPONSIBLE FOR PUTTING GENERAL WASTE, RECYCLING AND GARDEN ORGANICS
INTO THE PROVIDED BINS AND LEFT ON THE ROADSIDE (IN A PRACTICAL LOCATION) FOR WEEKLY &
FORTNIGHTLY COLLECTION BY WASTE CONTRACTOR. AFTER COLLECTION THE RESIDENTS ARE RESPONSIBLE
FOR REMOVING THE BINS FROM THE COLLECTION POINT AND BACK TO THE STORAGE LOCATION

Part 7: General Controls - Chapter 7.2 - Waste Management

6. PLANS AND DRAWINGS (All Developments)

The following checklists are designed to help ensure WMP are accompanied by sufficient information to allow assessment of the application.

Drawings are to be submitted to scale, clearly indicating the location of and provisions for the storage and collection of waste and recyclables during:

- demolition
- construction
- ongoing operation.

Demolition

Refer to Section 7.2.13 of the chapter for specific objectives and measures.
Do the site plans detail/indicate?:

	Tick Yes
Size and location(s) of waste storage area(s)	✓
Access for waste collection vehicles	✓
Areas to be excavated	✓
Types and numbers of storage bins likely to be required	✓
Signage required to facilitate correct use of storage facilities	N/A

Construction

Refer to Section 7.2.15 – 7.2.19 of the chapter for specific objectives and measures.
Do the site plans detail indicate?:

	Tick Yes
Size and location(s) of waste storage area(s)	✓
Access for waste collection vehicles	✓
Areas to be excavated	✓
Types and numbers of storage bins likely to be required	✓
Signage required to facilitate correct use of storage facilities	N/A

Part 7: General Controls - Chapter 7.2 - Waste Management

Ongoing Operation

Refer to Section 7.2.15 – 7.2.19 of the chapter for specific objectives and measures.

Do the site plans detail indicate?:

	Tick Yes
Space	
Size and location(s) of waste storage areas	✓
Recycling bins placed next to residual waste bins	✓
Space provided for access to and the maneuvering of bins/equipment	✓
Any additional facilities	✓
Access	
Access route(s) to deposit waste in storage room/area	✓
Access route(s) to collect waste from storage room/area	✓
Bin carting grade not to exceed 10% and travel distance not greater than 100m in length	✓
Location of final collection point	✓
Clearance, geometric design and strength of internal access driveways and roads	✓
Direction of traffic flow for internal access driveways and roads	✓
Amenity	
Aesthetic design of waste storage areas, including being compatible with the main building/s and adequately screened and visually unobtrusive from the street	✓
Signage – type and location	✓
Construction details of storage rooms/areas (including floor, walls, doors, ceiling design, sewer connection, lighting, ventilation, security, wash down provisions, cross & longitudinal section showing clear internal dimensions between engaged piers and other obstructions, etc)	✓

Item No: 2.2

Title: Supplementary Report - DA/1849/2005/B - 2-6
Fairport Avenue & 46-48 Ocean Parade, The
Entrance - Residential Flat Building and Demolition
of Existing Structures (Amended Application)

Central Coast
Local Planning Panel

Department: Environment and Planning

22 August 2024 Local Planning Panel Meeting

Reference: DA/1849/2005/B - D16288819

Author: Rebecca Samways, Development Planner. Employment and Urban Release

Manager: Emily Goodworth, Section Manager Employment and Urban Release

Executive: Andrew Roach, Unit Manager. Development Assessment

Recommendation

- 1 That the additional information be considered in the Panel's determination of the application.**
- 2 In the event that the Local Planning Panel are of the view that sufficient evidence has been provided that Development Consent DA/1849/2005 has physically commenced, the Panel approve the modifications to Development Application 1849/2005/B at Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571, 2-6 Fairport Ave & 56-48 Ocean Parade, THE ENTRANCE in accordance with the recommendation included in the initial report on the matter (23 September 2021) subject to the amendments detailed in the schedule attached to that report and having regard for the matters for consideration detailed in Section 4.15 and Section 4.55(2) of the Environmental Planning and Assessment Act 1979.**
- 3 That Council advise those who made written submissions of the Panel's decision.**

Summary

A section 4.55(2) application has been received to modify a consent for a residential flat building (comprising 45 units) and demolition of existing structures. The application has been examined having regard to the matters for consideration detailed in Section 4.15 and Section 4.55 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements.

The Local Planning Panel considered the matter at its meeting of 23 September 2021 (report included as Attachment 1). The matter was deferred at the meeting pending the submission of supplementary information regarding:

- a. Physical commencement
- b. Suitability of the proposed species and height, in consideration of potential view loss within the north eastern corner of the lot

2.2 **Supplementary Report - DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (cont'd)**

A Supplementary Report was provided to the Panel on 18 July 2022 (report included as Attachment 2) addressing the matters raised in the meeting minutes from the 23 September 2021 meeting. Upon review of the supplementary report and the submission of further legal correspondence prepared by Mills Oakley on behalf of the applicant, the Chair of the LPP requested further round of legal advice be obtained in relation to the legal advice received from Mills Oakley, specifically in relation to physical commencement.

This Supplementary report provides further information regarding the correspondence prepared by Mills Oakley which has been received since the preparation of the first Supplementary Report and includes comments from a Landscape Architect who worked for council recently.

Applicant	Planning Lab
Owner	Fincorp Pty Ltd
Application No	DA/1849/2005/B
Description of Land	Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571 2-6 Fairport Avenue & 46 – 48 Ocean Parade, The Entrance
Approved Development	Residential Flat Building comprising 45 units and Demolition of Existing Structures
Proposed modification	Increase in the number of units from 45 to 56, removal of level 3 basement carpark and reduction of carparking spaces from 84 to 72, internal reconfiguration of apartments, change of rooftop private open space to communal open space, increase in building height and external design changes
Site Area	3258m ²
Zoning	R3 Medium Density Residential
Existing Use	Multi dwelling housing/vacant lot
Employment Generation	Nil
Estimated Value	\$20,731,286

Precis

Proposed Development	Modification of consent for a residential flat building and demolition of existing structures
Permissibility and Zoning	The site is zoned <i>R3 Medium Density Residential</i> under <i>Wyong Local Environmental Plan 2013</i> (WLEP). A residential flat building is permissible in the zone.
Relevant Legislation	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act) • <i>Environmental Planning & Assessment Regulation 2000</i> (EP&A Regulation) • <i>State Environmental Planning Policy No. 65</i> (SEPP 65) • <i>Apartment Design Guide</i> (ADG)

	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Coastal Management) 2018</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)</i> • <i>State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)</i> • <i>Wyang Local Environmental Plan 1991</i> • <i>Wyang Local Environmental Plan 2013</i> • <i>Draft Central Coast Local Environmental Plan 2018</i> • <i>Wyang Development Control Plan 2005</i> • <i>Wyang Development Control Plan 2013</i>
Current Use	Multi dwelling housing/vacant lot
Integrated Development	No
Submissions	<ul style="list-style-type: none"> • 25 submissions original LPP report • 11 submissions latest notification period for supplementary report

Background

The Panel considered a Planning Report on the matter at its meeting on 23 September 2021 and resolved as follows:

Panel Decision

- 1** *That the Local Planning Panel defer this matter for electronic determination, pending provision of detailed evidence from the applicant within the next 28 days demonstrating the consent has physical commencement and therefore not lapsed.*
- 2** *Matters to be addressed as part of the above include, but are not limited to:*
 - *Copy of the deposited plan of the plan of consolidation required.*
 - *Evidence from surveyor as to any physical work they undertook on site required.*
 - *Evidence that the demolition took place prior to the lapse of consent, including copies of receipts and dated aerial photos showing demolition before consent lapsed required.*
- 3** *That Council's Landscape Officer review the proposed landscaping within the north eastern corner of the lot to*

***confirm the suitability of the proposed species and height,
in consideration of potential view loss issue raised by
adjoining resident.***

- 4 *Upon receipt of the additional material requested, that
Council make this information available on their website
and notify those who previously made submissions.***

Reasons

- 1 *The applicant has not adequately demonstrated that the
consent has physical commencement. In this regard the Panel
does not rely on the letter provided by Council dated 29
September 2009.***
- 2 *To minimise any adverse impacts on the amenity of adjoining
residents.***

In response to the outcome of the Panel meeting of 23 September 2021, additional information was received from the applicant. A Supplementary Report was prepared for the Panel to address the matters raised in the Panel's decision on 23 September 2021.

On 29 June 2022, the Chair of Central Coast Local Planning Panel (LPP) requested a briefing meeting between the Panel members and Council staff prior to arranging a date for determination. Council arranged a briefing meeting scheduled for 21 July 2022 and circulated the Supplementary Report on 18 July 2022 to the Panel. However, on 20 July 2022 the meeting was cancelled and was to be rescheduled for a later date as not all Panel members were available.

On 21 July 2022 the Chair requested a meeting with the Director of Environment and Planning to discuss the Supplementary Report.

Since the Supplementary Report was prepared and sent to the Panel on 18 July 2022, Council has received further legal correspondence prepared by Mills Oakley on 20 October 2022 and 11 April 2023 (Attachments 3 and 4).

Having regard for the complexity of the matter regarding physical commencement, the LPP Chair requested Council obtain further legal advice to respond to the more recent Mills Oakley advice, to assist the Panel in making an informed decision on the matter of physical commencement.

Additional information for the Panel's consideration is attached in (Confidential Attachment 5).

Physical Commencement

The legal advice prepared by Mills Oakley on behalf of the applicant asserts that physical commencement has occurred. As a result of the additional legal advice received from Mills Oakley dated 20 October 2022 and 11 April 2023, post the preparation of the Supplementary report, Council has sought further assistance on behalf of the Chair of the LPP.

The only evidence provided in respect of physical commencement are the documents referred to in the Supplementary Report dated 31 December 2022. The tax invoices supplied do not detail the date or nature of the works undertaken. No further evidence has been provided since December 2022 to substantiate the assertions of physical commencement. It is a matter for the LPP to decide whether they are satisfied if physical commencement has occurred. The options for determination of the modification are:

- refuse on the basis that physical commencement has not occurred, or
- approve the modification based on the facts provided by Mills Oakley and satisfaction physical commencement has occurred; or
- defer the decision for further information to be obtained by the Applicant.

Notwithstanding the question of physical commencement, Council must still complete a merit assessment of the proposed modification if it is determined that physical commencement has been achieved. An assessment of the proposed modification was undertaken in the report considered by the Panel on 23 September 2021 and the supplementary report sent to the Panel on 18 July 2022. Those assessment reports remain relevant for the merit assessment.

Other Matters

Landscaping

Since the previous supplementary report, Council has obtained comments from a landscape architect that was working with Council. The following comments are made in relation to the landscaping.

The Panel raised concerns with the suitability of the proposed species and height in the north eastern corner of the site with regard to potential view loss. The landscape plans provided at the LPP meeting on 23 September 2021 detailed the provision of an Illawarra Flame Tree in the north eastern corner of the site which grows up to 16m in height. The original landscaping also included Coastal Banksia and Blueberry Ash which both grow up to 10m in height in the north eastern corner.

The applicant submitted amended landscape plans, dated 18 October 2021 which reduced the maximum height of the landscaping to 6m in the north eastern corner of the site. The amended landscape plans included Coastal Tea Tree (maximum 6m), NSW Christmas Bush (maximum 3-5m) and Silver Banksia (maximum 2-4m). It is estimated that maximum tree

height and widths in planting to the north eastern precinct, predominantly Coastal Tea Tree, are unlikely to be reached due to the confined soil depths in the planter box structure (over basement), and therefore unlikely to have a major impact on associated view loss.

The plant selections are all hardy species suitable for use in planter boxes and coastal conditions with rooftop planting to be irrigated. The proposed Roof Plan planting consist of predominantly native shrubs, low growing groundcovers and texture grasses that are drought tolerant species suitable for use in coastal conditions and high wind environments. The Landscape Response states that an automatic irrigation system is proposed which will ensure a greater success in plant growth and establishment.

As per the previous assessment report and supplementary report which discussed the landscaping on the roof and the landscaping in the north eastern corner of the site, the landscaping is considered satisfactory.

Contributions

Condition 2 which levied the payment of contributions was recommended to be updated in the original report to the Local Planning Panel on 23 September 2021. Since the application was reported to the Local Planning Panel, contribution rates have been indexed. Accordingly, condition 2 has been updated in the modified conditions of consent in (Attachment 6).

Merit assessment

As per the original report for the modification application (considered by the Panel 23 September 2021), the proposed modifications are considered to result in a proposal that is substantially the same development for which consent was originally granted. Having regard for the statutory approach to the consideration of what constitutes substantially the same development, a quantitative and qualitative analysis of the proposed development has identified there will be no radical changes to the original approved built form and the impacts assessed in the granting of the original consent will remain relatively the same under the proposed modified built form.

Having regard for the provisions of Sections 4.55(2) and 4.15 of the *Environmental Planning & Assessment Act 1979*, as set out in the original report, and the additional landscaping information, the proposed modification to the original approved development is considered reasonable and warranted in this instance.

Conclusion

This supplementary report and the previous supplementary report, along with the report considered by the Panel on 23 September 2021, has been prepared and assessed against the matters for consideration of Sections 4.15 and 4.55 of the *Environmental Planning & Assessment Act 1979* and all relevant instruments, plans and policies.

2.2 **Supplementary Report - DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (cont'd)**

The applicant has provided further legal advice post consideration of the Supplementary Report sent to the Panel on 18 July 2022 and Council has sought its own further analysis in relation physical commencement at the request of the Chair. It is a matter for the LPP to decide whether they are satisfied physical commencement has occurred. The LPP should have regard to all information included in the attachments to this Report, a number of which are confidential documents and not addressed in detail in this public document.

The proposed landscaping is considered suitable. A merit assessment of the application was undertaken under the original report that went before the Panel on 23 September 2021 which found that the proposed modification was substantially the same development to that which was originally granted consent. Subject to the imposition of appropriate amended and new conditions, the proposed modifications are considered reasonable. It is a matter for the LPP to be satisfied that the proposed modification to the approved development is considered reasonable and warranted having regard for the merits of the proposal.

Attachments

1	 Original Assessment Report - 23 Septemeber		D14810016
	 2021 LPP Meeting		
2	 First Supplementary Report distributed to LPP		D15327792
	 on 18 July 2022		
3	Mills Oakley legal advice dated 20 October 2022 -	Provided Under Separate Cover	D15723655
4	Mills Oakley Legal Advice dated 11 April 2023 -	Provided Under Separate Cover	D15723658
5	Confidential Attachment dated 27 March 2023 -	Provided Under Separate Cover	D15723660
6	 Updated Modified Conditions of Consent		D15037217

Item No: 3.2
Title: DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application)

Central Coast
Local Planning Panel

Department: Environment and Planning

23 September 2021 Local Planning Panel Meeting

Reference: DA/1849/2005/B - D14810016
 Author: Rebecca Samways, Development Planner
 Manager: Emily Goodworth, Section Manager Development Assessment North
 Approver: Andrew Roach, Unit Manager, Development Assessment

Summary

A section 4.55(2) application has been received to modify a consent for a residential flat building (comprising 45 units) and demolition of existing structures. The application has been examined having regard to the matters for consideration detailed in section 4.15 and Section 4.55 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application is required to be determined by the Local Planning Panel because it has received 25 submissions of objection.

Applicant	Planning Lab
Owner	Fincorp Pty Ltd
Application No	DA/1849/2005/B
Description of Land	Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571 2-6 Fairport Avenue & 46 – 48 Ocean Parade, The Entrance
Approved Development	Residential Flat Building comprising 45 units and Demolition of Existing Structures
Proposed modification	Increase in the number of units from 45 to 56, removal of level 3 basement carpark and reduction of carparking spaces from 84 to 72, internal reconfiguration of apartments, change of rooftop private open space to communal open space, increase in building height and external design changes
Site Area	3258m ²
Zoning	R3 Medium Density Residential
Existing Use	Multi dwelling housing/vacant lot
Employment Generation	Nil
Estimated Value	\$20,731,286

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Recommendation

- 1 That the Local Planning Panel approve the modifications to Development Application 1849/2005/B at Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571, 2-6 Fairport Ave & 56-48 Ocean Parade, THE ENTRANCE subject to the amendments detailed in the schedule attached to the report and having regard for the matters for consideration detailed in Section 4.15 and Section 4.55(2) of the Environmental Planning and Assessment Act 1979.**
- 2 That Council advise those who made written submissions of the Panel's decision.**

Key Issues

- Consent was granted for a residential flat building comprising of 45 units and demolition of existing structures on 19 June 2006.
- Physical commencement was confirmed by Council on 23 September 2009.
- The original development was approved under Wyong LEP 1991 which permitted a maximum building height 18 metres. The current Wyong LEP 2013 identifies a maximum permitted building height of 12 metres.
- An increase in building height of the southern building section by 500mm and southern lift overrun by 1.23 metres is proposed.
- The original development was approved under Wyong LEP 1991 which permitted a maximum FSR of 2:1. The current Wyong LEP 2013 identifies a maximum permitted FSR of 0.9:1.
- The proposal remains compliant with SEPP 65 and Apartment Design Guide.
- The development will result in substantially the same development to that which was originally granted consent.
- The proposed modification remains consistent with the objectives of the zone.
- It is considered there will be no additional amenity impacts to those that were considered upon the granting of the original development consent.
- 25 submissions of objection to the section 4.55(2) application were received

Precis:

Proposed Development	Modification of consent for a residential flat building and demolition of existing structures
Permissibility and Zoning	The site is zoned <i>R3 Medium Density Residential</i> under <i>Wyong Local Environmental Plan 2013</i> (WLEP). A residential flat building is permissible in the zone.
Relevant Legislation	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act) • <i>Environmental Planning & Assessment Regulation 2000</i> (EP&A Regulation) • <i>State Environmental Planning Policy No. 65</i> (SEPP 65)

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

	<ul style="list-style-type: none"> • Apartment Design Guide (ADG) • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX) • State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55) • Wyong Local Environmental Plan 1991 • Wyong Local Environmental Plan 2013 • Draft Central Coast Local Environmental Plan 2018 • Wyong Development Control Plan 2005 • Wyong Development Control Plan 2013
Current Use	Multi dwelling housing/vacant lot
Integrated Development	No
Submissions	25 submissions

Variations to Policies

There are no variations to report.

The Site

The subject site (figures 1 and 2) is irregular shaped and comprises three lots. The site is located on the corner of Fairport Avenue and Ocean Parade. The site has a 69.6m frontage to Fairport Avenue and a 41.5m frontage to Ocean Parade with an area of 3258m².

The site has a fall of approximately 4.5m towards the north eastern side boundary. No. 2-4 Fairport Avenue is currently vacant while No. 44-48 Ocean Parade currently has two 3-storey residential apartment buildings known as the 'Paradise Apartments'. The site has previously been used for residential development.

Surrounding Development

The surrounding development is predominantly medium density residential development. Buildings vary from low scale one and two storey single residential dwellings to residential flat buildings of up to nine storeys as shown in figure 3.

Adjoining the site to the east is a seven storey residential flat building known as 'The Harriot' and a three storey residential flat building known as 'Blue Pacific'. Directly adjoining the site to the north-east is a seven storey residential flat building known as the 'Tasman Towers'.

Opposite the site on Fairport Avenue is a mix of two and three storey residential developments. Directly opposite the site to the west on the corner of Fairport Avenue and Ocean Parade is a vacant site which currently has an approved seven storey residential flat

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

building under DA/95/2003 which has been commenced. Opposite the site to the south west on Ocean Parade are two residential apartment buildings known 'Fairport Court' and 'Scenic Court', both four storeys in height.



Figure 1: Aerial photo showing the subject site and surrounding development



Figure 2: Site as viewed from the corner of Fairport Avenue and Ocean Parade

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

[Click here to enter text.](#)



30 Marine Parade ('Tasman Tower')



50-54 Ocean Parade ('The Harriot')



26-28 Fairport Avenue



44 Ocean Parade



43-49 Ocean Parade (artist's render approved 7 storey RFB, DA/95/2003)



55 Ocean Parade ('Fairport Court')



57-59 Ocean Parade ('Scenic Court')



30 Marine Parade ('Blue Pacific')

Figure 3: Existing and approved surrounding development

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

The site is currently zoned R3 Medium Density Residential under Wyong LEP 2013 as shown in figure 4. The B2 Local Centre land of The Entrance Town Centre is located further to the west of the site. RE1 Public Recreation zoned land is to the north and east of the site along The Entrance Beach and foreshore and further west of the site at Shore Park and Taylor Park.



Figure 4: Land zoning of subject site and surrounding locality

The Proposed Modification

Under the provisions of Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, approval is sought to modify development consent 1849/2005 for a residential flat building comprising 45 units and demolition of existing structures. The proposed modification includes the following:

Basement

- Removal of Basement 3
- Relocation of the southern outer wall to the boundary to increase the parking area floorplate and the north-western and south-western basement walls away from the boundary
- Reduction in the provision of car parking spaces from the approved 84 to 72 (62 resident spaces + 10 visitor spaces)
- Inclusion of 16 bicycle and 2 motorbike parking spaces on Basement Level 2

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Ground Floor

- Rearrangement of unit layouts resulting in an amended unit mix from 4 x one bedroom units, 2 x two bedroom units and 1 x three bedroom units to:
 - 1 x Studio
 - 1 x one bedroom unit
 - 5 x two bedroom units
 - 1 x three bedroom unit
- Provision of three "cross through" lobbies with three principle access gates on Fairport Avenue and secondary single access from Ocean Parade
- Deletion of communal cinema and gym in the north western part of the building.
- Inclusion of new ground level courtyards on the south eastern elevation to provide private open space to the units
- Reconfiguration of driveway area at the north-western corner of the property to provide a paved hardstand for waste truck manoeuvring and accommodate on-site waste collection
- General reconfiguration of landscape design of private courtyards and common area gardens including the removal of the communal swimming pool

Level 1 to Level 4

- Rearrangement of unit layouts resulting in an amended unit mix from 3 x two bedroom units and 5 x three bedroom units to:
 - 2 x one bedroom unit
 - 7 x two bedroom units (1 adaptable)
 - 1 x three bedroom unit (adaptable)
- Inclusion of new balconies to units on the southern corner of the building.

Level 5

- Rearrangement of unit layouts resulting in an amended unit mix from 2 x two bedroom units and 4 x three bedroom units to:
 - 5 x two bedroom units
 - 3 x three bedroom unit
- Reduction of balcony area to north-eastern elevation and south-western elevation and the inclusion of new balconies to the units on the southern corner of the building.

Roof Level

- Removal of approved private terraces including swimming pools and operable shade structures
- Provision of communal open space with BBQ are and shaded seating zones

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

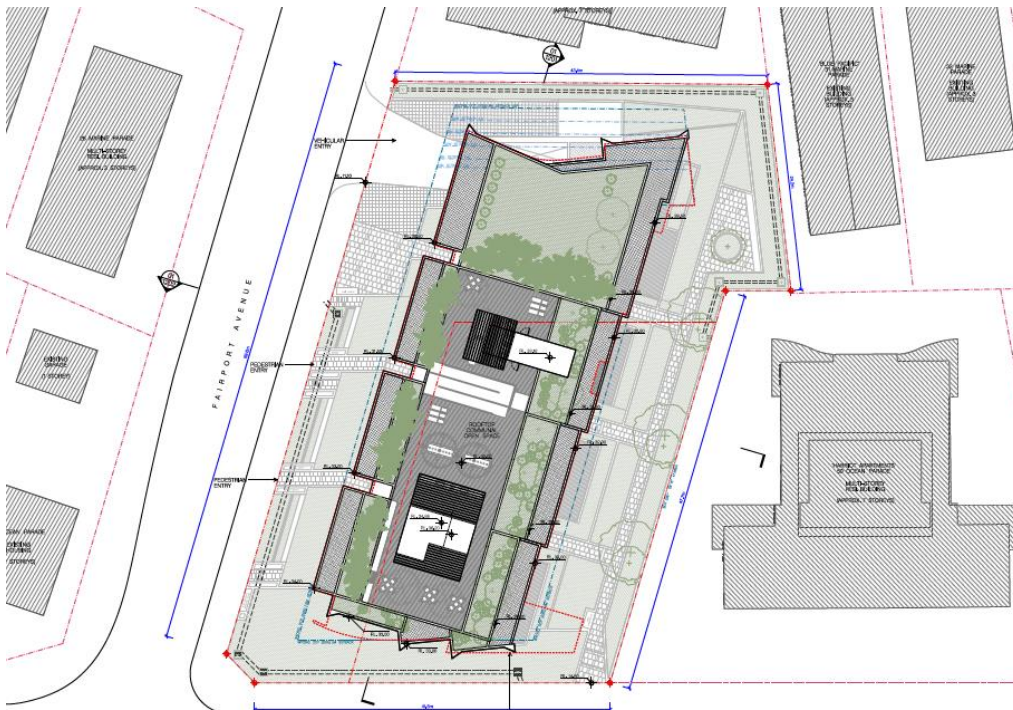
- New lift access to communal terrace
- Inclusion of extensive soft landscaping and planting

Exterior

- Amendments to the approved building facades, including:
 - Incorporation of off form concrete, precast concrete elements, façade recesses and articulate openings
 - Use of materials which are considered more appropriate for the local climate, are durable and require low maintenance
 - Higher levels of articulation to the east and west façades

General

- Reduction of the building's circulation cores from 4 to 3
- Increase in finished floor levels to have a minimum 300mm freeboard from the 1% AEP flood levels.
- Increase in building height due to the increased floor levels and the southern lift overrun to access the rooftop communal open space.
- Change to waste servicing arrangements from kerbside pickup to on-site collection in the northern corner of the site.



3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Figure 5: Site plan of proposed development



Figure 6: North-western (Fairport Avenue) front elevation

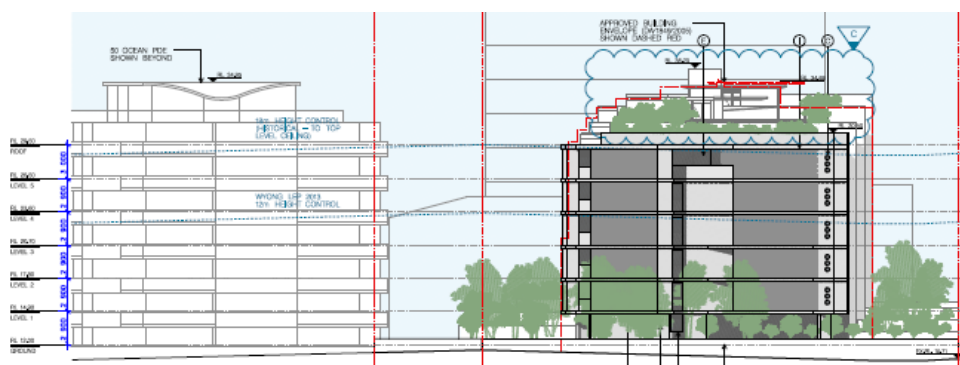


Figure 7: North-eastern elevation side elevation



Figure 8: South-eastern rear elevation

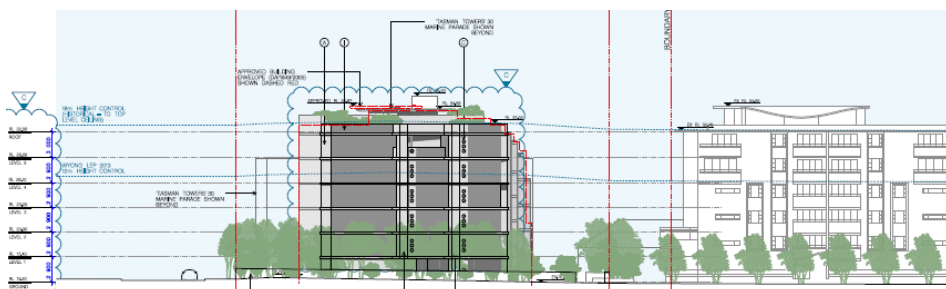


Figure 9: south-western (Ocean Parade) side elevation

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

The Section 4.55(2) modification will involve the following modifications to the consent (modifications shown in red text on the following pages).

1 Modify description of land

Original description of land:

Lots 16 and 17 DP 18810, Lot A DP 364571, Lot O SP 18493
Nos 2-4 Fairport Avenue & 44-48 Ocean Parade THE ENTRANCE

Amend description of land to read:

Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571
Nos 2-6 Fairport Avenue & 46 – 48 Ocean Parade, THE ENTRANCE NSW 2261

Comment:

As part of the physical commencement of the consent lots 16 and 17 in DP 18810 and lot A in DP 364571 were consolidated to partially satisfy condition 54. Subsequently, the description of land has changed since the original granting of the consent and is required to be modified to reflect the current description of the land.

2 Modify description of proposal

Original description of proposal:

Residential Flat Building comprising 45 units and Demolition of Existing Structures

Amend description of proposal to read:

Residential Flat Building comprising 56 units and Demolition of Existing Structures

Comment:

The proposed modification includes changes to the apartment mix from 45 units to 56 units. To reflect the changes to the number of units, the description of proposal is required to be updated to describe the correct number of units proposed in the modification.

3 The modification of condition 1

Original condition 1:

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

- 1 The development taking place in accordance with the approved development plans reference number DA0501C, DA1101B as amended by DA1101C, DA1102B as amended by DA1102C, DA1201C as amended by DA1201D, DA1202C, DA1301C, DA1302C, DA1303C, DA1304C, DA1305D, DA1401D, DA1451C, DA1501C, DA1502C, DA1601B, DA1602C and DA1603A, DA1604A and DA1605B, except as modified by any conditions of this consent, and any amendments in red.

Amend condition 1 to read:

- 1 Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

Architectural Plans by: RJS & CE Price

Drawing	Description	Issue	Date
S4.55 - 1100	Site Plan	C	7/04/2021
S4.55 - 1101	Basement 2 Floor Plan	C	7/04/2021
S4.55 - 1102	Basement 1 Floor Plan	B	23/02/2021
S4.55 - 1103	Ground Floor Plan	C	7/04/2021
S4.55 - 1104	Level 1-4 Floor Plans	C	7/04/2021
S4.55 - 1105	Level 5 Floor Plan	C	7/04/2021
S4.55 - 1106	Roof Plan	C	7/04/2021
S4.55 - 1201	Section	C	7/04/2021
S4.55 - 1301	Elevation - North	C	7/04/2021
S4.55 - 1302	Elevation - East	C	7/04/2021
S4.55 - 1303	Elevation - South	C	7/04/2021
S4.55 - 1304	Elevation - West	C	7/04/2021

Comment:

The plans are to be updated to reflect the modified development subject to this section 4.55(2) application.

4 The modification of condition 5

Original condition 5:

- 5 The payment to Council of contributions (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

and Council's Contribution Plan. Council's contributions are adjusted on the first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.

Amend condition 5 to read:

- 5 Pursuant to Section 7.11 of the *Environmental Planning and Assessment Act 1979* pay to Council a total contribution amount of **\$526,945.14** that may require adjustment at the time of payment, in accordance with The Entrance District Development Contributions Plan with the applicable amounts as follows:

THE ENTRANCE/LONG JETTY ROADS	\$ 278,626.63
THE ENTRANCE/LONG JETTY OPEN SPACE LAND	\$ 12,420.02
THE ENTRANCE/LONG JETTY OPEN SPACE WORKS	\$ 87,383.85
THE ENTRANCE COMMUNITY FACILITIES LAND	\$ 58,445.24
THE ENTRANCE COMMUNITY FACILITIES WORKS	\$ 90,069.40
Total	\$ 526,945.14

The contributions amount must be indexed each quarter in accordance with the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician as outlined in the contributions plan.

Contact Council on 1300 463 954 for an up-to-date contribution payment amount.

Any Construction Certificate must not be issued until the developer has provided the Certifier with a copy of a receipt issued by Council that verifies that the contributions have been paid. A copy of this receipt must accompany the documents submitted by the certifying authority to Council under Clause 104/Clause 160(2) of the *Environmental Planning and Assessment Regulation 2000*.

A copy of the Contribution Plan may be inspected at the offices of Central Coast Council, 2 Hely Street Wyong or 49 Mann Street Gosford or on Council's website: [Development Contributions](#)

'Section 7.11 contributions may be satisfied by the value of works as part of a "Works in Kind" agreement with Council. Works in kind to be carried out shall be agreed to by Council in writing prior to the payment of the contributions and issue of a construction certificate (related to the works in kind). All such agreements shall be in accordance with Council's policies.'

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Comment:

Section 7.11 contributions are applicable to the proposed development. As the proposed modification involves changes to the number of units proposed, condition 5 is required to be updated to reflect the updated contributions applicable to the modified development.

5 The modification of condition 14

Original condition 14:

- 14 The provision of a footpath and gutter crossing in accordance with Council's Development Control Plan 2005 Chapter No 67 - Engineering Requirements for Development. The design plans must be approved by Council prior to the issue of a Construction Certificate.

Amend condition 14 to read:

- 14 The provision of a footpath and gutter crossing in accordance with Council's **current Civil Works Design Specification**. The design plans must be approved by Council prior to the issue of a Construction Certificate.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design Specification.

6 The modification of condition 15

Original condition 15:

- 15 The provision at no cost to Council of concrete footpaving for the full street frontage of the development in Ocean Parade and Fairport Avenue. The footpath design is to be 1.2 metres wide and is to include a minimum 100mm concrete path with SL72 reinforcement and is to be constructed on 75mm compacted roadbase and on compacted subgrade. All other details are to be in accordance with Council's Development Control Plan 2005 Chapter No 67 - Engineering Requirements for Development. The design plans must be approved by Council under the *Roads Act 1993* prior to issue of the Construction Certificate.

Amend condition 15 to read:

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

- 15 The provision at no cost to Council of concrete footpaving for the full street frontage of the development in Ocean Parade and Fairport Avenue **and the connection to pram ramps at the roundabout intersection**. The footpath design is to be 1.5 metres wide and is to include a minimum 100mm concrete path with SL72 reinforcement and is to be constructed on 75mm compacted roadbase and on compacted subgrade. All other details are to be in accordance with Council's **Civil Works Design Specification**. The design plans must be approved by Council under the *Roads Act 1993* prior to issue of the Construction Certificate.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design Specification and appropriate 'tie-in' works are carried out.

7 The modification of condition 16

Original condition 16:

- 16 Design Plans to be submitted to Council for approval under the Roads Act need to include the relocation of the existing raised pedestrian crossing in Fairport Avenue at the front of the development, and in the vicinity of the proposed access to the development. All works associated with the relocation of this crossing including all design and construction related costs including restoration of road pavements and kerb and gutter, and extensions of footpaths to suit the relocated crossing will be at the full cost to the developer, and to Council's satisfaction. The design plans must be approved by Council and the Local Traffic Committee prior to the issue of a Construction Certificate and prepared in accordance with Council's Development Control Plan 2005 Chapter No 67 - Engineering Requirements for Development.

Amend condition 16 to read:

- 16 Design Plans to be submitted to Council for approval under the Roads Act need to include the relocation of the existing raised pedestrian crossing in Fairport Avenue at the front of the development, and in the vicinity of the proposed access to the development. All works associated with the relocation of this crossing including all design and construction related costs including restoration of road pavements and kerb and gutter, and extensions of footpaths to suit the relocated crossing will be at the full cost to the developer, and to Council's satisfaction. The design plans must be approved by Council and the Local Traffic Committee prior to the issue of a Construction Certificate and prepared in accordance with Council's **Civil Works Design Specification**.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design Specification.

8 The modification of condition 17

Original condition 17:

- 17 The submission to and approval by Council of stormwater drainage details with water quality control facilities in accordance with Council's Development Control Plan 2005 Chapter No 67 - Engineering Requirements for Development prior to issue of the Construction Certificate.

Amend condition 17 to read:

- 17 The submission to and approval by Council of stormwater drainage details with water quality control facilities in accordance with Council's **Civil Works Design Specification** prior to issue of the Construction Certificate.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design Specification.

9 The modification of condition 18

Original condition 18:

- 18 Stormwater drainage works discharging from the site into a public system or public land require approval from Council under Section 68 of the Local Government Act. The extent of work must be determined by Council prior to issue of a Construction Certificate. All works are to be designed and constructed in accordance with Council's Development Control Plan 2005 Chapter 67 - Engineering Requirements for Development. Design plans must be approved by Council prior to issue of the Construction Certificate.

Amend condition 18 to read:

- 18 Stormwater drainage works discharging from the site into a public system or public land require approval from Council under Section 68 of the Local Government Act. The extent of work must be determined by Council prior to issue of a Construction Certificate. All works are to be designed and

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

constructed in accordance with Council's **Civil Works Design Specification**. Design plans must be approved by Council prior to issue of the Construction Certificate.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design Specification.

10 The modification of condition 19

Original condition 19:

- 19 Stormwater generated from roofed areas is to be collected and stored for re-use within the development site for landscaping, pools and car washing. Details indicating the balance between the projected water usage and the capacity for collection are to be submitted to and approved by Council. A minimum storage of 25,000L will be required.

Amend condition 19 to read:

- 19 Stormwater generated from roofed areas is to be collected and stored for re-use within the development site **for irrigation of landscaped areas and other non-potable purposes as required by BASIX**. Details indicating the balance between the projected water usage and the capacity for collection are to be submitted to and approved by Council. A minimum storage of **23,000L** will be required.

Comment:

The modified development includes a stormwater tank with a total capacity of 23kL. The stormwater tank will collect runoff from the trafficable and non-trafficable areas of the site and water harvesting will be filtered and used for irrigation of landscaped areas and other non-potable purposes as required by BASIX. The condition is to be amended to reflect the revised stormwater management proposed on site and the updated BASIX certificate.

11 The modification of condition 20

Original condition 20:

- 20 The applicant will be responsible for maintaining the flow conveyance of the existing 450mm Council stormwater pipeline within the development site via maintaining the existing pipeline or replacing it with an alternate pipeline. All

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

works associated in satisfying this condition including all design and construction related costs including restoration of land, road pavements and kerb and gutter will be at the full cost to the developer, and to Council's satisfaction. The design plans must be approved by Council prior to the issue of a Construction Certificate and prepared in accordance with Council's Development Control Plan 2005 Chapter No 67 - Engineering Requirements for Development.

Amend condition 20 to read:

- 20 The applicant will be responsible for maintaining the flow conveyance of the existing 450mm Council stormwater pipeline within the development site via maintaining the existing pipeline or replacing it with an alternate pipeline. All works associated in satisfying this condition including all design and construction related costs including restoration of land, road pavements and kerb and gutter will be at the full cost to the developer, and to Council's satisfaction. The design plans must be approved by Council prior to the issue of a Construction Certificate and prepared in accordance with Council's **current Civil Works Design Specification**.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design Specification.

12 Add new condition 24A

Add new condition 24A which reads as follows:

- 24A Turning areas are to be provided for all blind aisles on both basement levels 1 and 2. Carparking spaces identified in basement 1, number 15 and basement 2, number 1, are to be amended to provide turning areas for vehicles to manoeuvre and circulate in a forward direction.**

Comment:

Council's Traffic Engineer has advised that parking space number 15 on basement level 1 and parking space number 1 on basement level 2 are required to be amended to provide turning areas as they are located at the end of blind aisles. This can be rectified as part of the detailed design plans that will be prepared at Construction Certificate stage.

13 The modification of condition 25

Original condition 25:

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

- 25 All water and sewer services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's Development Control Plan 2005 Chapter 67 - Engineering Requirements for Development and Council's Policy: Building Over and Adjacent to Sewer Mains. The design plans for the required services must be approved by Council prior to the issue of the Construction Certificate.

Amend condition 25 to read:

- 25 All water and sewer services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's **water and sewer specification** and Council's Policy: Building Over and Adjacent to Sewer Mains. The design plans for the required services must be approved by Council prior to the issue of the Construction Certificate.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current water and sewer specification.

14 The modification of condition 26

Original condition 26:

- 26 The developer will be fully responsible for the funding, design and relocation of the existing sewer line between MH A14/1 and MH A14/2. The design and construction of the sewer relocation are to be in accordance with Council's Engineering Requirements for Development – Sewerage. Design plans are to be submitted to Council for approval prior to the approval of the Construction Certificate.

Amend condition 26 to read:

- 26 The developer will be fully responsible for the funding, design and relocation of the existing sewer line between MH A14/1 and MH A14/2. The design and construction of the sewer relocation are to be in accordance with Council's **Sewer Specifications**. Design plans are to be submitted to Council for approval prior to the approval of the Construction Certificate.

Comment:

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Condition required to be updated to ensure development is constructed in accordance with Council's current sewer specification.

15 Add new condition 27A

Add new condition 27A which reads as follows:

27A A suitably qualified acoustic consultant shall be engaged to provide recommendations on how to appropriately attenuate the temporary bin holding area so that any noise impact associated with the temporary storage of waste bins is adequately mitigated. The Construction Certificate plans shall detail the recommended attenuation measures and the holding area constructed accordingly.

Comment:

The proposed modification includes the provision of waste collection on-site in the side setback instead of kerb-side pickup as originally approved. The above condition is recommended to ensure that attenuation measures are implemented to minimize any potential unreasonable noise impacts associated with the temporary storage of the waste bins.

Any impacts associated with the modified waste collection location for bulk bin pickup is expected to be commensurate with the noise that would have been anticipated from kerb-side pickup. New conditions have been recommended for this modification which require the bins to be moved to the temporary bin holding area no earlier than the day before waste collection and a requirement for their relocation back to the permanent basement storage area no later than the day of collection.

16 Add new condition 29A

Add new condition 29A which reads as follows:

29A The landscape plan is to be amended to replace the Illawarra flame tree with an alternative species which grows to a mature height of up to 10 metres.

Comment:

The landscape plan submitted for the proposed modification includes an Illawarra flame tree located in the ground level communal open space in the eastern corner of the site. The mature height of the Illawarra flame tree is up to 16 metres which, if it achieves full height, has the potential to impact on views from adjoining properties towards Norah Head.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

This concern was raised in public submissions and it is considered reasonable to require a different species to be planted in this location. To limit the impact to views the above condition is recommended to reduce the height of any plantings in this location to a maximum of 10 metres, which is consistent with the mature height of the landscaping proposed within the communal open space of the original approval.

17 The modification of condition 51

Original condition 51:

- 51 To encourage the use of alternate transport modes, secure bicycle parking/storage must be provided to accommodate 15 bicycles. The facility must be located in close proximity to the building entrances and be highly visible and well illuminated to minimise the likelihood of theft and vandalism. The installation and dimensions of the facility shall be in accordance with AS 2890.3-1993 – Parking Facilities – bicycle parking facilities.

Amend condition 51 to read:

- 51 To encourage the use of alternate transport modes, secure bicycle parking/storage must be provided to accommodate 19 bicycles. The facility must be located in close proximity to the building entrances and be highly visible and well illuminated to minimise the likelihood of theft and vandalism. The installation and dimensions of the facility shall be in accordance with AS 2890.3-1993 – Parking Facilities – bicycle parking facilities.

Comment:

The increase in the number of units proposed under the modification will increase the required number of bicycle parking spaces from 15 to 19. The condition is to be amended to update the number of required bicycle parking spaces to 19.

18 The modification of condition 60

Original condition 60:

- 60 The provision and maintenance of landscaping in accordance with Council's Policy Number L1 - Landscape for Category 3 development and generally in accordance with the plans prepared by PBS dated 1/7/05, including the engagement of an approved landscape consultant and contractor to undertake the design and construction of the landscaping. All landscaping works are to be completed prior to issue of the Occupation Certificate.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Amend condition 60 to read:

- 60 The provision of landscaping in accordance with the plans prepared by Narelle Sonter Botanica dated 2/10/2020 and the amended landscape plan required under condition 29A, including the engagement of an approved landscape consultant and contractor to undertake the design and construction of the landscaping.

Written certification from a qualified landscape designer certifying that landscaping has been implemented in accordance with the landscape plan is to be provided to the Principal Certifier prior to issue of the Occupation Certificate.

Comment:

An updated landscape plan has been submitted with the modification which includes more substantial planting at ground level along the rear and side boundaries, changes to landscaping design within the front setback to Fairport Avenue and around the communal open space where the pool has been removed, and changes to the landscaping design on the rooftop to incorporate more substantial planting around the proposed communal open space. The condition is proposed to be amended to reference the updated landscape plans submitted with the current Section 4.55(2) application and the amended plan required under new condition 29A.

19 Delete conditions 76, 77, 78 and 79

Original conditions 76, 77, 78 and 79:

Swimming Pools

- 76 Prior to the pool being filled with water, the swimming pool, safety fences and gates being installed in accordance with the approved plans and specifications and the Swimming Pools Act 1992 and Regulations and AS 1926 - 1986 including the display of an approved sign regarding pool safety and resuscitation techniques.
- 77 Prior to the use of the swimming pool, the submission to Council of a Compliance Certificate to confirm the construction of the concrete shell in accordance with the design approved by a practicing professional engineer.
- 78 All swimming pool plant is to be sound insulated so as to minimise the noise to adjoining properties.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

- 79 The disposal of filter backwash to the sewer in a manner that will not cause a nuisance or where sewer is not available, the disposal of filter backwash into a rubble absorption trench as identified on the approved development plan.

Comment:

The original development included a pool within the communal open space at ground level and four private pools within the rooftop private open space areas. All the swimming pools are proposed to be deleted under the subject modification application and subsequently conditions 76, 77, 78 and 79 relating to the swimming pools are no longer required.

20 The modification of condition 81

Original condition 81:

- 81 The provision of a minimum number of 70 carparking spaces (with minimum dimensions of 5.5 metres x 2.5 metres) generally in accordance with the layout shown on the approved plans, amended in red and in accordance with Council's Development Control Plan 2005 Chapter No 61 - Carparking. The carparking spaces and any off-street loading and unloading area must be constructed, sealed, marked, drained and maintained in accordance with Council's Development Control Plan 2005 Chapter No 67 – Engineering Requirements for Development. All work must be completed prior to occupation/use of the development.

Amend condition 81 to read:

- 81 The provision of a minimum number of **72** carparking spaces (with minimum dimensions of 5.5 metres x 2.5 metres) generally in accordance with the layout shown on the approved plans, amended in red and in accordance with Council's Development Control Plan 2005 Chapter No 61 - Carparking. The carparking spaces and any off-street loading and unloading area must be constructed, sealed, marked, drained and maintained in accordance with Council's **Civil Works Design Specification**. All work must be completed prior to occupation/use of the development.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design Specification and reflects the minimum number of car parking spaces now required as a result of the proposed change to the number of units within the development.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

21 The modification of condition 83

Original condition 83:

- 83 The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's Development Control Plan 2005 Chapter No 67 - Engineering Requirements for Development. All works must be approved by Council.

Amend condition 83 to read:

- 83 The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's **Civil Works Design and Construction Specification**. All works must be approved by Council.

Comment:

Condition required to be updated to ensure development is constructed in accordance with Council's current Civil Works Design and Construction Specification.

22 The modification of condition 86

Original condition 86:

- 86 For safety, amenity and maintenance reasons, the waste storage area must be constructed to the following standards:
- Floors must be constructed of concrete, graded and drained to an approved drainage outlet connected to the sewer and finished to a smooth even trowelled surface;
 - Walls must be constructed with solid impervious material and shall be cement rendered internally to a smooth even steel trowelled surface;
 - All intersections between the walls and floors shall be coved with coving having a minimum radius of 25mm;
 - All entry points into the room must be bunded to prevent the escape of liquid waste. Bunding shall be for 110% of the likely liquid storage waste and constructed in such a manner that does not obstruct the removal of waste receptacles from the room or create a safety risk to users;
 - Adequate ventilation shall be provided;
 - Adequate lighting shall be provided;

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- The ceiling must have a minimum height of 2.1m from floor level and be finished with a smooth faced non-absorbent material capable of being easily cleaned;
- Waste storage areas shall prevent the access of vermin;
- Waste receptacles used shall be compatible with Wyong Council's waste collection service;
- The door to the storage area shall be weatherproof and shall be openable from the inside at all times;
- Hot and cold water hose cocks shall be located inside or within close proximity to the waste storage areas to facilitate cleaning.

Amend condition 86 to read:

- 86 For safety, amenity and maintenance reasons, the waste storage area must be constructed to the following standards:
- Floors must be constructed of concrete, graded and drained to an approved drainage outlet connected to the sewer and finished to a smooth even trowelled surface;
 - Walls must be constructed with solid impervious material and shall be cement rendered internally to a smooth even steel trowelled surface;
 - All intersections between the walls and floors shall be coved with coving having a minimum radius of 25mm;
 - All entry points into the room must be bunded to prevent the escape of liquid waste. Bunding shall be for 110% of the likely liquid storage waste and constructed in such a manner that does not obstruct the removal of waste receptacles from the room or create a safety risk to users;
 - Adequate ventilation shall be provided;
 - Adequate lighting shall be provided;
 - The ceiling must have a minimum height of 2.1m from floor level and be finished with a smooth faced non-absorbent material capable of being easily cleaned;
 - Waste storage areas shall prevent the access of vermin;
 - Waste receptacles used shall be compatible with Wyong Council's waste collection service;
 - The door to the storage area shall be weatherproof and shall be openable from the inside at all times;
 - Hot and cold water hose cocks shall be located inside or within close proximity to the waste storage areas to facilitate cleaning.
 - A maximum 3% grade in the temporary bin holding area and waste truck servicing at the front of the temporary bin holding area.

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Comment:

A maximum 3% grade in the temporary bin holding area and waste truck servicing area is required to achieve safe and practical bulk bin waste storage and collection.

23 Add new condition 87A

Add new condition 87A which reads as follows:

87A Prior to the release of any Occupation Certificate, a certificate of compliance, prepared by a suitably qualified acoustic consultant, must be submitted to Council certifying the attenuation measures recommended for the temporary bin holding area have been implemented.

Comment:

The proposed modification includes provision of waste collection on-site in the side setback instead of bulk bin kerb-side pickup as originally approved. Proposed condition 87A requires certification that appropriate attenuation measures have been implemented in accordance with new condition 27A.

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24 Add new condition 93A

Add new condition 93A which reads as follows:

93A The waste bins are to be moved to the temporary bin holding area no earlier than the day before waste collection and are to be moved back to the basement waste storage room no later than the day of waste collection.

The above condition is recommended to ensure the waste bins are moved within a reasonable time before and after the waste collection day to minimise any amenity impacts from waste servicing.

25 The modification of condition 94

Original condition 94:

94 The approved landscape design prepared by PBS, including the private front courtyards, is to be maintained to maturity with watering and mulch. Any trees that die are to be replaced.

Amend condition 94 to read:

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- 94 The approved landscape design prepared by Narelle Sonter Botanica and the updated landscape plan required under condition 29A, including the private front courtyards, is to be maintained to maturity with watering and mulch. Any trees that die are to be replaced.

Comment:

The condition is proposed to be amended to reference the updated landscape plans submitted with the current Section 4.55(2) application.

26 Add new condition 95

Add new condition 95 which reads as follows:

- 95 Furniture on the rooftop communal open space is to be safely secured and/or stored during high wind events to prevent the furniture from being blown off the building.

Comment:

To ensure the safety of the residents of the development and adjoining properties a new ongoing condition is recommended requiring rooftop furniture to be safely secured during high wind events to prevent furniture from being blown from the rooftop.

History

Development Application No. DA/1849/2005 was originally lodged 23 September 2005 and subsequently refused by council on 28 February 2006. A section 82A Review of the application was lodged 13 March 2006 with minor amendments to the application to address the reasons for refusal and was subsequently approved on 19 June 2006 for a residential flat building comprising 45 units and demolition of existing structures.

A Section 96(1A) application was lodged under DA/1849/2005/A on 11 March 2009 to modify the timing of payment of development contributions. The application was withdrawn 29 May 2009.

Council issued a letter on 23 September 2009 advising physical commencement has been achieved in relation to DA/1849/2005. As part of the physical commencement of the development, three dwellings located on lots 16 and 17 in DP 18810 and lot A in DP 364571 were demolished and the lots were consolidated.

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ASSESSMENT

Having regard for the matters for consideration detailed in Sections 4.15 and 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and other statutory requirements, Council's policies and Section 10.7 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

Environmental Planning and Assessment Act 1979 – Section 4.55

The applicant is seeking an amendment to the original development under Section 4.55(2) of EP&A Act 1979. In accordance with Section 4.55(2), Council may consider a modification of development consent provided:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Substantially the same development (s.4.55(2)(a))

The proposed modifications include a number of internal and external changes to the originally approved built form. This has included changes to the dwelling mix, reconfiguration of unit arrangements, refinement of building's presentation and type of residential amenities provided based on detailed market advice. The resulting key driver has been to increase the number of smaller apartments, including the adoption of adaptable and liveable housing

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units and the removal of the private terraces on the rooftop and their replacement with a communal area.

A comparison of the modifications with the approved development has been summarised in the following table.

	Approved	Modification Proposed
Number of apartments	45	56
Apartment mix	4 x 1 bedroom 16 x 2 bedroom 25 x 3 bedroom	1 x studio 9 x 1 bedroom 38 x 2 bedroom 8 x 3 bedroom
Gross floor area (internal area as per WLEP 2013 definition)	6,661m ²	6,463m ²
Number of storeys	6 + 3 basement levels	6 + 2 basement levels
Building height (to top of building as per WLEP 2013 definition)	22.47m	23.7m
Number of lift cores/lobbies	4	3
Parking spaces	84 (74 resident spaces + 10 visitor space)	72 (62 resident spaces + 10 visitor space)
Communal open space	572m ² ground level communal open space with pool No communal open space provided on rooftop (rooftop POS provided)	348m ² ground level communal open space 696m ² communal open space on rooftop to replace approved rooftop POS
Waste servicing	Kerbside collection	On-site collection at ground level
Material palette	Expressed concrete grid (slabs and columns) with glass balustrades. Side walls masonry	Expressed concrete grid (slabs and columns) with masonry balustrades. Side walls in decorative precast concrete
Roof design	Private open space for four units located on roof with 4 separate pools and associated terraces and shade structures	Communal open space area with areas containing BBQ, seating, and landscape planting zones
Pools	5 pools (4 on roof floor and 1 on ground floor)	None

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The above changes maintain the approved building envelope and have retained the key design elements of the approved development. It is considered that nothing has materially changed and that there has been no increase in impacts from those considered under the original assessment. As such, the proposed modification is consistent with case law that the proposal is substantially the same development for which consent was originally granted i.e. the modified development is essentially or materially, or has the same essence, as that which was originally approved.

Chief Justice Preston reiterated the statutory approach, with reference to relevant case law, when assessing whether a modification application satisfies s4.55(2) of the *Environmental Planning & Assessment Act 1979* in *Arrage v Inner West Council* [2019] NSWLEC 85 at paragraphs [24-28]. Those paragraphs are outlined below:

24. *First, the essential elements to be identified are not of the development consent itself, but of the development that is the subject of that development consent. The comparison required by s 4.55(2) is between two developments: the development as modified and the development as originally approved: see [Scrap Realty Pty Ltd v Botany Bay City Council](#) (2008) 166 LGERA 342; [2008] NSWLEC 333 at [16].*
25. *Second, the essential elements are not to be identified "from the circumstances of the grant of the development consent"; they are to be derived from the originally approved and the modified developments. It is the features or components of the originally approved and modified developments that are to be compared in order to assess whether the modified development is substantially the same as the originally approved development.*

Comment

With regard to paragraphs 24 and 25 above, a comparison table has been prepared outlining the quantitative changes between the original approval and the proposed modified approval. The proposed modification would still result in a six storey residential flat building that occupies generally the same footprint and building envelope as the original development. The building will remain six storeys in height and the modifications will result in a minor decrease in gross floor area.

Only minor changes are proposed to be made to the height and setbacks of the building, which will result in minor changes to the bulk and scale, however, these would not result in a built form that is radically different to that which was originally approved. The changes to the apartment mix, communal open space, parking spaces and waste servicing will not alter the essential elements of the building or substantially alter the overall built form of the development.

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26. *The choice of language in the judicial decisions of “material and essential features” or a “material and essential physical element” of the development (see, for example, [Moto Projects](#) at [58], [59] and [64]) derives from judicial interpretations of the statutory test that the modified development be “substantially the same” development as the originally approved development. In [Vacik Pty Ltd v Penrith City Council](#) [1992] NSWLEC 8, p 2 Stein J interpreted the word “substantially” in the former s 102(1)(a) of the EPA Act to mean “essentially or materially or having the same essence”. That interpretation of the word “substantially” was accepted in [North Sydney Council v Michael Standley & Associates Pty Ltd](#) (1998) 43 NSWLR 468 at 475 by Mason P (with whom Sheppard AJA agreed at 403) and at 481-482 by Stein JA and in [Moto Projects](#) by Bignold J at [30] and [55].*
27. *This interpretation of the statutory test that the modified development be substantially the same development as the originally approved development, that the modified development be “essentially or materially” the same or “having the same essence” as the originally approved development could support an inquiry to identify the material and essential features of the originally approved and modified developments in order to undertake the comparative exercise required, but it does not demand such an inquiry.*
28. *That is one way, probably in most cases the most instructive way, to identify whether the modified development is substantially the same development as the originally approved development, but it is not the only way to ascertain whether the modified development is substantially (in the sense of essentially or materially) the same development as the originally approved development. For example, comparison could be made of the consequences, such as the environmental impacts, of carrying out the modified development compared to the originally approved development: see [Moto Projects](#) at [62] and [Tipalea Watson Pty Ltd v Ku-ring-gai Council](#) (2003) 129 LGERA 351; [2003] NSWLEC 253 at [17].*

Comment

In relation to the points made in paragraphs 26-28, the proposed internal and external modifications will not significantly change the character of the development to which the original consent was granted. The proposed modifications will not materially alter the form or function of the building and will result in the building retaining the same use, generally the same building footprint, same number of levels of units and access arrangements. While the apartment mix, basement parking and the communal open space area will be changing, the proposed modifications will not materially alter the use as a residential flat building.

The consequences of carrying out the modified development, compared to the originally approved development, will be minimal, particularly in relation to environmental impacts. Whilst there is the potential to have a minor increase in noise that is associated with the temporary bin storage area and location of garbage pick-up area, the modified development

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does reduce some impacts compared to the original approval, including impact from overshadowing and views.

The impacts of the original approval have been considered with regard to the Section 4.55(2) application and the proposed modifications will generally result in the same impacts. Any additional impacts are not considered to adversely impact adjoining properties or the amenity of future occupants.

Having regard for the above, it is considered that the modified development is substantially the same development as the originally approved development.

Consultation (s.4.55(2)(b))

Concurrence was not required from the relevant Minister, public authority or approval body in relation to the originally approved development and as such there was no requirement to consult with the relevant Minister, public authority or approval body regarding the proposed modification.

Notification (s.4.55.(2)(c)(d))

The application was originally notified from 13 November 2020 to 4 December 2020. During the assessment of the application, it was identified that notification of one adjoining property has been missed in the original notification period and as such a notification letter was sent to the property to provide a notification period from 25 May 2021 to 15 June 2021. A request to extend the notification period was granted and notification concluded on 13 July 2021. 25 submissions were received during the notification period which have been considered further in the report.

Section 4.55(3)

Section 4.55(3) requires Council to consider matters referred to in Section 4.15(1) as are relevant to the application for modification of the development consent. The modification has been assessed against the matters for consideration under Section 4.15 of the Act and found to be satisfactory. These are discussed further in the report. Additionally, consideration must be given to the reasons for the granting of the original approval.

Reasons for Decision

When the consent was originally granted there was no statutory requirement to provide reasons for the decision and none have been recorded. As such, there are no reasons given as to the merits of the granting of consent to the originally approved development, only reasons as to why the decision is one that can be made in the proper exercise of the Council's functions. Accordingly, it is not possible to identify any essential element from the circumstances of the grant of consent.

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Even though there were no formal specified reasons for the granting of the original consent, a review of the report for the originally approved application has been undertaken and the conclusion and findings of that assessment have been taken into consideration as part of the assessment of the subject application.

State Environmental Planning Policies (SEPP)

SEPP No. 65 – Design Quality of Residential Apartment Development

The original development was assessed against the provisions of SEPP 65 and was considered by the Design Review Panel on 2 November 2005. The approved development was considered by the Design Review Panel with regard to the context, scale, built form, density, resource energy and water efficiency, landscape, amenity, safety, social dimensions and aesthetics in which it was considered that the originally approved development satisfactory addressed the design principles.

The applicant's architect provided a SEPP 65 Design Verification Statement with regard to the proposed modifications to the approved residential flat building and confirmed the proposal meets the requirements of SEPP 65 and the Apartment Design Guide (ADG).

The modifications have been assessed in accordance with Schedule 1 – Design Quality Principles of SEPP 65 as follows:

Principle	Comment
Context and neighbourhood character	The modifications are generally within the approved building footprint and will maintain the form and scale of development to Ocean Parade and Fairport Avenue as previously approved. The design is commensurate with both the current and future desired character of the area and is appropriately designed with regard to neighbouring developments to minimise overshadowing, privacy and acoustic impacts.
Built form and scale	The modifications are generally consistent with the form, scale and height of the approved development. The modifications create an articulated building that addresses Fairport Avenue as the primary road frontage and is appropriately articulated to the Ocean Parade frontage to positively contribute to the streetscape. The built form is consistent with the desired future character of the locality and suitable for the subject site.

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	The building appropriately responds to the slope of the site by stepping the building down the slope and the architectural treatment and proposed materials and finishes contribute to building articulation.
Density	The proposed modification will result in a decrease in the FSR, however an increase in the number of apartments is proposed. Suitable amenity has been achieved for each unit including provision of private open space on balconies, solar access and cross-ventilation. It is considered that the density of the development is appropriate for the site.
Sustainability	The modifications maintain the energy and water efficiency measures for the building with the modified plans supported by a BASIX certificate. The modification includes passive design strategies to reduce energy usage and other environment impacts including solar access to balconies and internal living areas, natural cross ventilation and selection of low maintenance, long life materials, having regard for the proximity of the site to the ocean.
Landscape	The landscape design surrounding the built form at ground level has been increased. More substantial tree planting has been provided along the south western boundary and in the south eastern corner of the site. Basement setbacks have been increased along the north eastern and south eastern boundaries to provide additional deep soil zones to the street. Setbacks to the south western side boundary to the basement have been reduced, however some deep soil zones have been retained, particularly around the main communal open space area in the eastern corner, and substantial planting has still been provided within the ground level setbacks. The private open space on the roof is to be converted to communal open space and the upper level setbacks to the rooftop terrace has been increased to allow for more substantial landscaping.
Amenity	Solar access and privacy afforded to each unit and to neighbouring residential development.

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	Each unit is afforded suitable private open space and communal open space is provided at both ground level and on the roof. The residential flat building is easily accessible from the street or via the basement carpark.
Safety	The modifications do not alter the ability of the development to provide safety and security measures within the building.
Housing diversity and social interaction	<p>The modifications propose a mix of 1, 2 and 3 bedrooms suitable for housing demand in the locality. The units have also been designed to accommodate dual key apartments to support the provision of larger apartments.</p> <p>Communal open space has been provided in two locations, at ground level and on the roof, to provide opportunities for social interaction among the residents.</p>
Aesthetics	The proposed modifications include upgrades to the façade of the building to create greater articulation and modernise the façade. The proposed architectural elements, materials and finishes of the building contribute to the articulation and disguise the bulk and scale of the building. The visual appearance of the development positively contributes to the streetscape and suitably responds to the existing and desired future character of the area.

The modifications have also been assessed, where relevant, in accordance with the Design Criteria contained in the Apartment Design Guide, as provided in Attachment 2.

As indicated above, the modifications to the development are acceptable when reviewed against the requirements of SEPP No. 65 – Design Quality of Residential Flat Buildings and the Apartment Design Guide.

Modification to Communal Open Space

Over 100m² of communal open space is provided to the residential flat building which is greater than 25% as required in the current ADG. The communal open space is provided on the rooftop (696m²) and at ground level (348m²). The proposed modification includes the removal of the pool in the ground level communal open space area located in the eastern corner of the site and replacement with a paved area with seating and landscaping.

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The communal open space is to be primarily located on the rooftop which contains barbeques, tables and seating with landscaping. All residents will have access to the communal open space via the western block lift core and centre block lift core and stairs. The original approval did not contain any communal open space on the rooftop.

While the ground level communal open space has limited functionality, given the size and terraced landscaping, it is considered to be sufficient ground level space in addition to the available communal open space on the rooftop. The modification will increase the overall area and functionality of the communal open space by providing the additional area at the rooftop. It is considered that the removal of the pool is reasonable given the location of the site near other areas for recreation including the beach and oval located within walking distance.

State Environmental Planning Policy No 71 – Coastal Protection and State Environmental Planning Policy (Coastal Management) 2018

The original application was assessed against clause 8 of *State Environmental Planning Policy No 71 – Coastal Protection*. The original assessment had regard for the following matters for consideration under clause 8 of SEPP 71:

- (a) the aims of this Policy set out in clause 2,
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- (g) measures to conserve animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act), and their habitats,
- (h) measures to conserve fish (within the meaning of Part 7A of the *Fisheries Management Act 1994*) and marine vegetation (within the meaning of that Part), and their habitats
- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

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- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) *likely impacts of development on the water quality of coastal waterbodies,*
- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*
- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*
- (p) *only in cases in which a development application in relation to proposed development is determined:*
 - (i) *the cumulative impacts of the proposed development on the environment, and*
 - (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

The original assessment found the proposed development would have minimal impact on the coastal environment and foreshore and found the development to be suitable for the site having regard for the coastal location and the existing high-density residential buildings in the area. The proposed modification will retain substantially the same built form and footprint and will not result in any additional impacts to the coastal environment and foreshore as assessed under SEPP 71.

Since the assessment of the original development, SEPP 71 has been repealed and the provisions of SEPP 71 have been incorporated within *State Environmental Planning Policy (Coastal Management) 2018*. The site is identified as land to which SEPP (Coastal Management) applies, as it is within the *coastal zone*, which in accordance with Clause 6 is land that includes a coastal environment area and/or a coastal use area. Consideration of the proposed modification application has been given to the provisions of SEPP (Coastal Management) below.

The site is identified under the SEPP (Coastal Management) as being located within a coastal environment area. Any development on land identified as a coastal environment area is required to be in accordance with *Clause 13 – Development on land within the coastal environment area*. Clause 13(1) includes matters of consideration that the consent authority must take into account in order to grant consent:

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*

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- (c) *the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

The proposed modification will not result in an adverse impact on the environment, coastal environmental values and processes, the water quality of the lake, marine vegetation, public open space or Aboriginal cultural places. The applicant has submitted a stormwater quality management plan which has adequately addressed water quality measures to treat stormwater prior to entering Council's stormwater drainage system.

Clause 13(2) includes matters that the consent authority must be satisfied of in order to grant consent:

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

In relation to the above, Council, having undertaken a site inspection and having regard for information supplied with the application, is satisfied that the proposed modification will not result in an adverse impact in regard to any of the matters for consideration under Clause 13(1), and that impacts of the development will be appropriately managed. The proposed modification will not have an adverse impact upon the coastal environment and is therefore consistent with the requirements of Clause 13.

The site is also identified under SEPP (Coastal Management) as being located within a coastal use area. Any development on land identified as a coastal use area is required to be in accordance with *Clause 14 – Development on land within the coastal use area*. Clause 14(1)(a) includes matters for consideration that the consent authority must take into account in order to grant consent:

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- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage*

Having considered the above, the proposed modification will not result in any significant additional overshadowing or wind funneling which is discussed further in the report. The proposed modification will not result in an impact to views from public places and is considered acceptable in terms of visual amenity. The site is a disturbed site and will not impact any Aboriginal cultural heritage. The site is not identified as having any cultural or built environmental heritage.

Clause 14(1)(b) includes matters that the consent authority must be satisfied of in order to grant consent:

- (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (iv) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

In relation to the above, the proposal is not considered to result in an adverse impact in regard to any of the matters for consideration under Clause 14(1), and that impacts of the development will be appropriately managed. The articulated facades of the building are consistent with the anticipated development outcomes for the area having regard for the coastal and built environment. The modified development is consistent with the requirements of Clause 14.

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State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposed residential flat building constitutes 'BASIX affected development' as defined within the Regulations. A valid BASIX Certificate (as required by Schedule 1 of the *Environmental Planning and Assessment Regulation 2000*) has been submitted with the development application. The application has adequately demonstrated water conservation and energy efficiency measures to be adopted as part of the proposal in order to ensure the development will be energy and water efficient consistent with the NSW State Governments requirements.

State Environmental Planning Policy No.55 – Remediation of Land

Clause 7(1) of State Environmental Planning Policy No. 55 requires that the consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and if contaminated that the land is suitable in its contaminated state (or will be suitable, after remediation) for the development proposed to be carried out.

The site is unlikely to have contamination issues given the history of the site for residential uses. Furthermore, the original assessment found the approved development to be suitable for the proposed residential use. There are no proposed modifications that will render the site unsuitable for the residential development having for SEPP 55.

Wyong Local Environmental Plan (WLEP)

The original development application was lodged in 2005 and approved under the provisions of Wyong LEP 1991. An assessment has been provided with regard to the provisions of Wyong LEP 1991, with a comparative analysis provided in relation to the current Wyong LEP 2013 also being provided.

Permissibility

The subject site was zoned 2(c) *Medium Density Residential Zone* under the provisions of Wyong LEP 1991 and is currently zoned R3 *Medium Density Residential* under Wyong LEP 2013. The development is characterised as a *residential flat building* under both Wyong LEP 1991 and Wyong LEP 2013, however the definition of a residential flat building has changed since the original development consent was granted. Under Wyong LEP 1991 a *residential flat building* was defined as follows:

***residential flat building* means a building containing 3 or more dwellings.**

A *residential flat building* is currently defined under Wyong LEP 2013 as follows:

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residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Note—Residential flat buildings are a type of residential accommodation

The development in its modified form remains consistent with the characterisation as a residential flat building and is permissible with consent.

Zone objectives

The objectives of the 2(c) *Medium Density Residential Zone* under the provisions of Wyong LEP 1991 are as follows:

- (a) *to cater primarily for residential flat buildings generally not exceeding a height of 3 storeys (except as otherwise provided for by clause 42B), and*
- (b) *to provide for other uses which:*
 - (i) *are compatible with the residential environment and afford services to residents at a local level, and*
 - (iii) *are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential uses, and*
- (c) *to provide home-based employment where such will not:*
 - (i) *involve exposure to view from any public place of any unsightly matter, or raw material, equipment, machinery, product or stored finished goods, or*
 - (ii) *have a material adverse impact on residents.*

The assessment of the approved development found it to be consistent with the objectives of the zone. The proposed modifications are considered to remain consistent with the objectives as the proposed modifications will remain compatible with the residential environment, are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential uses and will not result in any home based employment which will impact on the amenity of the local area.

The height of the building was originally approved in accordance with clause 42B which permitted a building height greater than 3 storeys in The Entrance on land zoned 2(c) Medium Density Residential. The building height is discussed further in the report.

For comparative purposes, the zone objectives of the current R3 – *Medium Density Residential* zoning of the site under Wyong LEP 2013 read as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*

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- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain and enhance the residential amenity of the surrounding area.*
- *To encourage amalgamation of existing lots to facilitate well designed medium density development and to avoid unnecessary isolation of lots.*

The proposed modification is found to be consistent with the stated zone objectives. In particular, the development maintains the residential amenity of the surrounding area and includes the amalgamation of lots in the original development consent to achieve a medium density development that is largely compliant with the Apartment Design Guide without resulting in the isolation of adjoining lots.

Building Height

The original development was approved under the provisions of Wyong LEP 1991 which permitted a maximum building height of 18 metres. Building height was defined under Wyong LEP 1991 as follows:

building height *is the vertical distance from natural ground level at any point within a building to the top-most ceiling of the building directly above that point.*

Under the provisions of Wyong LEP 2013 the site is mapped with a maximum permissible building height of 12 metres and building height is defined as follows:

building height (or height of building) *means—*

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The original application was assessed and approved under Wyong LEP 1991 with a building height of 17.8 metres (to the ceiling) which was compliant with the maximum permitted building height of 18 metres, measured to the ceiling. The building was approved with a height to the highest point of the building of 22.47 metres.

The proposed modified development proposes an increase to the building height to 23.7 metres, which is an increase in the overall building height of 1.23 metres. The increase in the building height is a result of the change in the number of lift cores (from four to three), the increase in height to the lift overrun to allow access to the rooftop communal open space area and for the southern section of the building (closest to Ocean Parade) to align with the floor levels of the remainder of the building section and to satisfy the requirements of **condition 21** of the development consent which requires the finished floor levels to have a minimum 300mm freeboard from the 1% AEP flood levels.

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While the zone objectives of the 2(c) zone included restricting residential flat buildings to generally not exceeding a height of 3 storeys, clause 42B of Wyong LEP 1991 provided development principles for the 2(c) zone within The Entrance, which permitted development on sites greater than 1,800 m² to exceed 3 storeys and 10 metres in height in order to facilitate the construction of larger scale buildings on amalgamated land parcels in a form that is consistent with the natural topography of the land, and where it could be demonstrated to the Council's satisfaction that the potential impacts associated with such development would be within acceptable limits. The subject site was identified on the Building Height Map as having a height limit of 18 metres under Wyong LEP 1991, which the proposal complied with.



Figure 10: South elevation – originally approved building height shown in red



Figure 11: West elevation – originally approved building height shown in red and adjoining RFB 50-54 Ocean Parade (right)

The contravention to a development standard can be approved under a modification and a clause 4.6 written request is not required. The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) relevantly state that Section 4.55 is a 'free-standing provision': "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". Clause 4.6 only regulates whether

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'development consent' may be granted, not whether an existing consent may be modified. As such, a clause 4.6 written request for the increase in the building height is not required

Section 4.55 is subject to its own stand-alone tests (such as the "substantially the same" test, and a requirement to consider all relevant Section 4.15 matters) and the merit assessment undertaken for the modification will have regard for these tests.

The applicant has provided the following justification for the non-compliance with the approved building height:

The modification to the building's design retains the fundamental components of the development approved with DA/1849/2005. Its spatial characteristics are not significantly altered as the modified 6-storey building is contained within an almost identical envelope to the one previously approved.

When approval was granted to the original development application (19 June 2006), the maximum permissible building height was 18m and the development was, generally, compliant with the height control in force at the time (Note: Height was measured to the underside of the ceiling of the topmost apartment as per the building height definition in WLEP 1991). The modified building closely mirrors the original approved development in terms of floor levels and internal apartment height and, accordingly, it would comply with the former height control for the site.

Notwithstanding the above discussion, there are now substantially different planning circumstances than existed at the time of the DA/1849/2005 approval. A change in the planning controls of the site occurred when the new WLEP 2013 came into force on 23 December 2013 and both the Height and FSR standards contained in the repealed instrument were reduced significantly. Clause 4.3 Height of Buildings of the WLEP 2013 now applies to the proposal with the subject site nominated a maximum height of 12 m.

As noted earlier, the proposed building is largely consistent with the original development as it is generally contained within the confines of its external envelope, retains and/or increases the approved building setbacks and maintains the original number of storeys. The result is a building which does not produce any additional environmental impacts (i.e. overshadowing, acoustic and visual privacy and view disruptions) to the ones occasioned by the original development.

The proposal's exceedances do not result in any additional privacy impact on surrounding properties beyond the one caused by the original development. If anything, the design of the facades of the building has been modified to better respond to the surrounding context by carefully orienting the openings and using architectural elements to obstruct sightlines where the potential for overlooking has been identified, such as at the north elevation.

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Furthermore, significant planting is proposed around the perimeter of the building and the proposed rooftop terrace to provide an additional measure of visual screening between the subject development and the neighbouring apartment buildings.

In consideration of the merits of the increase of the building height, the objectives of the current clause 4.3 of Wyong LEP 2013 have been considered. The objectives of clause 4.3 are as follows:

- (a) *to establish the maximum height limit for buildings to enable the achievement of appropriate development density,*
- (b) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (c) *to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.*

The proposed increase in building height is to accommodate the lift overrun to provide access to the communal open space area on the roof and to increase the finished floor levels to have a minimum 300mm freeboard from the 1% AEP flood level, as per the requirements of condition 21.

Two shade structures are proposed to be removed (one over the north section of the building and the other in the centre) which will result in a reduced maximum building height in some sections of the building. The building will generally retain the bulk and scale as previously approved.

Overshadowing as a result of the increase in the building height will generally remain the same, with some areas of overshadowing resulting in minor increases due to the increased articulation of the building on the northern façade and south western façade. The introduction of the lift overrun will result in negligible increased impact. The deletion of two of the originally approved roof shade structures has resulted in a slight decrease in overshadowing. The increase in building height will not result in any additional privacy impacts as it is to accommodate the lift overrun and will not create additional areas where overlooking can occur from habitable areas.

The original assessment report found the development would not have any unreasonable impact on views. A detailed assessment of the impact to views has been provided further in the report under section 4.15 matters. Additional impacts to views will be minor as a result of the proposed modification. The building height will be a similar number of storeys as existing surrounding developments (refer figure 12) and similar height to adjoining properties including 30 Marine Parade (north-east of the site) which has a building height of 23.6 metres (7 storeys) and 50-54 Ocean Parade (south-west of the site) which has a building height of 21 metres (6 storeys).

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Furthermore, when considering the RLs of the building height of the proposed modification with the adjoining properties they are generally similar heights as follows:

- Proposed modification - RL 36.20 (to lift overrun), RL 29.5 – RL 33.0 (to top of roof)
- 50-54 Ocean Parade - RL 34.95
- 30 Marine Parade –RL 33.48/RL 28.9

The increase in building height will not result in an unsympathetic development form in the context of the development of directly adjoining and nearby development sites. The increase in the building height will not result in any additional environmental impacts and will not be discernible from the street. As such, the proposed height of the modified development is considered acceptable.



Figure 12: Number of storeys of adjoining buildings

Floor Space Ratio (FSR)

There was no identified maximum permissible FSR on the site under Wyong LEP 1991, however a maximum permissible FSR was identified in Chapter 64 of Wyong DCP 2005 which permitted a maximum FSR of 2:1 (including bonus provisions as the site is over 3,000m² and was able to have a 15% increase to site area for the purpose of FSR calculations).

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The original application was assessed and approved with a gross floor area (GFA) of 7,565m² which was an FSR of 2.3:1. Chapter 64 of Wyong DCP 2005 defined the gross floor area as follows:

gross Floor Area means the sum of the areas of each floor of a dwelling, where the area of each floor is taken to be the area within the outer face of the external enclosing walls (as measured at a height of 1400 mm above each floor level), excluding:

- Awnings, columns, fin walls, or similar devices and any elements, projections or works outside the general line of the outer face of the external wall; and
- Garages or carports needed to meet the requirements of this plan.

For comparison, the site now has a maximum permissible FSR of 0.9:1 under clause 4.4 of the Wyong LEP 2013 and the definition of gross floor area is as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

The proposed modification involves a reduction in the originally approved gross floor area to 7237m² (measured as per old definition) which equates to an FSR of 2.2:1 which is less than the approved 2.3:1. The GFA has been reduced in the southern corner of the site and south western side of the building in units 01A, 01B, 07 on the ground floor, units 01A, 01B and 02 on floors 1-4 and units 01 and 02 on floor 5. The modified FSR is considered acceptable.

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Acid Sulfate Soils

The site was identified under Wyong LEP 1991 as potentially containing Class 5 Acid Sulfate Soils. The clause required the consideration of the need for an acid sulfate soils management plan.

The original assessment identified that an acid sulfate soils management plan was not required as the proposed works for the basement were unlikely to lower the watertable in any adjoining class 1, 2, 3 or 4 land in accordance with clause 15 of Wyong LEP 1991.

The proposed modification includes the deletion of basement level 3. The natural ground levels of the site range from 11 metres to 15 metres AHD. The watertable may need to be lowered during the construction of the development as modified, however will not result in the watertable being lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land and as such, an acid sulfate soils management plan is not required for the proposed modification.

Flood Prone Land

The land is identified as being affected by flood controls. The ground level is at 11 metres - 15 metres AHD. The flooding of the site is localised overland flooding due to a low point in Ocean Parade. Council's flood mapping for the 1% AEP is identified in figure 13 below.



Figure 13: 1% AEP flood extent on the site

The applicant has submitted a flood study which involves a hydrological and hydraulic model of the pre and post development flows for the development. The applicant is proposing to retain the Council drainage system and divert it around the development including the

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creation of overland flow paths and drainage easement. The development also includes on-site stormwater detention to attenuate stormwater runoff flows downstream.

The development has also been modified to increase the floor level of the ground floor 100mm to ensure that the floor levels offer a minimum 300mm freeboard from the 1% AEP flood level in accordance with **condition 21** of the development consent. In a flooding event the development provides for safe evacuation of the occupants to the south along Fairport Avenue. It is considered that the modified development is compatible with the flood hazard on the site.

Essential Services

The site will have access to all essential services for the development including water, electricity, management of sewage, drainage and suitable vehicular access.

A water service is available in Fairport Avenue and Ocean Parade as shown in figure 14. The applicant is required to replace the existing AC DN150mm water main for the extent of proposed development boundary along Fairport Avenue due to impact from proposed works. There is sufficient capacity to service the proposed development.

Any proposed adjustments to Council's water assets will require a detailed design to be prepared by the applicant to be submitted to Council for approval prior to the issue of the Construction Certificate. The design and construction of the water mains are to be in accordance with the WSAA Water Supply Code of Australia WSA – 02 Sydney Water Edition. These requirements will be issued under Section 306 of the *Water Management Act 2000*.



Figure 14: Water servicing arrangements

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An existing DN300mm gravity sewer main is traversing the site (figure 15) and the proposed building structure is proposed directly above this infrastructure. The applicant will be required to relocate the existing gravity sewer main around the proposed building footprint and connect back into Council's sewer network along Fairport Avenue. The design will need to satisfy WSA code Sydney Water Edition and Council's Building in Proximity to Sewer Pipeline policy.

Any proposed adjustments to Council's sewerage assets will require a detailed design to be prepared by the applicant prior to the issue of the Construction Certificate. These requirements will be issued under Section 306 of the *Water Management Act 2000*.



Figure 15: Sewer servicing arrangements

The applicant has submitted a stormwater management plan which is designed in accordance with AS3500.3 – Stormwater drainage and is considered adequate for the scale of the development. The proposed driveway profile will be required to have a 100mm freeboard to the 1% AEP flood level to prevent floodwaters entering the basement carpark.

The driveway profile is required to be compliant with the grade and transition requirements of AS/NZS 2890. Council's existing drainage pit in Fairport Avenue will be required to be upgraded to a heavy duty "V" grate pit to be constructed in the driveway layback to Council's specification. A 3.6 metre overland flowpath is to be constructed along the Ocean Parade and Fairport Avenue within the property boundary.

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Draft Central Coast Local Environmental Plan 2018

The Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP) was exhibited from 2 December 2018 until 28 February 2019 and will replace Wyong Local Environmental Plan 2013 and Gosford Local Environmental Plan 2014. The Draft CCLEP was adopted by Council at its meeting on 14 December 2020. Under the provisions of Draft CCLEP, the site remains R3 Medium Density Residential zoning. There are no additional or amended clauses or provisions warranting further discussion.

Wyong Development Control Plan 2005

The original development application was lodged in 2005 and approved under the provisions of Wyong DCP 2005. An assessment has been provided with regard to the provisions of Wyong DCP 2005.

Chapter 64 Multiple Dwelling Residential Development

The original development was assessed having regard to the provisions of Wyong DCP 2005, Chapter 64. The provisions of Chapter 64 have since been repealed and replaced by Wyong DCP 2013 Chapter 2.4. A summary of compliance with the relevant controls are outlined under the attached table (Attachment 3). However, there are a number of requirements under the DCP that are relevant to the proposal but overridden by similar controls contained within the ADG. These DCP requirements include:

- communal open space (10m² per dwelling with a minimum dimension of five metres);
- private open space (a minimum area of 10m² and a minimum dimension of two metres);
- deep soil provision (12.5% site area), site coverage (soft landscaping 25%);
- solar access;
- building separation; and
- storage (3m² of floor area/1-2 bed dwelling).

The design of the proposed modification is substantially the same to that which was originally approved and generally complies with the controls. There are no major changes to what was required under Chapter 64 under the proposed modification.

Parking and Access

The proposed modification includes changes to the apartment mix and the deletion of the level 3 basement parking. The modified development proposes 56 units with the following apartment mix:

- 10 x one bedroom unit (including 1 x studio unit)

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- 38 x two bedroom units
- 8 x three bedroom unit

As part of the proposed modification the parking is proposed to be reduced from 84 parking spaces (74 residents parking spaces plus 10 visitor parking spaces) to a total of 74 parking spaces (64 residents parking spaces plus 10 visitor parking spaces). Wyong DCP 2005 - Chapter 64 Multiple Dwelling Residential required the following parking rates for residential flat buildings:

- 1 space per 1 bedroom unit
 - 1.2 spaces per 2 bedroom unit
 - 1.5 spaces per 3 (or more) bedroom unit
- Plus
- 1 space per 5 units for visitor parking (for over 15 units)

The required parking spaces have been calculated in accordance with the DCP as follows:

	Resident parking spaces required
10 x 1B units at 1 space/unit	10
38 x 2B units at 1.2 spaces/unit	45.6
8 x 3B units at 1.5 spaces/unit	12
TOTAL	67.6 (rounded to 68)

	Visitor parking spaces required
56 units at 1 visitor space/5 units	11.2 (rounded to 12)

The original development provided in excess of the required parking spaces by 5 resident parking spaces and 2 visitor parking spaces. The proposed modifications have reduced the number of larger 3 bedroom apartments from 25 units to 8 units while the number of 2 bedroom and 1 bedroom units have increased.

The proposed modified apartment mix requires the provision of 68 resident parking spaces and 12 visitor parking spaces to be provided. The proposed modification only includes the provision of 64 resident parking spaces and 10 visitor spaces. Furthermore, Council's Traffic Engineer has advised that parking space number 15 on basement level 1 and parking space number 1 on basement level 2 are required to be deleted to provide a turning area as they are at the end of blind aisles (**new condition 24A**). This will reduce the number of parking spaces provided to 62 resident parking spaces, which is a shortfall of 6 resident parking spaces and 2 visitor parking spaces.

The shortfall in the parking has been considered in the context of the objectives of the control, impacts on street parking and whether the number of proposed spaces can adequately cater for the number of dwellings proposed. Council's Traffic Engineer has raised

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no concerns with the shortfall in parking having regard for impact on street parking within the vicinity of the development.

The proposed parking numbers are considered to provide adequate on-site parking within a basement car park. The proposed parking arrangement minimizes the potential for pedestrian and vehicle conflict and vehicles can enter and leave the site in a forward direction. The proposed parking numbers will enable at least one space per unit to be provided and the shortfall in parking is minor (6 resident and 2 visitor spaces). It is considered that the parking proposed under this modification provides parking in an efficient manner that has little impact to neighbouring properties or the street.

Site Waste Management

The proposal has been assessed against the provisions of Wyong DCP 2005 and the Wyong Shire Council Waste Control Guidelines.

The proposed modification provides an adequate waste storage area within the basement, and the bins are taken to a new separate temporary bin store area enclosure on the north eastern side setback on the day of collection. The waste collection vehicle will reverse into the waste collection area on the site for collection of waste from the enclosure. There is enough space to accommodate the waste servicing truck.

The revised waste collection arrangements are considered more suitable and a safer option than kerb-side bulk bin collection. Detailed comments are provided within the waste discussion under Section 4.15 matters discussed below.

Chapter 60 - The Entrance Peninsula

The original development had regard for the provisions of Wyong DCP 2005, Chapter 60, which provided specific controls relating developments in The Entrance. Chapter 60 has since been replaced by Wyong DCP 2013, Chapter 5.3 which includes controls generally relating to the design and residential character of the area.

The proposed modification will remain consistent with the desired character of The Entrance Peninsula as follows:

- The proposed upgrades to the façade will enhance the architectural quality of the development;
- Enhancing the landscape setting by providing substantial planting and protecting scenic qualities of the area;
- Improving the quality of the streetscape by the modified façade and increased deep soil areas and landscaping the street setbacks;
- Minimising and disguising the bulk and scale of the approved development by increasing the articulation to the façade through incorporation of architectural

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- elements and balconies and the provision of substantial landscaping to soften the built form of the development; and
- Providing an effective residential address with clear pedestrian access to the outdoor communal open space provided on the site and the public open space areas within the vicinity of the site.

It is considered that the modified development continues to achieve the objectives of the character of The Entrance with the modified development having an improved streetscape presentation.

Relevant Regulations

There are no specific matters under the Regulation that require further discussion.

Likely Impacts of the Development (built environment, natural environment, economic and social impacts)

Built environment

A thorough assessment of the aspects of the proposed development on the built environment has been undertaken in terms of the planning controls.

Accessibility

The proposed modification to the layout of the basement parking provides accessible residential parking spaces that are practical and in accordance with AS/NZS 2890.6 (2009) – “Off-street parking for people with disabilities”. The modification provides accessible pathways from the street to the building entry, lift core and communal open space areas.

Internal access and parking

As previously discussed in the report, the parking is considered to be suitable for the modified development. Sufficient parking will be available, with at least one parking space provided to each unit. The modification to the basement provides parking in an efficient manner that has little impact to neighbouring properties or the streetscape and that retains deep soil planting around the perimeter of the site which is an appropriate outcome for the development and surrounding area. The access ramp will remain in the same location as originally approved and will provide suitable access to the basement carpark.

Drainage

The site falls gently to the rear. The Applicant has submitted a stormwater quality management plan that indicates that stormwater is directed to Council’s drainage system via an overland flow path around the development and a 23kL stormwater tank. The internal

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stormwater management plans have been designed in accordance with AS3500.3 – Stormwater drainage and is considered adequate for the scale of the development.

Waste disposal

The original approved development included kerbside waste collection of bulk bins. The proposed modification includes a garbage room within the basement and servicing on site at ground level. The proposal provides an adequate waste storage area within the basement, and the bins are taken to a separate enclosure on the north corner of the site on the day of collection. The waste collection vehicle will enter in a forward direction into the site and use the manoeuvring area within the site to reverse into the service bay, allowing for the vehicle to exit in a forward direction in a single manoeuvre (figure 16).

Turning paths have been provided to demonstrate manoeuvring for the waste collection truck on-site are compliant with AS2890.2. Residents will transport their general waste and recyclables to the Waste Storage Room on Basement Level 2 and deposit into the appropriate bulk bin or Mobile Garbage Bin (MGB). The building manager will be responsible for transporting the general waste bulk bins to the bin collection area on the ground level via the car ramp for twice-weekly collection, no earlier than the day before collection day. For the collection of bulk bins, a rear-loading waste collection vehicle will enter the site via Fairport Avenue and park in the ground floor loading bay. Fortnightly kerbside collection of green waste bins is also proposed.

Landscaping along the northern boundary of the waste servicing area is proposed including New Zealand Christmas Trees which grow up to 3 metres in height (figure 17). It is considered that the proposed modifications to the waste servicing arrangements will improve the previously approved arrangements, which currently required kerbside collection of all waste which would result in a significant number of bulk bins and MGB's along the street on waste collection days.

The on-site waste servicing arrangements will reduce the impact on the street during waste collection days and will result in similar acoustic impacts to what would have occurred on the street however, it will be for a shorter duration of time as the waste servicing truck will not continually move between bins. It is considered that the proposed modifications to the waste servicing are suitable for the development.

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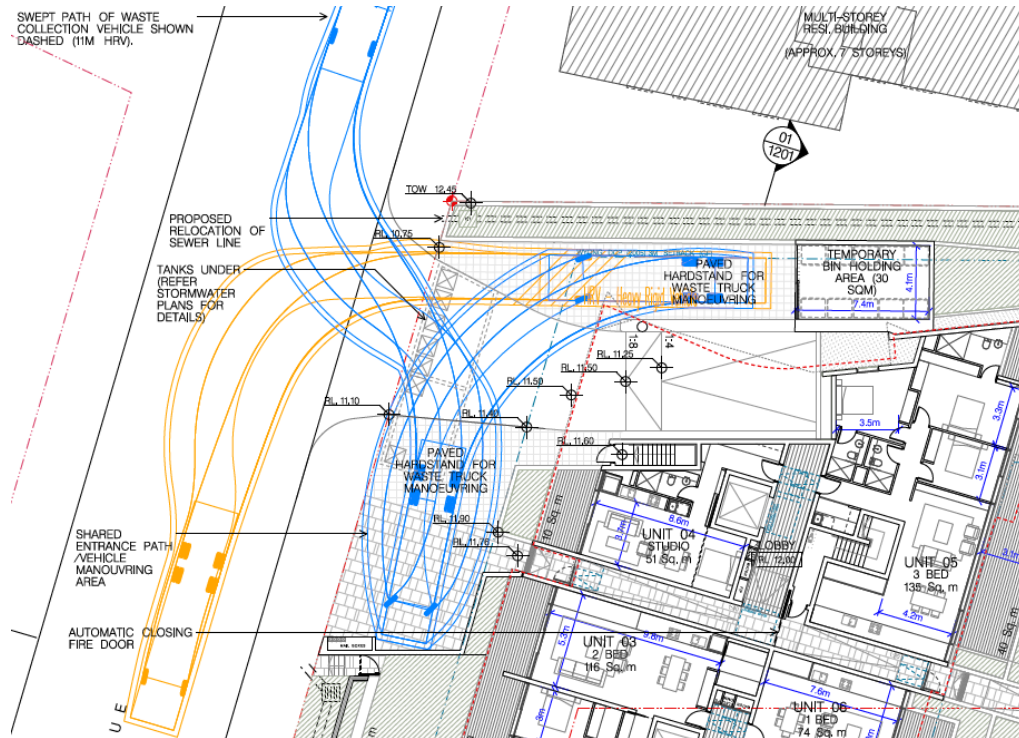


Figure 16: Swept turning path of waste collection vehicle to waste servicing area

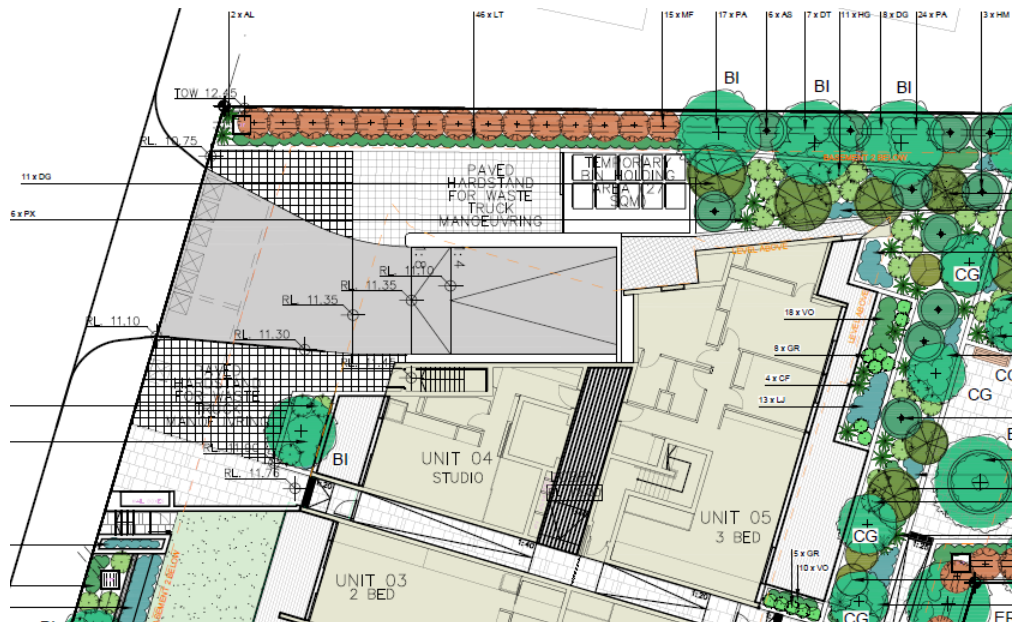


Figure 17: Landscaping around waste servicing area

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Whilst there may be some acoustic impact to adjoining residents at the rear of the property at 30 Marine Parade on collection day, this will be a limited window of impact that occurs twice per week and for short duration. **Conditions 27A and 87A** will be imposed to require that attenuation measures are implemented to the temporary bin holding area to ensure that the placement and use of the waste bins will not unreasonably impact the adjoining neighbours.

Any attenuation measures will be required to be included on the Construction Certificate plans. It is considered that a reasonable acoustic outcome consistent with a medium density residential environment can be achieved having regard for the inclusion of conditions 27A and 87A.

Locality and streetscape

The proposal will not adversely impact on the character and amenity of the locality and streetscape. The scale, form, character and density of the modified development is considered acceptable within the locality given the R3 zoning of the site. The proposed modification involves changes to the façade which includes greater articulation to the built form.

The design and appearance of the modified development is of a high design that is of an architectural appearance which is satisfactory within the future character of the streetscape. The form and scale of the development is consistent with that envisaged for the site under the R3 zoning for medium density development. The proposal provides a design that clearly identifies the residential entry and minimises impacts of car parking by incorporating a basement. The built form is well articulated and composed, includes a suitable materials palette and has considered the relationship to surrounding properties and the opportunities presented by the location of the site.

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Figure 18: 3D perspective of modified development and materials palette

Privacy, overlooking and boundary treatments

The nearby dwellings to the south east of the site are the most sensitive of potentially affected neighbouring properties that are most likely to be impacted by overlooking and privacy impacts from the future occupants of the development. Overlooking potential has been minimised in the design through the orientation of dwellings, internal layouts and balconies to avoid conflict.

Apartments along the north eastern façade have been orientated to the south east or north west to prevent privacy impacts with 30 Marine Parade. The balconies on the south eastern façade have been recessed within the façade to limit overlooking and include solid balustrades. Additionally, physical distance and separation of over 20 metres will address potential visual privacy issues through large setbacks along the south eastern boundary.

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The modification includes new balconies to the south eastern portion of the building (figure 19). The southernmost balconies along the south eastern boundary are generally located forward of the building line of 50-54 Ocean Parade and are not located off living areas in the subject development and as such will have lesser privacy impacts.

The northern most balconies are located off living areas and will likely be used more often, however it is considered that the building separation of over 20 metres is sufficient to mitigate privacy impacts and will generally not overlook into living areas of the adjoining property. The balconies in the centre are not located off living areas and will be used less often and result in lesser privacy impacts. Furthermore, the development also incorporates deep soil planting around the perimeter of the site that allows for landscaping that incorporates trees of an appropriate scale for the development that assist in breaking view lines and mitigating privacy impacts of the lower floor apartments.

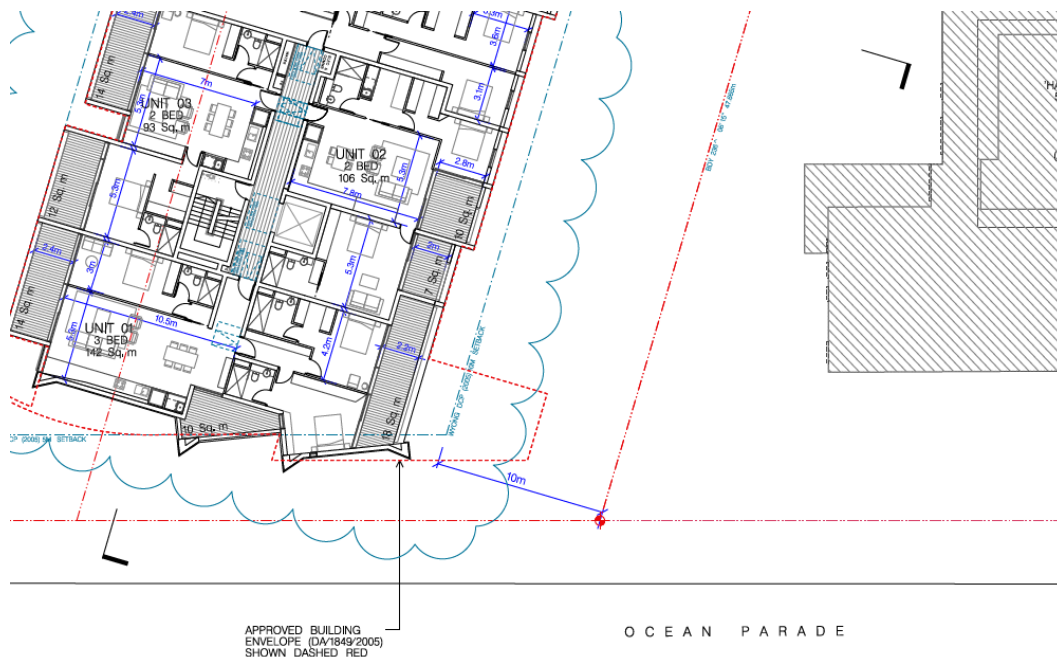


Figure 19: Orientation and building separation of balconies on the south eastern façade

Overshadowing

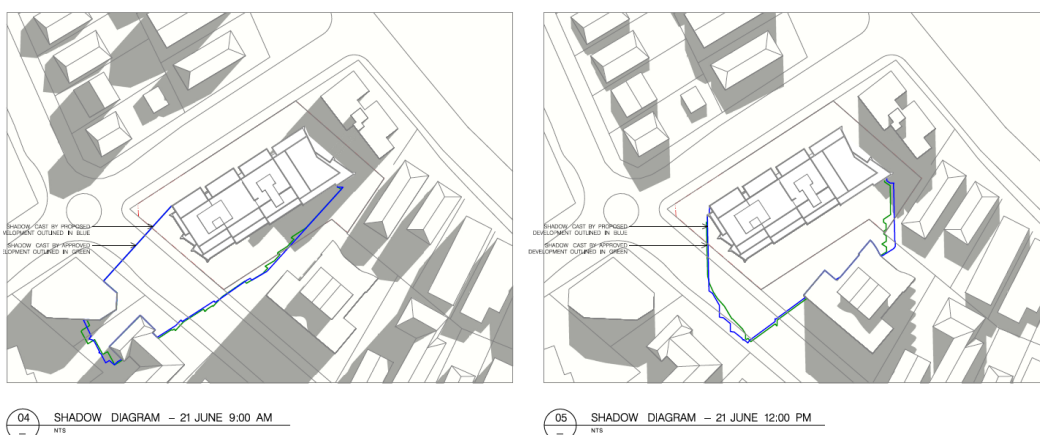
Shadow diagrams have been prepared for the modified development between 9:00am and 3:00pm, for 21 June (midwinter) in order to demonstrate a worst-case scenario for solar access and shadow impact on the shortest day of the year. Due to the orientation of the site, the shadowing created by the development extends over Ocean Parade and partially over the properties on the opposite side of Ocean Parade to the south west of the site and the south eastern neighbouring properties at 50-54 Ocean Parade. It is noted that the adjoining

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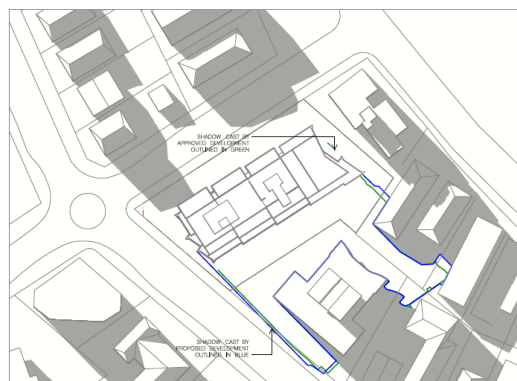
properties of the site share the same R3 Medium Density Residential zoning as the subject site.

During midwinter in the morning, shadowing from the proposal extends across Ocean Parade and the side and front setbacks of 55 Ocean Parade and 57-59 opposite the subject site. At midday, the shadowing impacts occur to the north western boundary of 50-54 Ocean Parade, including the side wall of the dwellings and side setback. Some of the rear open space of 31 Marine Parade will be overshadowed at midday. During midwinter in the afternoon, shadowing from the proposal extends further across 50-54 Ocean Parade and 31 Marine Parade and causes solar access impacts across most of the 50-54 Ocean Parade between 1pm and 3pm.

Given the proposed modifications to the roof structure/design the overshadowing is slightly different to that which was approved, however the overall impact will generally remain the same as shown in the shadow diagrams in figure 20. It is considered that the proposed modification is reasonable having regard for the overshadowing resultant from the originally approved development.



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06 SHADOW DIAGRAM – 21 JUNE 3:00 PM
NTS

Figure 20: Shadow diagrams 21 June – modification shown in blue; originally approved development shown in green

Wind Funnelling

The modified development generally retains the building separation distances as originally approved. The generous building separation distances will not result in wind funnelling between buildings. Furthermore, the minor increase in the building height will not exacerbate wind speeds in the area

Views

In considering the impact to views as a result of the proposed modification, the planning principles provided in Tenacity Consulting v Waringah [2004] have been considered below.

- *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.*

Comment:

Water views to the north will be impacted by the development from 50-54 Ocean Parade which have views to The Entrance foreshore and the bridge and are currently uninterrupted. Views from 50-54 Ocean Parade to the north east of The Entrance Beach and Norah Head lighthouse will not be impacted by the building, however landscaping will impact views for the lower storeys of 50-54 Ocean Parade. Some views from 55 Ocean Parade to The Entrance beach will be impacted by the development, however the views are currently partially obscured.

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The bulk, scale and setbacks of the building remain relatively the same under the proposed modification. In terms of the height, the lift overrun may result in minor additional view loss, however, the proposed modification does not significantly increase any view loss to that which was originally considered in the original granting of consent.

- *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*

Comment:

Views are currently obtained from the north western side of 50-54 Ocean Parade over the side boundary of the subject site towards The Entrance foreshore and bridge. They are visible from the upper floor balconies of the units and the rooftop communal open space from both sitting and standing positions.

Views towards Norah Head are also visible from sitting and standing positions above the landscaping along the rear boundary of 50-54 ocean Parade. Views from 55 Ocean Parade are available from all levels of the RFB from balconies and windows on the front elevation down Fairport Avenue and over the subject site on the opposite side of Ocean Parade, they are available from both sitting and standing positions.

The proposed modification will not significantly increase any view loss to that which was approved originally, as the footprint of the originally approved development remains the same except for some additional articulation on the northern façade and south western façade and the addition of a lift overrun on the roof terrace area.

- *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.*

Comment:

The impact to views was assessed in the original assessment of the development. Views from 50-54 Ocean Parade towards The Entrance foreshore and bridge are significantly affected as a result of the approved development. All levels of 50-54 Ocean Parade would be affected by

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the erection of the building. However, it is noted that the development has already been approved Council is unable to re-assess impacts that are approved. Subsequently consideration of the extent of the impact is focused on any additional impact to the views from the proposed modifications.

The proposed modification includes the increase in the building height, most significantly to the southern portion of the building. Views are obtained from 50-54 Ocean Parade predominantly over the northern portion of the site where the building height is lower. The northern portion of the building will have an RL between RL 29.5 and PL 30.5. The RL of the rooftop communal open space of 50-55 Ocean Parade has a floor level of RL 31.5 and as such they will still have reasonable views over the subject development towards The Entrance Foreshore and bridge. Furthermore, it is noted that the northern rooftop shade structure has been proposed to be deleted as part of the modification which will alleviate some view loss from the approved development and over the northern portion of the building and rooftop planting consists of low shrubs up to 0.5m in height.

Views obtained from the lower storeys of 50-55 Ocean Parade will not be available towards The Entrance foreshore and bridge, only views towards Norah Head lighthouse will be retained, however it is noted that these views were impacted by the approved development and are not further impacted by the proposed modification.

With regard to the views from 50-54 Ocean Parade towards Norah Head, it is noted that the landscape plan includes trees up to 10 metres in height and an Illawarra flame tree which grows up to 16 metres in height in the ground level communal open space area located in the eastern corner of the site. The landscaping has the potential to impact some views towards Norah Head from the lower levels of 50-54 Ocean Parade.

The original development was approved with landscaping in the ground level communal open space area with a mature height of up to 10 metres. Having regard for the original approval and to ensure the view impacts of the proposed modification towards Norah Head are not further reduced, a condition of consent is proposed to replace the Illawarra flame tree with another species which grows to a maximum height of 10 metres which is consistent with the landscaping of the original approval (**condition 29A**).

With regard to the views from 55 Ocean Parade the Residential Flat Building would not experience any further impact to views as a result of the modification given the existing four storey building is well below the building height of the development as originally approved. Having regard for the impact to views resulting from the originally approved development, and the modifications to the building height in relation to the heights of adjoining properties, it is considered that any additional impacts on views as a result of the modification will be minor and are considered to be reasonable.

- *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*

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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.

Comment:

As previously discussed, the impacts to the views are primarily resultant from the development as originally approved, specifically the impacts to 55 Ocean Parade and the lower levels of 50-54 Ocean Parade and are not further impacted by the proposed modification. In considering the proposed modification it is considered that the development is substantially the same and the minor increase to the building height will not result in further unreasonable impact to the adjoining properties having regard for the fact that views were obstructed to 50-54 Ocean Parade on all levels from the originally approved development (except the rooftop communal open space area), and the increase in building height will not result in views being restricted from the rooftop communal open space. It should also be noted that the removal of the northern rooftop shade structure will alleviate some view loss to that which was originally approved, and the low shrubs will help maintain views for 50-54 Ocean Parade.

Having regard for the above consideration of the planning principle it is considered that the impacts to views are primarily resultant from the approved development and that any additional impact to views will be minor and limited to the northern view from the rooftop communal open space of 50-54 Ocean Parade where views will still be available to the north. Furthermore, it is noted that views towards Norah Head lighthouse to the north east will be maintained from all levels of 50-54 Ocean Parade currently enjoying the view given the subject site is located to the north west of the adjoining property.

Safety, security and crime prevention

The principles of Crime Prevention Through Environmental Design (CPTED) have been considered under the design of the proposed modification. The design has appropriate regard for the principles of CPTED and the following design measures have been considered:

- The residential units provide passive surveillance of the public domain, open space, the driveway access and the pedestrian entry to the building.
- The development maintains clearly defined separate pedestrian and vehicular entry points from Ocean Parade and Fairport Avenue that will be access controlled.
- The entries to the development will be appropriately lit at night to enhance safety, visibility and legibility.

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- An electronic access control system with fob keys is supplied to occupants; this allows controlled access through the development including the ground floor entry, stairs as well as lifts and other circulation routes.
- The internal areas within the development such as the entrances and lobbies will be well used by residents.

Having regard for the principles of CPTED and safer by design, the proposed development as modified adequately discourages anti-social behaviour and minimises the opportunities for criminal activities.

Overall built environment impacts

The proposed modification will not adversely impact on the character and amenity of the locality and streetscape. The scale, form, character and density of the development are acceptable within the locality.

A thorough assessment of the proposed modification's impact on the built environment has been undertaken having regard for *SEPP 65* and the *ADG* along with the relevant statutory controls and policies at the time of the granting of the original development consent and the built environment impacts are considered to be reasonable within the context of the site.

Natural environment

There will be no significant impact upon the natural environment as a result of the proposed modification.

Flooding

The proposal has a ground floor level at RL 12.0 to satisfy current **condition 21** which requires a minimum 300mm freeboard from the 1% AEP flood levels. The crest of the driveway is required to have a 100mm freeboard to the 1% AEP flood level to prevent floodwaters entering the basement (**condition 24**). This freeboard is also consistent with current design requirements outlined in *Wyong Development Control Plan 2013*, Chapter 3.3 Floodplain Management.

Economic impacts

The modified development is likely to result in positive economic impacts through the provision of a variety of cost-effective housing and employment generation for the duration of the construction of the building.

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Social impacts

The development will provide high amenity residential dwellings that have been designed to fit within their context, in close proximity to facilities, services and recreation opportunities. The development is considered to make a positive social impact upon the area.

Suitability of the Site for the Development

The site is situated at the edge of The Entrance town centre and this location is well serviced with a high level of amenity. The site is accessible to public transport and facilities and the proposed development provides benefits to the ongoing viability of The Entrance town centre by encouraging people to live within the centre.

The site is located within a medium density residential area. Although the modified development proposes a minor increase in the building height, it is of similar heights to the adjoining residential flat buildings which are 7 storeys (north east) and 6 storeys (south east). The building form is considered consistent with the character of the area and the modification to the architectural design and treatment of the building will present well on all facades.

The design of the modified development is in an appropriate form, layout and scale that is substantially the same as the originally approved development. There are no significant site constraints or hazards that would render the location of the development as unsuitable. The building form as modified will present well within the streetscape and will not adversely impact on the character and amenity of the locality.

Submissions

The application was notified in accordance with Wyong DCP 2013, Chapter 1.2 Notification of Development Proposals. Chapter 1.2 requires notification for residential flat buildings for 21 days. The application was originally notified for 21 days from 13 November 2020 to 4 December 2020. During the assessment of the application it was identified that notification of one adjoining property has been missed in the original notification period and as such a notification letter was sent to the property to provide a notification period from 25 May 2021 to 15 June 2021. A request to extend the notification period was granted and notification concluded on 13 July 2021.

During notification 25 submissions were received. A number of common themes were identified in the submissions relating to the height, bulk and scale, overshadowing, views, privacy, noise, landscaping, apartment mix and the original consent. The general issues raised in relation to the proposal are included in the following table.

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Submission	Comment
Notification not received until 24 May 2021 and less than four weeks to make submissions	The application was notified in accordance with Wyong DCP 2013, Chapter 1.2 Notification of Development Proposals. Chapter 1.2 requires notification for residential flat buildings for 21 days. The application was originally notified for 21 days from 13 November 2020 to 4 December 2020. During the assessment of the application it was identified that notification of one adjoining property had been missed in the original notification period and as such a notification letter was sent to the strata manager of the adjoining property to provide a notification period from 25 May 2021 to 15 June 2021. During the first week of notification period some of the notification plans were unavailable on Council's DA tracker and as such the notification period was extended a further seven days to 22 June 2021. A further request for an extension of time for an additional 3 weeks was granted until 13 July 2021 as a GIPA had been submitted to obtain the approved plans of the original development consent.
Excessive bulk and scale	The bulk and scale of the proposed modified development is generally the same as the bulk and scale of the approved development. The modified development remains consistent with the approved building footprint and the number of storeys. The proposed modification involves additional articulation to the facades and additional landscaping which is considered to mitigate the perceived bulk and scale of the development.
Non-compliance with the current Wyong LEP 2013 planning controls, in particular the height and FSR.	The application is for a section 4.55(2) modification to the original development consent granted which was approved with regard to the provisions of Wyong LEP 1991. As such a merit assessment has been undertaken and considered with regard to Section 4.55 matters such as the development being substantially the same. As discussed in the body of the report the proposed modification to the height is substantially the same to that which was originally approved (6 storeys with rooftop open space) and there is no proposed increase to the FSR.
Consistency/consideration of Coastal Zone Management Act of 2016	The assessment of the proposed modification has included consideration of SEPP (Coastal Management) 2018 which includes consideration of

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
	any potential impacts on the Coastal Use Area or Coastal Environment Area.
Insufficient parking and increase in traffic. The development has an increase in the number of units and a decrease in on-site parking spaces, placing greater pressure on kerbside parking in surrounding streets. Due to the popularity of the area for tourists kerbside parking is already unavailable in Fairport Avenue on weekends year-round and throughout the summer months.	The original development provided in excess of the required parking. The proposed modification will reduce the parking while the number of units is proposed to increase. As previously discussed in the report the parking proposed under the modification is considered to be suitable for the proposed development noting that the development will provide at least one parking space per unit and it will not result in additional traffic impacts on the local road network.
Noise from increased density, rooftop communal open space and motorcycle parking.	The increased density is not expected to result in any undue acoustic impacts as impacts will generally be restricted to the internal area of the development. Given the approved development contained 5 rooftop private pools it is considered that the deletion of the pools and the provision of communal open space with BBQ facilities and seating will not cause adverse acoustic impacts compared to the use of the pools. The modification includes the provision of two motorcycle parking spaces which are not considered to generate excessive noise.
Privacy	As discussed in the report the building separation distances, landscaping and design of the building, including recessed balconies and balcony orientation, is considered to have suitable regard for privacy and will not result in any adverse privacy impacts having regard for the medium density residential context. The rooftop terrace has been setback from the edge of the building 6.2m to mitigate any potential privacy issues, the setback has also been landscaped to provide further mitigation measures.
Shadow diagrams indicate that due to the height of the building neighboring units that currently receive reasonable sunlight will be in shade for the majority of daylight hours.	The shadow diagrams indicate the minor increase in building height and greater articulation on the northern and south western façade will result in some additional overshadowing to adjoining properties. As previously discussed in the report, the originally approved building generally overshadows the south eastern side of the adjoining property at

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
	50-54 Ocean Parade. The overshadowing impacts are generally the same as that which was originally approved with some minor increases and decreases in overshadowing due to the modified roof structures.
The location of the development so close to the eastern boundary is likely to create a wind tunnel.	The modified development will generally have the same building footprint. The only reduction in setbacks is on the ground floor where private open space courtyards are proposed which will not create wind funneling. The balconies proposed on the south eastern façade are recessed and will not encroach further into the originally approved setback. As discussed in the report it is considered that the building generous building separation will not result in wind funneling. Condition 95 is recommended to be imposed requiring furniture to be secured by strata management during storm events.
Original DA 15 years old and assessed under old laws and regulations	The original development consent was granted in 2006 and was approved under the provisions of Wyong LEP 1991 and Wyong DCP 2005. Since the original approval Wyong LEP 1991 and Wyong DCP 2005 have been repealed and replaced by Wyong LEP 2013 and Wyong DCP 2013. A merits assessment of this modification has been undertaken accordingly.
Loss of views from the height of the building, landscaping on the roof, Illawarra flame tree at ground level in the western corner of the site, new balconies, including western views to the fairground, bridge, Tuggerah Lake and Watagans and beach views across to Norah Head lighthouse.	Consideration of the impact of the proposed modification on views has been assessed previously in the report. Views to Norah Head lighthouse towards the North East will not be impacted by the building from 50-54 Ocean Parade as the building subject to the current modification application is located to the north west of the property. However, it is acknowledged that the mature height of the Illawarra flame tree of 16m will likely impede some views between towards the Norah Head. Condition 29A is recommended to substitute the tree for a species which grows to a maximum mature height of 10m which is in accordance with the height of trees approved in the communal open space area of the original development. Views will not be impacted by the additional balconies on the south eastern façade. Views from the rooftop communal open space of 50-54 Ocean Parade towards the north will be available

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
	of the subject development where the building height is lower and low shrubs up to 0.5m in height are proposed.
The Harriot building was constructed after the original development was approved and as such the impacts of the approved building have not been considered.	The approved building cannot be re-assessed under this application. The assessment of the current modification application can only assess the scope of works proposed in the modification and any impacts to adjoining properties that may result from the modification application. However, while it is acknowledged the Harriot was not constructed at the time the original consent was granted in 2006, it should be noted that the consent was granted for The Harriot in 2002 and as such would have been considered in the granting of the original development consent of the subject development.
The proposed modification is not substantially the same as to what was originally approved, specifically with regard to the increase in height, additional units, change in building footprint and as the development has been incrementally changed (modification A).	The proposed modification is considered to be substantially the same as the development that was originally approved as previously discussed in the report. There have been no modifications approved since the original granting of the consent modification application. A previous modification application, referenced under DA/1849/2005/A was withdrawn (not determined) and as such the development has not been incrementally changed through previous modifications.
A Geotechnical report was completed in 2016. What was it for?	A geotechnical report was completed in 2016 and was submitted to Council with the current modification application. The conditions of the land and soil structure are not expected to have changed since the geotechnical was prepared. The information contained within the geotechnical report will be used to inform the construction requirements prior to the issue of a Construction Certificate.
Soil testing for acid sulfate soils should be required	As previously discussed in the report the site is identified as potentially containing class 5 Acid Sulfate Soils. The watertable may need to be lowered during the construction of the development as modified, however given the elevation of the site (between 11 metres and 15 metres AHD) it will not result in the watertable being lowered below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land and as such an acid sulfate soils management plan is not required.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
Waste collection on-site – noise and safety, 4-5 pickups a week	The proposed waste management has been considered in the report and is considered to provide an improved outcome to kerbside collection as originally approved. Waste collection will only be twice weekly which is considered to limit any acoustic impacts. The waste servicing vehicle will enter the site in a forward direction over the shared pedestrian/waste truck area and will reverse into the dedicated waste servicing area on-site servicing which will limit pedestrian/vehicle conflict. Conditions have been recommended to ensure that the waste collection will not cause any unreasonable acoustic impact to adjoining properties and appropriate acoustic mitigation measures will be implemented prior to the issue on an Occupation Certificate.
Outside approved building footprint – balconies additional bulk, non-complaint/reduced setbacks.	The proposed modification is generally within the approved building footprint. There are some minor projections outside of the building footprint for articulation to the building façade and private open space courtyards to the ground floor units on the eastern side of the building. The upper level balconies will remain within the approved footprint. The reduced setbacks have been previously considered in the report and it is considered that the modifications outside of the approved footprint will provide additional articulation and will not result in amenity impacts from the reduced setback.
The waste management plan notes excavation fill to be used on site. Is there a change in land levels to what is currently there that would cause fence and planting heights to be raised?	The waste management plan states 'all excavated material generated on this site may be re-used in the landscaping or used on other sites as fill material, provided no contamination is present'. It is only stated that the excavated material may be used on this site for landscaping and may be used on <i>other</i> sites for fill.
Validity of operational consent/consent has lapsed. The SEE states that 3 month passed between the lapsing of the original consent and the letter from Council being issued saying that physical commencement has occurred. The	On 23 September 2009 Council issued a letter advising physical commencement has been achieved in relation to DA/1849/2005. As part of the physical commencement of the development 3 dwellings located on lots 16 and 17 in DP 18810 and lot A in DP 364571 were demolished and the lots were

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
SEE does not claim the letter confirmed it occurred prior to the lapse date, as would have been required.	consolidated to partially satisfy condition 54 of the consent.
Communal open space is proposed at ground level in the eastern corner of the site which will be overshadowed from either Tasman Tower or its own building for most of the day, year-round. It would not be attractive and draw undesirable behaviour right on the boundary.	The original approved plans included the provision of the primary communal open space located within the eastern corner of the site, where a communal pool was proposed. The proposed modification maintains communal open space within the eastern corner of the site as it was originally located and as such the location of the communal open space within the eastern corner of the site is considered to be outside the scope of this modification application. It is considered that the proposed modification which includes the removal of the communal pool within the eastern corner of the site will lessen amenity impacts to adjoining properties specifically with regard to noise and there is no evidence to suggest that the overshadowing of the ground level communal open space would result in undesirable behaviour.
The Entrance Town Centre Master Plan (2011, Key Principles) stresses connectivity and embracing the values of the town centre. This development fails to fulfill these values.	The Entrance Town Centre Master plan key principles identify connectivity <i>within</i> and <i>to</i> The Entrance through walking and public transport. A condition of consent requires the construction of a pedestrian pathway along the frontage of the site which will connect into the existing pedestrian network providing improved pedestrian connectivity to the foreshore and town centre. The development will not have an impact on the provision of public transport in the area for people travelling to The Entrance. Other key principles also encourage renewal consistent with the urban framework and future direction for The Entrance and respect of the natural assets and beauty of the locality. It is considered that the modified development will support the renewal of the site and will further modernise the originally approved development without compromising the natural assets and beauty of the locality. It is considered that the modified development will not impede any of the design principles in The Entrance Town Centre Masterplan.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
Property value reduced on adjoining properties	Land values are not a matter for consideration under s. 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) and there is no evidence to suggest that the proposed development will have an impact on adjoining property values.
Details of the builder not provided.	The builder is not required to be provided to Council as part of the Development Application.
The building is no longer terraced/stepped down and will now be 6 storeys in height.	The original development was six storeys in height plus an additional three basement levels and rooftop terraces. Under the current modification application, no additional floors are proposed, the building will remain six storeys in height plus two basement levels and a rooftop terrace and will be stepped down the site.
Concerns will not meet construction standards	Condition 32 requires the development to be designed and constructed in accordance with Building Code of Australia. A Construction Certificate and Occupation Certificate is also required to confirm the development is built to the relevant construction standards.
No information has been provided on Amendment A	A Section 96(1A) application was lodged under DA/1849/2005/A on 11 March 2009 to modify the timing of payment of development contributions. The application was withdrawn on 29 May 2009.
The original development was only for 36 units, however, the SEE refers to 45.	The original development consent was granted for a 'Residential Flat Building comprising 45 units and Demolition of Existing Structures'. The proposed modification will result in a total of 56 units capable of independent living.
Extension of existing façade about 3m towards Tasman tower. Balconies as approved on the eastern side (i.e. lower levels) will be extended about 2m horizontally, while the upper levels will extend about 4-5m horizontally from the approved façade.	There is no extension of balconies towards Tasman tower proposed under the modification only articulation up to approximately 1m is proposed. The setback will generally remain the same apart from the additional articulation.
Deep soil planting compliance, basement underneath unsuitable for large trees above.	The development provides in excess of the required deep soil planting in accordance with the ADG. The trees located above the basement are considered suitable, while it is acknowledged the reduced soil depth will result in the trees growing to a smaller mature height.

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
Draft CCLEP and CCDCP not considered	The Draft CCLEP has been considered in the assessment of the proposed modification, as part of the merit assessment, and it is considered that the development will remain consistent with the CCLEP. There is no requirement to consider the Draft CCDCP.
Vibration testing before commencement. Due to the proposal to excavation at or near the boundary and near buildings on adjoining properties concern is raised for the potential impacts to the structural integrity/structural damage of adjoining buildings particularly with regard to the basement carpark. A dilapidation report should be prepared by the body corporate of the adjoining buildings (or by negotiation with them) at the developer's cost. The cost would include a post-construction report comparing the two. In addition, if any concerns arise during construction, the body corporate must be protected by being enabled to contact Council for a stop work order and/or for an engineering opinion.	<p>A condition of consent (condition 7) was imposed during the original assessment of the proposal requiring the applicant to submit a dilapidation report for the adjoining properties to Council prior to the issue of a Construction Certificate. Condition 7 reads as follows:</p> <p><i>7 The applicant must supply Council with a dilapidation report for the adjoining properties, which documents and photographs the condition of buildings and improvements. The report must be submitted to Council prior to issue of the Construction Certificate and will be made available by Council in any private dispute between the neighbours regarding damage arising from site and construction works.</i></p> <p>Condition 56 was also subsequently included in the consent requiring any damage not shown in the dilapidation report to be rectified prior to the issue of an Occupation Certificate. Condition 56 reads as follows:</p> <p><i>56 Any damage not shown in the Dilapidation Report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of the Occupation Certificate.</i></p> <p>In addition to the dilapidation report conditions, condition 30 was imposed prior to the commencement of works to ensure the preservation and protection of buildings on adjoining allotments during excavation. Condition 30 reads as follows:</p>

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
	<p>30 Any excavation below the level of footings of buildings on adjoining allotments requires the preservation and protection of the buildings from damage, and if necessary, underpinning and support of the building in a manner certified by a Practising Structural Engineer. The owner of the adjoining property must be given written notice of the intention to excavate and provided with details of the proposed work at least seven (7) days prior to excavation.</p>
There is an incomplete stormwater drainage system along the western end of the southern boundary. How will stormwater (and/or watering from landscape maintenance) reach the street system?	As previously discussed in the report the stormwater is proposed to be directed around the development via overland flow paths and into Council's drainage system. The stormwater management plan has been reviewed by Council's development engineer and the proposed stormwater management is considered suitable.
The SEE assumes infrastructure (with or without upgrades) will cope with the additional units in the locality, however the statement is untested. Have satisfactory clearance letter been received from all infrastructure providers?	The application was referred to Council's Water and Sewer Section, Traffic Engineer and Contributions Officer. Water and sewer identified there is sufficient capacity for the development and works will be required to replace the existing water main and sewer line due to the impact from the proposed works which would be subject to a section 306 letter of requirements. Council's traffic engineer has identified that the proposed modification will have no impact on street parking in locality and Council's Contributions officer has calculated the applicable contributions based on the apartment mix proposed which will be used in accordance with Council's Contributions Plans to upgrade community infrastructure and facilities. Condition 44 which was imposed on the original consent requires other public authorities including Australia Post, AGL, Energy Australia and telecommunications carriers to be consulted prior to the commencement of works for any separate requirements they may have.
Mature size of the trees within the ground level setbacks – add unnecessary visual bulk and public safety from branches overhanging	The trees are considered to improve the streetscape and soften the built form of the development. The substantial landscaping has been proposed within the deep soil zones to provide improved amenity to

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
footpath, views, drainage (leaf litter), choice and positing of trees particularly in courtyard.	the development and street. The landscaping will not result in excessive overshadowing and will not impact on sightlines. Ongoing Condition 94 of the consent requires the landscaping to maintained to maturity with any trees that die to be replaced.
Dual key units misleading, unclear location of units	There are dual key units located on all levels of the residential flat building, for the purposes of assessment, Council has considered dual key units as two separate units. The number of dual key units on each level has been detailed on page 17 of the SEE.
Unable to see internal floor plans	In accordance with Clause 56 of the EP&A Regulations Council is only required to notify plans of the building that indicates its height and external configuration, as erected, in relation to the site on which it is to be erected. Internal floorplans are not provided on Council's website due to privacy and copyright. Plans are available for viewing at Council admin buildings only.
What conditions of consent will protect residents of adjoining properties from dust, any asbestos, fumes or other air-borne pollution during construction?	Condition 35 of the consent required the disposal of any asbestos materials to be in accordance with the requirements of Workcover NSW and AS 2601 - 2001 - The Demolition of Structures. Any other pollution from the construction of the development is covered by the Protection of the Environment Operations Act 1997.
Removal of demolition of building waste would be more efficient from near Fairport Avenue frontage. Neighbours do not want waste at their own boundaries. Further, unloading and storage of incoming building materials should be near the road frontages.	Prior to the issue of Construction Certificate condition 12 requires the provision of a plan of management to be certified for any works for the development that impact on any public roads and public land for the construction phase of the development. It is noted that any waste generated from the construction, deliveries and storage of materials are temporary during the time of construction.
The retaining walls in the eastern part of the site appear to reach at least 2m, with an associated drainage system within 1m of each wall (east, south). How will these significantly sized structures be maintained from within the site? The basement roof will be close below and beside them.	Retaining walls along the boundaries will generally remain the same as what is existing, some additional retaining is required in the eastern corner of the site around the communal open space up to approximately 0.3m. Drainage along the north eastern and south western boundary is proposed as overland flow around the building and into Council's stormwater system, there will be no underground stormwater drainage along the boundaries which will

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Submission	Comment
	be impeded by retaining walls or the basement carpark.

Submissions from Public Authorities

There were no referrals or submissions from any public authorities associated with the modified development.

Internal Consultation

The application has been referred to and reviewed by the following experts in council and is generally supported subject to conditions of consent.

Urban Design	Supported without conditions.
Engineering	Supported subject to modified conditions.
Engineering – Traffic and Transport	Supported subject to modified conditions including 24A .
Water and Sewer	Supported subject to original conditions including 4, 6 and 88 .
Waste Services	Modified conditions including 82 .
Contributions	Supported subject to modified condition 5 .

The Public Interest

The application was advertised for 21 days, in accordance with Wyong DCP 2013, Chapter 1.2 Notification of Development Proposals. During this period 25 submissions were received.

The majority of the objections related to a number of impacts resulting from the originally approved building. The proposed modification will improve the street presentation of the façade and landscaping to the streetscape. The development is substantially the same to that which was originally approved, and the modifications are not considered to result in adverse impacts to adjoining properties or exacerbate impacts resultant from the approved development.

Having regard for the planning controls applicable to the site and the merits of the proposed modification it is considered that the proposed modifications are reasonable and will provide an improved outcome for the development and surrounding locality and will not result in additional amenity impacts and it is therefore considered to be in the public interest.

Ecologically Sustainable Principles:

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

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The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the development application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts.

Other Matters for Consideration

Development Contribution Plan

The application falls under The Entrance District Section 7.11 Contributions Plan and the Shire Wide Section 7.11 Plan, however the Shire wide contributions do not apply as the Shire Wide Section 7.11 Plan was not in effect at the date of the original consent. The following contributions are applicable under The Entrance District Section 7.11 Contributions Plan:

- Open Space Land & Works
- Community Facilities Land & Works
- Roads

As the modification includes changes to the apartment mix the contributions have been updated base on the following apartment mix:

- 10 x 1 bedroom/studio units
- 38 x 2 bedroom units
- 8 x 3 bedroom units

Credits for 8 x 2 bedroom units and 3 x 3 bedroom units have been applied in accordance with the original consent for the serviced lots.

The total Section 7.11 contributions are \$526,945.14. The contributions are indexed by CPI quarterly and are required to be paid prior to the release of the Construction Certificate (**condition 5**).

3.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Water and Sewer Contributions

Water and sewer contributions are applicable to the development and a Section 307 Certificate issued under the *Water Management Act 2000* is required. Prior to the issue of a Section 307 Certificate, payment to Council of developer contributions is required. **Condition 6** was imposed on the original development consent requiring the payment of water and sewer contributions.

Conclusion

After consideration of the development against Sections 4.55(2) and 4.15 of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposed modification to development consent 1849/2005 is considered reasonable and warranted in this instance.

The proposed modification will result in substantially the same development for which consent was originally granted and before the consent as originally granted was modified. Accordingly, the proposed Section 4.55(2) is recommended for approval.

RECOMMENDATION:

That development consent 1849/2005 be modified in accordance with Attachment 1.

Attachments

1	Recommended Modified Conditions of Consent		D14813014
2	Development Plans	Provided Under Separate Cover	D14813336
3	Landscape Plans		D14813449
4	Original Approved Plans	Provided Under Separate Cover	D14815857
5	ADG Compliance Table		D14813466
6	Multiple Dwelling Residential Development Wyong DCP Comparison Table Comparison (DCP 2005 and DCP 2013)		D14813473
7	Public Development Plans	Provided Under Separate Cover	D14826321
8	Public Original Approved Plans	Provided Under Separate Cover	D14826518

Item No: 0.0

Title: Supplementary Report - DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application)

Central Coast
Local Planning Panel

Department: Environment and Planning

31 December 2022 Supplementary Local Planning Panel

Reference: DA/1849/2005/B - D15327792

Author: Rebecca Samways, Development Planner

Section Manager: Emily Goodworth, Section Manager Development Assessment North

Unit Manager: Andrew Roach, Unit Manager, Development Assessment

Executive: Alice Howe, Director Environment and Planning

Recommendation

- 1 That the additional information be considered in the Panel's determination of the application.**
- 2 That the Local Planning Panel approve the modifications to Development Application 1849/2005/B at Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571, 2-6 Fairport Ave & 56-48 Ocean Parade, THE ENTRANCE subject to the amendments detailed in the schedule attached to the report and having regard for the matters for consideration detailed in Section 4.15 and Section 4.55(2) of the Environmental Planning and Assessment Act 1979.**
- 3 That Council advise those who made written submissions of the Panel's decision.**
[Click here to enter text.](#)

Summary

A section 4.55(2) application has been received to modify a consent for a residential flat building (comprising 45 units) and demolition of existing structures. The application has been examined having regard to the matters for consideration detailed in Section 4.15 and Section 4.55 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements.

The Local Planning Panel considered the matter at its meeting of 23 September 2021. The matter was deferred at the meeting pending the submission of supplementary information regarding:

- a. Physical commencement
- b. Suitability of the proposed species and height, in consideration of potential view loss within the north eastern corner of the lot

0.0 Supplementary Report - DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Applicant	Planning Lab
Owner	Fincorp Pty Ltd
Application No	DA/1849/2005/B
Description of Land	Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571 2-6 Fairport Avenue & 46 – 48 Ocean Parade, The Entrance
Approved Development	Residential Flat Building comprising 45 units and Demolition of Existing Structures
Proposed modification	Increase in the number of units from 45 to 56, removal of level 3 basement carpark and reduction of carparking spaces from 84 to 72, internal reconfiguration of apartments, change of rooftop private open space to communal open space, increase in building height and external design changes
Site Area	3258m ²
Zoning	R3 Medium Density Residential
Existing Use	Multi dwelling housing/vacant lot
Employment Generation	Nil
Estimated Value	\$20,731,286

Precis:

Proposed Development	Modification of consent for a residential flat building and demolition of existing structures
Permissibility and Zoning	The site is zoned <i>R3 Medium Density Residential</i> under <i>Wyong Local Environmental Plan 2013</i> (WLEP). A residential flat building is permissible in the zone.
Relevant Legislation	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act) • <i>Environmental Planning & Assessment Regulation 2000</i> (EP&A Regulation) • <i>State Environmental Planning Policy No. 65</i> (SEPP 65) • Apartment Design Guide (ADG) • <i>State Environmental Planning Policy (Coastal Management) 2018</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> (BASIX) • <i>State Environmental Planning Policy No.55 – Remediation of Land</i> (SEPP 55) • <i>Wyong Local Environmental Plan 1991</i> • <i>Wyong Local Environmental Plan 2013</i> • <i>Draft Central Coast Local Environmental Plan 2018</i> • <i>Wyong Development Control Plan 2005</i> • <i>Wyong Development Control Plan 2013</i>

0.0 Supplementary Report - DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application) (contd)

Current Use	Multi dwelling housing/vacant lot
Integrated Development	No
Submissions	<ul style="list-style-type: none"> • 25 submissions original LPP report • 11 submissions latest notification period for supplementary report

Background

The Panel considered a Planning Report on the matter at its meeting on 23 September 2021 and resolved as follows:

- Panel Decision**
- 1 *That the Local Planning Panel defer this matter for electronic determination, pending provision of detailed evidence from the applicant within the next 28 days demonstrating the consent has physical commencement and therefore not lapsed.***
 - 2 *Matters to be addressed as part of the above include, but are not limited to:***
 - *Copy of the deposited plan of the plan of consolidation required.***
 - *Evidence from surveyor as to any physical work they undertook on site required.***
 - *Evidence that the demolition took place prior to the lapse of consent, including copies of receipts and dated aerial photos showing demolition before consent lapsed required.***
 - 3 *That Council's Landscape Officer review the proposed landscaping within the north eastern corner of the lot to confirm the suitability of the proposed species and height, in consideration of potential view loss issue raised by adjoining resident.***
 - 4 *Upon receipt of the additional material requested, that Council make this information available on their website and notify those who previously made submissions.***

- Reasons**
- 1 The applicant has not adequately demonstrated that the consent has physical commencement. In this regard the Panel**

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does not rely on the letter provided by Council dated 29 September 2009.

- 2 To minimise any adverse impacts on the amenity of adjoining residents.

Additional Information

In response to the outcome of the Panel meeting of 23 September 2021, the following additional information has been submitted:

20 October 2021:

- Received legal advice prepared by Mills Oakley, dated 19 October 2021 demonstrating physical commencement of the consent.

22 October 2021:

- Received amended landscape plans (dated 18 October 2021) and correspondence from the applicant's landscape architect (dated 12 October 2021) prepared by Narelle Sonter Botanica.

23 November 2021

- Received further legal advice prepared by Mills Oakley, dated 23 November 2021 in response to submissions (Attachment 2).

16 December 2021

- Received further legal advice prepared by Mills Oakley, dated 16 December 2021 to provide further information in relation to demolition on site.

RESPONSE TO PANEL DECISION

The applicant has addressed the decision of the Panel as follows:

- 1 *That the Local Planning Panel defer this matter for electronic determination, pending provision of detailed evidence from the applicant within the next 28 days demonstrating the consent has physical commencement and therefore not lapsed.***

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The applicant provided additional legal advice in relation to physical commencement within 28 days from the request of the Panel. Additional information was provided subsequent to the 28 days e.g., amended landscape plan and information from the landscape architect. It is also noted a GIPA request was lodged during this time.

2 *Matters to be addressed as part of the above include, but are not limited to:*

- ***Copy of the deposited plan of the plan of consolidation required.***
- ***Evidence from surveyor as to any physical work they undertook on site required.***
- ***Evidence that the demolition took place prior to the lapse of consent, including copies of receipts and dated aerial photos showing demolition before consent lapsed required.***

The applicant has submitted legal advice providing opinion that the consent has physically commenced. A copy of the applicant's legal advice is provided in **Attachment 1** and a summary provided below:

- *A development consent may be operational, even after its lapse date, if:*
 - *work is physically commenced before the lapse date;*
 - *that work is 'building, engineering or construction work';*
 - *that work relates to the work that is the subject of the development consent; and*
 - *that work is on the site.*
- *Demolition work was physically commenced on the site sometime between 3 June 2009 and 12 June 2009.*
- *Half of the demolition work was completed by or on 12 June 2009.*
- *This work was carried out before the lapse date of 19 June 2009.*
- *It is plain that the partial demolition of the existing dwellings on the site was 'building, engineering or construction work'.*
- *It is plain that the demolition of the existing structures was authorised and required by the development consent.*
- *The contemporaneous letter of the Council (issued in 2009) indicates that the demolition work was carried out in accordance with the development consent. No construction certificate was required for this work.*
- *The demolition plainly took place on the site.*
- *The development consent was physically commenced before its lapse date and now cannot lapse.*

The original consent was granted on 19 June 2006 and the notice of determination identified the nominated lapse date of the consent was 19 June 2008. On 26 September 2007 the development consent lapse date was extended by Council until 19 June 2009 in accordance

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with the provisions of (former) Section 95A of the *Environmental Planning and Assessment Act 1979*.

The following documents have been provided with the legal advice to demonstrate that physical commencement of the development consent occurred before the lapse date of 19 June 2009:

- A tax invoice from BFW Constructions Pty Ltd (BFW) dated 3 June 2009
- A tax invoice from BFW dated 12 June 2009
- A letter to the Council from 'DMPS' signed by Daniel McNamara, dated 23 June 2009. The letter states demolition of the existing dwellings has commenced and will soon be completed and refers to the receipts for demolition and two of the dwellings having been demolished.

The information also included the following Google Street View images of the site showing the demolition of the buildings.



Figure 1. Google Street View from Fairport Avenue in July 2008

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Figure 2. Google Street View from Fairport Avenue in July 2010

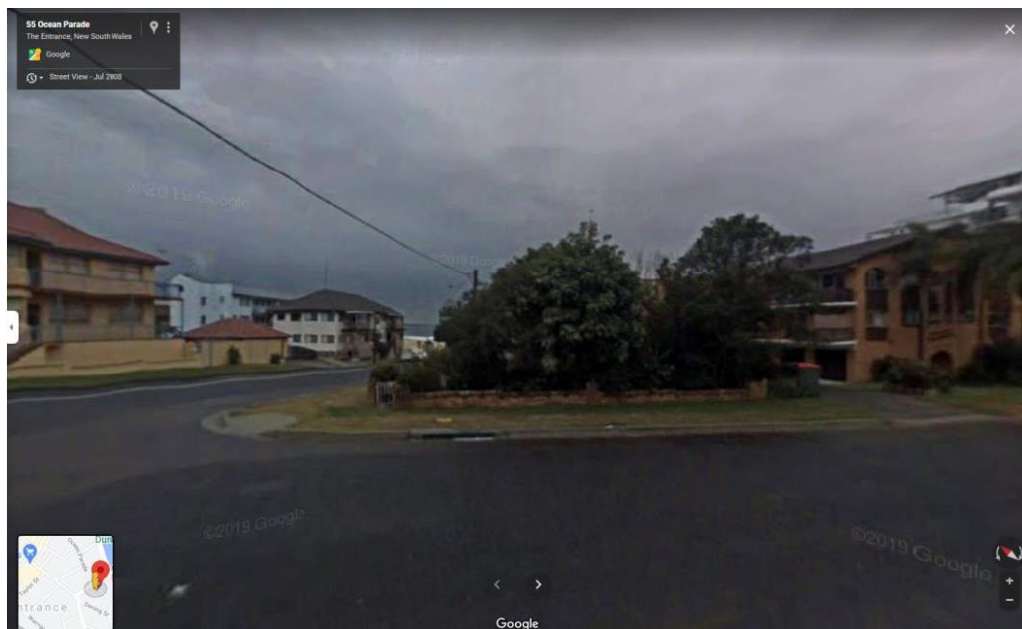


Figure 3. Google Street View from Ocean Parade in July 2008

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Figure 4. Google Street View from Ocean Parade in July 2010

Based on the tax invoices from BFW, the letter from DMPS and the Google Street Views the legal advice concludes the following:

2.6 *Based on the above, we conclude the following:*

- (a) *BFW was a contractor engaged to carry out the demolition of three dwellings.*
- (b) *These dwellings were located on the land that is the subject of the development consent.*
- (c) *BFW was engaged, on the payment of a deposit on 3 June 2009.*
- (d) *The demolition work was 50 per cent complete on 12 June 2009 (seven days before the lapse date).*

2.7 *In our opinion:*

- (a) *demolition work was physically commenced on the site sometime between 3 June 2009 and 12 June 2009;*
- (b) *half of the demolition work was completed by or on 12 June 2009; and*
- (c) *this work was carried out before the lapse date.*

The applicant's legal advice concluded that that the partial demolition of the existing dwellings on the site was 'building, engineering or construction work' for the purpose of former section 95(4) of the EP&A Act and that the demolition of the existing structures was authorised and required by the development consent and was carried out lawfully on the site.

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The applicant has provided further legal advice (**Attachment 3**) with regard to whether the demolition works have been carried out in accordance with the consent:

1. Partial demolition of an existing dwelling is capable of physically commencing a development consent

- 1.1 *The commencement of work is evidenced in the payment of the invoice issued by BFW for payment of '50% completion of [the] balance of [the] contract' dated 12 June 2021 (7 days before the lapsing date). This is consistent with half the labour involved in the demolition being completed.*
- 1.2 *Paragraph 2 of our letter dated 19 October 2021 outlines with sufficient detail that work was physically commenced before the lapse date (19 June 2009). This is evidenced by contemporaneous documentation, namely:*
 - (a) the invoice for demolition works dated 12 June 2021; and*
 - (b) the letter from 'DMPS' signed by the Daniel McNamara (the then proponent's town planner), dated 30 June 2009.*
- 1.3 *The **partial** demolition of an existing dwelling (as a step towards the construction of a new dwelling) has been held to be 'building, engineering or construction works': Sharp v Hunters Hill Council [2002] NSWLEC 27 at [35] and [40] and is capable of physically commencing a development consent.*
- 1.4 *In our view, it is plain that the **partial** demolition of the existing dwellings on the site was 'building, engineering or construction work' for the purpose of the former section 95(4) of the Environmental Planning and Assessment Act 1979 (**EP&A Act**).*

2. The development consent has been lawfully physically commenced

- 2.1 *For works to be regarded as physically commencing the consent, it is necessary for those works to be lawfully carried out: Iron Gates Developments v Richmond-Evans Environmental Society (1992) 81 LGERA 132. This means that it was necessary for the work to be carried out in accordance with the conditions of the development consent.*
- 2.2 *We have no reason to believe that the conditions of the development consent were not satisfied in the carrying out of the demolition work. Furthermore, on 29 September 2009 Mr Martin Johnson 'Manager Planning Legal and Policy' for the Council wrote to DMPS.*
- 2.3 *In that letter the Council officer said:*

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I confirm my earlier verbal advice, that based on preparatory works undertaken and having regard to current case law, physical comment in accordance with Section 95(4) has been established.

- 2.4 *This contemporaneous letter of the Council indicates that the demolition work was carried out in accordance with the development consent. A copy of this letter is enclosed.*

In short

- 3.1 *The level of information available, in our view, is typical of the extent of documentation that is generally available to establish historical physical commencement.*
- 3.2 *The consent authority should rely on:*
- (a) the contemporaneous invoice for works completed as issued by BFW Constructions Pty Ltd; and*
 - (b) the contemporaneous letter of the then proponent's town planner dated 23 June 2009 as evidence establishing physical commencement.*

Conditions 33, 34 and 35 of the consent have been imposed for the carrying out of demolition work and state:

- 33 *Building demolition work is to be carried out in accordance with the requirements/provisions of the AS 2601 - 2001 - The Demolition of Structures.*
- 34 *Prior to the demolition and / or removal of existing structures on site, all existing services are to be disconnected, sealed and made safe. The sewer and water service is to be disconnected by a licensed plumber and drainer. It is an offence to remove the water meter from the site. A Start Work Docket must be submitted to Council and Council's Plumbing and Drainage Inspector must certify that the works have been undertaken to the satisfaction of Council.*
- 35 *The disposal of any asbestos materials in accordance with the requirements of Workcover NSW and AS 2601 - 2001 - The Demolition of Structures.*

Condition 33 states the way the demolition must be carried out and in accordance with the relevant Australian Standards (relevant at the time of the granting of consent). No evidence was required to be provided to Council in this regard and it is anticipated BFW, who carried out the demolition, were aware of the requirements of AS 2601-2001, being a licensed building/construction company.

Condition 34 requires all existing services to be disconnected, sealed, and made safe and Council's Plumbing and Drainage Inspector must certify that the works have been undertaken to Council's satisfaction. A review of Council's records shows that Council's Plumbing and

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Drainage Inspector carried out an inspection on 22 July 2009 and was satisfied sewer had been capped correctly and by a licensed plumber. The inspection report relates to all properties associated with the development consent, that is, No.s 2 and 4 Fairport Avenue, No. 44 Ocean Parade and 46-48 Ocean Parade, The Entrance.

The inspection record does not indicate which specific property and demolition it relates to, noting the correspondence from DMPS dated 23 June 2009 states *"two of the dwellings have now been completely demolished, and with good weather, the final dwelling will be removed within the next few days..."*. A search of Council's records has not provided any further information, such as the dated certification from the licensed plumber who carried out the work. There is no definitive information to verify whether the inspection was carried out upon completion of the demolition of all dwelling houses associated with the consent.

The requirements of condition 35 are similar to that of condition 33, requiring the works to be carried out in accordance with the Australian Standards. It is considered BFW, being a licensed building/construction company, would have been aware of the requirements for disposal of asbestos materials.

Having regard for the details above it is evident that works were being undertaken in or around the lapse date, notwithstanding the absence of a photo of the subject site on the lapse date. There is no evidence that demolition did not occur and a letter from a reputable planning consultant has been provided (DMPS dated 23 June 2009) confirming demolition had occurred prior to the lapse date of the consent.

It can be assumed that in the review of the file and evidence relating to works carried out on site, and the subsequent issuing of the letter by Council dated 29 September 2009 confirming physical commencement, that the relevant staff were satisfied that commencement of the consent had taken place prior to the lapsing date. This point of view is formed on the basis that the letter contains the following words *"...based on preparatory works and having regard to current caselaw..."*.

The applicant's legal advice prepared by Mills Oakley, and the legal advice prepared by PJ Donellan that was provided as a public submission, was reviewed by Council's Legal Section. In this regard, Council's Legal Counsel agreed with the points made in the Mills Oakley advice in place of those in the PJ Donellan letter, that is, that the consent had not lapsed. They disagreed with PJ Donellan that a Construction Certificate needed to be obtained prior to commencement of any works, in this instance specifically demolition works.

Council's Legal Counsel highlights the need for the application to have prevented the consent from lapsing pursuant to conditions 33, 34 & 35 and any other conditions associated with demolition. It was also noted that assertions made in public submissions about first-hand memory of certain dates of demolition occurring/not occurring are not matters in which Council should be involved. Based on the information provided, there appears to be enough

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evidence to indicate that physical commencement by way of demolition (partial) had occurred as per the Mills Oakley letters, prior to the lapsing date.

3 *That Council's Landscape Officer review the proposed landscaping within the north eastern corner of the lot to confirm the suitability of the proposed species and height, in consideration of potential view loss issue raised by adjoining resident.*

The panel has requested that the landscape plans be reviewed by Council's Landscape Officer, however as Council does not have a Landscape Officer, Council requested the applicant provide additional information from a suitably qualified landscape professional, to confirm the suitability of the proposed species and height within the north eastern corner of the lot. In response to point 3 of the panel's decision, the applicant provided amended landscape plans, dated 18 October 2021 (**Attachment 4**) and correspondence from the applicant's landscape architect, Narelle Sonter from Botanica, dated 12 October 2021 (**Attachment 5**).

Botanica stated the following in response to the height of the proposed landscaping within the north eastern corner of the site:

The buildings surrounding the north-eastern corner of the site currently experience considerable existing view restrictions. Depending on the specific remaining views, such as a possible view corridor between 30 & 31 Marine Parade, the boundary screening species may present some view encroachment.

As is the convention in the preparation of landscape plans, the heights noted in the landscape plan may be generally the maximum possible heights that these tree species may achieve. The individual plants may achieve a lesser height of some 10-25% of that given, in any particular exposed coastal location, such as this site. The wind-swept environment tends to cause trees to have suppressed vertical growth.

*There are three *Eleocarpus reticulatus* and a *Banksia integrifolia* proposed in the north eastern corner of the site. The *Banksia integrifolia* often has a sparse and open canopy in exposed coastal situations, allowing filtered views to be retained. Despite the likely shorter mature form of both of these species, they do have the potential to obscure or partially obscure some existing views. In order to retain existing views from adjoining properties one or two of the *Eleocarpus* could be replaced with smaller shrub species. Alternatively, the preferred height of vegetation on the north eastern corner of the proposed development could become a condition of consent, so that the landscape plan could be amended to ensure retention of views, as required.*

Given the identified potential to impact views between 30 and 31 Marine Parade from 50-54 Ocean Parade, the applicant has submitted amended landscape plans and have replaced the Illawarra Flame Tree (mature height 16m), four Blueberry Ash trees (mature height 10m) and

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one Coastal Banksia (mature height 10m) with NSW Christmas Bush (mature height 3-5m), four Coastal Tea Trees (mature height 6m) and one Silver Banksia (mature height 2-4m). The amended landscape plan has reduced the maximum height of the planting in the north eastern corner of the site from 16m to a maximum of 6m.

The proposed amendments to the landscape plans will allow for a view corridor from 50-54 Ocean Parade compared to the original approved development, which had landscaping up to 10m in height in the north eastern corner of the site. Views from 50-54 Ocean Parade will be restricted on the ground level and level 1 compared to the original approved development, which restricted views at ground level, level 1 and level 2.

In addition to the further information regarding view loss from the landscaping, the applicant has also provided further information from Botanica addressing the suitability of the proposed rooftop landscape species having regard for the coastal environment and windy conditions. The following information has been provided in relation to rooftop landscaping:

In regards to the suitability of rooftop species, the tree species - Leptospermum laevigatum (common name Coastal Tea Tree) is prolific in coastal vegetation communities and adapts very well to high wind environments, with contained vertical growth and a form typically aligned with prevailing wind direction. It is highly suited to this location in planters, on the rooftop.

Again, one would anticipate a significantly reduced height for these trees given the restricted soil volume of the planters, and the exposed coastal conditions. The shrubs, grasses and groundcovers are all specifically coastal species with the exception of Dianella 'Little Rev' and Phormium tenax 'Purpureum', both of which are varieties of hardy plants with distributions across a diverse range of landscapes. Both of these species are common in gardens in exposed coastal locations.

All of the selected species are highly suitable to their coastal rooftop position. An automatic irrigation system is proposed to ensure adequate watering of all species, thereby compensating for the challenging conditions of a coastal rooftop location.

Although, the coastal tea trees are considered suitable for rooftop planting, to alleviate the concerns of objectors, the applicant has amended the rooftop landscape plan to remove all coastal tea trees, and replaced the species with lower species, 'miss muffed' and 'dwarf coast rosemary' which grow up to 1m and 0.5m in height respectively. All other species on the rooftop are considered suitable for the coastal and high wind environments.

4 Upon receipt of the additional material requested, that Council make this information available on their website and notify those who previously made submissions.

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The additional information was notified to those who previously made submissions from 28 October 2021 to 18 November 2021 and the information made available on Council's website.

During the notification period a total of 11 submissions were received.

A summary of the issues in the submissions in relation to the proposal from the latest notification period are detailed below.

Submission	Comment
Wind funnelling	The modified development will generally have the same building footprint. The only reduction in setbacks is on the ground floor where private open space courtyards are proposed which will not create wind funnelling. The balconies proposed on the south eastern façade are recessed and will not encroach further into the originally approved setback. As discussed in the LPP report dated 23 September 2021 it is considered that the generous building separation will not result in wind funnelling.
Cannot access documents online	The additional information regarding physical commencement and the landscaping was made available online from the beginning of the notification period and has remained available beyond the notification period for the information of interested parties.
Views over landscaping in communal open space in the north eastern corner of site.	The landscaping proposed within the north eastern corner originally had planting up to 16m. A condition of consent (condition 29A) was recommended when the application was originally reported to the LPP on 23 September 2021 restricting the maximum height of the landscaping in the north eastern corner to 10m which was consistent with the landscaping originally approved. The amended landscape plans have replaced the Illawarra Flame Tree (16m mature height) with NSW Christmas Bush (3-5m mature height) and four Blueberry Ash trees (10m mature height) along the eastern side boundary with four Coastal Tea Trees (6m mature height) and one coastal Banksia (10m mature height) in the north eastern corner with a Silver Banksia (2-4m mature height).

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	<p>The maximum height of the landscaping proposed in the north eastern corner of the site is now proposed to be 6m which is 4m lower than the landscaping originally approved within that part of the site. It is considered the amendment to the landscape plan to reduce the height of the planting is reasonable to provide maintain views to the north east between the buildings at 30 and 31 Marine Parade.</p>
<p>Height of development exceed Wyong LEP 2013 maximum permissible height.</p> <p>A maximum height of 18m was permissible when the application was originally approved and the building height was approved at 17.8m. In the amended DA the height is now 23.2m which is an increase of 5.4m (30%).</p>	<p>The application is for a section 4.55(2) modification to the original development consent granted which was approved under the provisions of Wyong LEP 1991 which provided a different height limit. As such a merit assessment has been undertaken and considered with regard to Section 4.55, in particular, whether the development is substantially the same to that which was originally granted development consent.</p> <p>The definition of building height under Wyong LEP 1991 was as follows: building height is the vertical distance from natural ground level at any point within a building to the top-most ceiling of the building directly above that point. WLEP 2013 defines building height as follows: building height (or height of building) means— in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.</p> <p>The difference being height was measured to the topmost ceiling under WLEP 1991 and it is now measured to the highest point of the building under Wyong LEP 2013. The approved building had a height measured to the ceiling of 17.8m and a height of 22.47m approved to the highest point of the building (shade structures on the rooftop).</p>

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	<p>The modified development has a building height of 23.7m measured to the highest point of the building (lift overrun) which is an increase in height of 1.23m. This matter was discussed in the assessment report that was considered by the Panel on 23 September 2021.</p>
<p>Consideration of the environmental impacts of carrying out the modified development compared to the originally approved development is also relevant to a modification.</p> <p>In terms of amenity impact, the rooftop terrace is likely to have an impact on the privacy and acoustic amenity of occupants of adjoining developments and the new balconies on the eastern corner of the building will impact the iconic views of sunsets, the bridge and ferris wheel.</p>	<p>Consideration of the environmental impacts of the carrying out of the modified development has been considered in the original report to the LPP dated 23 September 2021 and was found to be satisfactory.</p> <p>The increased density is not expected to result in any undue acoustic impacts. Given the approved development contained 5 rooftop private pools it is considered that the deletion of the pools and the provision of communal open space with BBQ facilities and seating will have no greater adverse acoustic impacts than those envisaged under the original application.</p> <p>The reconfiguration of the balconies on the eastern corner of the building on levels 1, 2 and 3 are within the existing approved building footprint.</p> <p>The level 4 and level 5 balconies on the eastern corner have been reconfigured and protrude slightly beyond the 9m approved setback but will be in line with the lower floors and the rest of the building along this property boundary adjacent to 30 Marine Parade.</p> <p>Views towards the bridge, ferris wheel and sunset were not provided for under the approved development. The modification does not change this.</p>
<p>The proposal is now for 56 dwellings instead of 45, with the consequent increased demand for car parking, yet the proposal is to decrease car parking spaces from 82 down to 74.</p>	<p>The original development provided in excess of the required parking spaces by 5 resident parking spaces and 2 visitor parking spaces. The proposed modifications have reduced the number of larger 3 bedroom apartments from 25 to 8 units while the number of 2 bedroom and 1 bedroom units have increased.</p> <p>The proposed modified apartment mix requires the provision of 68 resident parking spaces and 12 visitor</p>

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	<p>parking spaces to be provided. The proposed modification only includes the provision of 64 resident parking spaces and 10 visitor spaces. Furthermore, Council's Traffic Engineer has advised that parking space number 15 on basement level 1 and parking space number 1 on basement level 2 are required to be deleted to provide a turning area as they are at the end of blind aisles (new condition 24A). This will reduce the number of parking spaces provided to 62 resident parking spaces, which is a shortfall of 6 resident parking spaces and 2 visitor parking spaces.</p> <p>The proposed parking numbers will enable at least one space per unit to be provided and the shortfall in parking is minor (6 resident and 2 visitor spaces). It is considered that the parking proposed under this modification provides parking in an efficient manner that has little impact to neighbouring properties or the street. This issue was discussed in the LPP report that was considered by the Panel on 23 September 2021.</p>
Overshadowing	<p>The shadow diagrams indicate the minor increase in building height and greater articulation on the northern and south western façade will result in some additional overshadowing to adjoining properties. As discussed in the LPP report dated 23 September 2021, the original approved building overshadows the south eastern side of the adjoining property at 50-54 Ocean Parade. The overshadowing impacts resulting from the modified proposal are generally the same as that which was originally approved with some minor increases and decreases in overshadowing due to the modified roof structures and height.</p>
Physical commencement - The LPP requested detailed evidence from the applicant that the demolition of houses had commenced prior to the DA lapsing on 19 June 2009. The information supplied by the applicant is scant and questionable and certainly lacking in any detail.	<p>The applicant has provided legal advice and other information to demonstrate physical commencement of the development consent took place before the lapsing of the consent. This information has been provided to the Panel and discussed in the report to enable them to form an opinion on the matter.</p>

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<p>An ASIC Report as to affairs into the then applicant, Beach Views (NSW) Pty Ltd ACN 110 357 312 (the Company), made by Liquidator Bruce Gleeson for the period up to 26 June 2009 (Form 507), indicates at page 3 of 8 that as at 26 June 2009 the Company had an interest in the land at 2-4 Fairport Avenue and 46-48 Ocean Parade The Entrance but that it had "NIL" works in progress. This appears to indicate that no works were being undertaken on the site by the Company in the period up to 26 June 2009.</p>	<p>It is not clear what the 'works in progress' is referring to in the ASIC Report. The works in progress may have been referring to construction works relating to the erection of the development. This report is not definitive.</p> <p>It is noted that BFW, who undertook the demolition of the dwellings on site, do not form part of the debtors and accordingly, it could be assumed that the invoices for the demolition dated 3 June 2009 and 12 June 2009 had been paid for the works that had been undertaken (before the lapsing date of 19 June 2009).</p>
<p>A number of preconditions in the conditions of consent were required to be met before demolition could take place and there is no evidence that these preconditions had been met prior to 19 June 2009.</p> <p>By way of example, condition 2 required a Construction Certificate prior to commencement of any works and condition 7 required that a dilapidation report be provided prior to commencement of works.</p> <p>No evidence has been provided that conditions 33 to 35 of the development consent were met.</p> <p>Accordingly, even if the applicant can establish that demolition works had started by 19 June 2009 unless evidence is available that all the preconditions were met prior to the demolition works taking place, then the demolition works cannot form the basis of 'physical</p>	<p>Conditions 2 and 7 are conditions required to be met prior to the issue of a Construction Certificate. The Courts have held that demolition may be carried out without first obtaining a Construction Certificate (<i>Sharp v Hunters Hill Council</i> [2002] NSWLEC 27 at [58]-[62]; <i>Benedict Industries Pty Ltd v Minister for Planning</i>; <i>Liverpool City Council v Moorebank Recyclers Pty Ltd</i> [2016] NSWLEC 122 at [33] and [71]-[74].</p> <p>Whether conditions 33, 34 and 35 have been satisfied has been addressed previously in the report and it is considered that there is no reason to believe that the conditions of the development consent were not satisfied in the carrying out of the demolition work.</p> <p>Legal advice has been provided by the applicant which states that based on the information available, physical commencement has occurred. Council's own legal advice is satisfied there is enough information available to indicate physical commencement by way of demolition (partial).</p>

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commencement' within the meaning of the EPA Act and the 2005 consent has lapsed.	
Street planting size and scale additional bulk	The trees are considered to improve the streetscape and soften the built form of the development. Substantial landscaping has been proposed within the deep soil zones to provide improved amenity to the development and street.
In the LPP report Council stated that the only new balconies faced Ocean Parade. This is incorrect as they are at the back of the block facing Marine Parade.	<p>That is not correct. The assessment report did not state that "only" new balconies faced Ocean Parade. Notwithstanding, they are the only new balconies proposed under the modification. Some balconies have changed in size, but they are not new.</p> <p>Balconies were provided on all levels of the approved plans to the units on the north eastern corner of the building. The approved plans included various configurations to the balconies.</p> <p>The modified plans result in changes to the configuration of the balconies; however, they will be orientated towards the south-east and will not result in any additional privacy impacts to the north.</p> <p>The eastern side elevation also indicates profiled precast concrete panels is proposed along the side of the balconies orientating the balconies to the south-east and it is noted that all the balconies on all levels originally approved in the north eastern part of the site were either entirely or partially orientated towards the south east and as such will not result in any additional privacy impacts to the adjoining properties to the south east.</p>
Balconies outside approved building footprint	<p>The proposed modification is generally within the approved building footprint. There are some minor projections outside of the building footprint for articulation to the building façade, balconies and private open space courtyards to the ground floor units on the eastern side of the building.</p> <p>All the new upper- level balconies within the southern corner of the building will remain within the approved footprint. The reconfigured balconies on levels 3-5 in the north eastern corner of the</p>

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	building have been extended further north east to have the same setback as the approved footprint of the ground level. The extension of the balconies will maintain sufficient separation distance between the proposed development and the building at 30 Marine Parade and will not result in privacy impacts as profiled precast concrete panels is proposed along the side of the balconies facing 30 Marine Parade.
Potential for structural damage to adjoining buildings	<p>A condition of consent (condition 7) was imposed on the original development consent requiring the applicant to submit a dilapidation report for the adjoining properties to Council prior to the issue of a Construction Certificate. Condition 56 was also included in the consent requiring any damage not shown in the dilapidation report to be rectified prior to the issue of an Occupation Certificate.</p> <p>In addition to the dilapidation report conditions, condition 30 was imposed prior to the commencement of works to ensure the preservation and protection of buildings on adjoining allotments during excavation.</p> <p>The modified proposal would not involve the deletion of these conditions.</p>
No proposed completion date for construction potential disruption may be for months/years.	The timing for the completion of the construction is a matter for the developer and is not a planning consideration.
The Harriot building was constructed after the original development was approved and as such the impacts of the approved building have not been properly considered.	The approved building cannot be re-assessed under this application. The assessment of the current modification application can only assess the scope of works proposed under the modification and any impacts to adjoining properties that may result from the amendments proposed. However, while it is acknowledged the Harriot was not constructed at the time the original consent was granted in 2006, it should be noted that the consent was granted for The Harriot in 2002 and as such would have been considered in the granting of the original development consent of the subject development.
Non-compliance with current LEP and DCP	The original development consent was granted in 2006 and was approved under the provisions of Wyong LEP 1991 and Wyong DCP 2005. Since the

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	original approval Wyong LEP 1991 and Wyong DCP 2005 have been repealed and replaced by Wyong LEP 2013 and Wyong DCP 2013. A merits assessment of this modification has been undertaken accordingly.
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Modified conditions

The following modified conditions that were recommended in the report and attachments that were considered by the Panel on 23 September 2021, will need to be amended to reflect the revised plans as follows:

1 Proposed condition 29A -no longer required.

A new condition was recommended in the original LPP report (23 September 2021) to restrict the landscaping to maximum height of 10m to prevent any further impact to the views to that which was originally approved. Condition 29A was recommended to read as follows:

29A The landscape plan is to be amended to replace the Illawarra flame tree with an alternative species which grows to a mature height of up to 10 metres.

As the latest amended plans have replaced the species within the north eastern corner of the site with species with a lower mature height (up to 6m) condition 29A is no longer required and has been deleted from the recommended modified conditions of consent in **Attachment 7**.

2 Amend proposed condition 60

Condition 60 was recommended to be amended to reflect the modified landscape plans submitted with the application upon lodgement. As the proposed landscape plans has been revised on 18 October 2021, condition 60 is required to be amended to reflect the current landscape plans. Furthermore, as discussed above, condition 29A is no longer required and as such reference to condition 29A within this condition is to be deleted. Condition 60 has been updated in **Attachment 7** and is recommended to read as follows:

60 The provision of landscaping in accordance with the plans prepared by **Narelle Sonter, Botanica, dated 18/10/2021**, including the engagement of an approved landscape consultant and contractor to undertake the design and construction of the landscaping.

Written certification from a qualified landscape designer certifying that landscaping has been implemented in accordance with the landscape plan is

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to be provided to the Principal Certifier prior to issue of the Occupation Certificate.

3 Condition 94

Condition 94 was recommended to be amended to reflect the modified landscape plans and to include reference to condition 29A. As discussed above condition 29A is no longer required and as such reference to condition 29A is to be deleted. Condition 94 has been updated in **Attachment 7** and is recommended to read as follows:

- 94 The approved landscape design prepared by **Narelle Sonter, Botanica**, including the private front courtyards, is to be maintained to maturity with watering and mulch. Any trees that die are to be replaced.

Other Matters

Condition 2 which levied the payment of contributions was recommended to be updated in the original report to the Local Planning Panel on 23 September 2021. Since the application was reported to the Local Planning Panel, contribution rates have been indexed. Accordingly, condition 2 has been updated in the recommended modified conditions of consent in **Attachment 7**.

Conclusion

The applicant has submitted the additional information requested by the Panel to demonstrate the consent has not lapsed and that the proposed landscaping will be satisfactory regarding height, species, and location. The additional information was notified as per the request of the Panel.

This supplementary report and the previous report considered by the Panel on 23 September 2021 has been prepared and assessed against the matters for consideration of Sections 4.15 and 4.55 of the *Environmental Planning & Assessment Act 1979* and all relevant instruments, plans and policies. Information has been provided by a planning consultant confirming demolition works had been carried out on site prior to the lapsing date and there is no substantial evidence to the contrary to prove otherwise. In this regard it is considered that in the issuing of a letter in September 2009, confirming commencement of the consent, Council staff at the time had the necessary evidence before them that works had occurred on the site prior to the lapsing date and they were satisfied the development consent had commenced.

The potential constraints of the site have been assessed and it is considered that the site is suitable for the proposed modified development. Subject to the imposition of appropriate conditions, the proposed modifications are considered reasonable and therefore it is

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recommended that the Local Planning Panel approve the modifications to

DA/1849/2005/B in accordance with the recommended conditions of consent in **Attachment**

7.

Attachments

1	Physical commencement legal advice prepared by Mills Oakley, dated 19 October 2021	D15036682
2	Response to submissions legal advice prepared by Mills Oakley, dated 23 November 2021	D15036685
3	Further physical commencement legal advice prepared by Mills Oakley, dated 16 December 2021	D15036689
4	Amended landscape plans dated 18 October 2021	D15036695
5	Correspondence from Landscape Architect, Narelle Sonter Botanica, dated 12 October 2021	D15036704
6	Local Planning Panel minutes – agenda item 3.2 – 23 September 2021	D15036781
7	Updated recommended modified conditions of consent	D15037217

Attachment 1 - Recommended Modified conditions of consent

1. Modify description of land as follows:

~~Lots 16 and 17 DP 18810, Lot A DP 364571, Lot O SP 18493~~
~~Lot 200 DP 1140826, Lot B DP 364571 & Lot C DP 364571~~
~~Nos 2-4 Fairport Avenue & 44 46-48 Ocean Parade THE ENTRANCE~~

2. Modify description of proposal as follows:

~~Residential Flat Building comprising 45 56 units and Demolition of Existing Structures~~

3. Modify conditions 1, 5, 14, 15, 16, 17, 18, 19 and 20 as follows:

- 1 ~~The development taking place in accordance with the approved development plans reference number DA0501C, DA1101B as amended by DA1101C, DA1102B as amended by DA1102C, DA1201C as amended by DA1201D, DA1202C, DA1301C, DA1302C, DA1303C, DA1304C, DA1305D, DA1401D, DA1451C, DA1501C, DA1502C, DA1601B, DA1602C and DA1603A, DA1604A and DA1605B, except as modified by any conditions of this consent, and any amendments in red.~~

~~Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.~~

Architectural Plans by: RJS & CE Price

Drawing	Description	Issue	Date
S4.55 - 1100	Site Plan	C	7/04/2021
S4.55 - 1101	Basement 2 Floor Plan	C	7/04/2021
S4.55 - 1102	Basement 1 Floor Plan	B	23/02/2021
S4.55 - 1103	Ground Floor Plan	C	7/04/2021
S4.55 - 1104	Level 1-4 Floor Plans	C	7/04/2021
S4.55 - 1105	Level 5 Floor Plan	C	7/04/2021
S4.55 - 1106	Roof Plan	C	7/04/2021
S4.55 - 1201	Section	C	7/04/2021
S4.55 - 1301	Elevation - North	C	7/04/2021
S4.55 - 1302	Elevation - East	C	7/04/2021
S4.55 - 1303	Elevation - South	C	7/04/2021
S4.55 - 1304	Elevation - West	C	7/04/2021

- 5 ~~The payment to Council of contributions (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act and Council's Contribution Plan. Council's contributions are adjusted on the~~

~~first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.~~

Pursuant to Section 7.11 of the *Environmental Planning and Assessment Act 1979* pay to Council a total contribution amount of **\$534,814.47** that may require adjustment at the time of payment, in accordance with The Entrance District Development Contributions Plan with the applicable amounts as follows:

THE ENTRANCE/LONG JETTY ROADS	\$ 283,760.46
THE ENTRANCE/LONG JETTY OPEN SPACE LAND	\$ 12,326.40
THE ENTRANCE/LONG JETTY OPEN SPACE WORKS	\$ 88,993.95
THE ENTRANCE COMMUNITY FACILITIES LAND	\$ 58,004.70
THE ENTRANCE COMMUNITY FACILITIES WORKS	\$ 91,728.96
Total	\$ 534,814.47

The contributions amount must be indexed each quarter in accordance with the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician as outlined in the contributions plan.

Contact Council on 1300 463 954 for an up-to-date contribution payment amount.

Any Construction Certificate must not be issued until the developer has provided the Certifier with a copy of a receipt issued by Council that verifies that the contributions have been paid. A copy of this receipt must accompany the documents submitted by the certifying authority to Council under Clause 104/Clause 160(2) of the *Environmental Planning and Assessment Regulation 2000*.

A copy of the Contribution Plan may be inspected at the offices of Central Coast Council, 2 Hely Street Wyong or 49 Mann Street Gosford or on Council's website: [Development Contributions](#)

'Section 7.11 contributions may be satisfied by the value of works as part of a "Works in Kind" agreement with Council. Works in kind to be carried out shall be agreed to by Council in writing prior to the payment of the contributions and issue of a construction certificate (related to the works in kind). All such agreements shall be in accordance with Council's policies.'

- 14 The provision of a footpath and gutter crossing in accordance with Council's ~~Development Control Plan 2005 Chapter No 67 – Engineering Requirements for Development~~ current Civil Works Design Specification. The design plans must be approved by Council prior to the issue of a Construction Certificate.
- 15 The provision at no cost to Council of concrete footpaving for the full street frontage of the development in Ocean Parade and Fairport Avenue ~~and the connection to pram ramps at the roundabout intersection~~. The footpath design is to be ~~1.2~~ 1.5 metres wide and is to include a minimum 100mm concrete path with SL72 reinforcement and is to be constructed on 75mm compacted roadbase and on compacted subgrade. All other details are to be in accordance

with Council's ~~Development Control Plan 2005 Chapter No 67—Engineering Requirements for Development Civil Works Design Specification~~. The design plans must be approved by Council under the *Roads Act 1993* prior to issue of the Construction Certificate.

- 16 Design Plans to be submitted to Council for approval under the Roads Act need to include the relocation of the existing raised pedestrian crossing in Fairport Avenue at the front of the development, and in the vicinity of the proposed access to the development. All works associated with the relocation of this crossing including all design and construction related costs including restoration of road pavements and kerb and gutter, and extensions of footpaths to suit the relocated crossing will be at the full cost to the developer, and to Council's satisfaction. The design plans must be approved by Council and the Local Traffic Committee prior to the issue of a Construction Certificate, and prepared in accordance with Council's ~~Development Control Plan 2005 Chapter No 67—Engineering Requirements for Development Civil Works Design Specification~~.
- 17 The submission to and approval by Council of stormwater drainage details with water quality control facilities in accordance with Council's ~~Development Control Plan 2005 Chapter No 67—Engineering Requirements for Development Civil Works Design Specification~~ prior to issue of the Construction Certificate.
- 18 Stormwater drainage works discharging from the site into a public system or public land require approval from Council under Section 68 of the Local Government Act. The extent of work must be determined by Council prior to issue of a Construction Certificate. All works are to be designed and constructed in accordance with Council's ~~Development Control Plan 2005 Chapter No 67—Engineering Requirements for Development Civil Works Design Specification~~. Design plans must be approved by Council prior to issue of the Construction Certificate.
- 19 Stormwater generated from roofed areas is to be collected and stored for re-use within the development site for ~~landscaping, pools and car washing for~~ irrigation of landscaped areas and other non-potable purposes as required by BASIX. Details indicating the balance between the projected water usage and the capacity for collection are to be submitted to and approved by Council. A minimum storage of ~~25,000L~~ 23,000L will be required.
- 20 The applicant will be responsible for maintaining the flow conveyance of the existing 450mm Council stormwater pipeline within the development site via maintaining the existing pipeline or replacing it with an alternate pipeline. All works associated in satisfying this condition including all design and construction related costs including restoration of land, road pavements and kerb and gutter will be at the full cost to the developer, and to Council's satisfaction. The design plans must be approved by Council prior to the issue of a Construction Certificate, and prepared in accordance with Council's

~~Development Control Plan 2005 Chapter No 67 – Engineering Requirements for Development current Civil Works Design Specification.~~

4. Add new condition 24A as follows:

- 24A Turning areas are to be provided for all blind aisles on both basement levels 1 and 2. Carparking spaces identified as basement 1, number 15 and basement 2, number 1 are to be amended to provide turning areas for vehicles to manoeuvre and circulate in a forward direction.

5. Modify conditions 25 and 26 as follows:

- 25 All water and sewer services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's ~~Development Control Plan 2005 Chapter 67 – Engineering Requirements for Development~~ water and sewer specification and Council's Policy: Building Over and Adjacent to Sewer Mains. The design plans for the required services must be approved by Council prior to the issue of the Construction Certificate.
- 26 The developer will be fully responsible for the funding, design and relocation of the existing sewer line between MH A14/1 and MH A14/2. The design and construction of the sewer relocation are to be in accordance with Council's ~~Engineering Requirements for Development – Sewerage~~ Sewer Specifications. Design plans are to be submitted to Council for approval prior to the approval of the Construction Certificate.

6. Add new condition 27A as follows:

- 27A A suitably qualified acoustic consultant shall be engaged to provide recommendations on how to appropriately attenuate the temporary bin holding area so that any noise impact associated with the temporary storage of waste bins is adequately mitigated. The Construction Certificate plans shall detail the recommended attenuation measures and the holding area constructed accordingly.

7. Modify conditions 51 and 60 as follows:

- 51 To encourage the use of alternate transport modes, secure bicycle parking/storage must be provided to accommodate ~~15~~ 19 bicycles. The facility must be located in close proximity to the building entrances and be highly visible and well illuminated to minimise the likelihood of theft and vandalism. The installation and dimensions of the facility shall be in accordance with AS 2890.3-1993 – Parking Facilities – bicycle parking facilities.
- 60 The provision of landscaping in accordance with the plans prepared by Narelle Sonter Botanica dated 18/10/2021, including the engagement of an approved

landscape consultant and contractor to undertake the design and construction of the landscaping.

Written certification from a qualified landscape designer certifying that landscaping has been implemented in accordance with the landscape plan is to be provided to the Principal Certifier prior to issue of the Occupation Certificate.

8. Delete conditions 76, 77, 78 and 79 as follows:

Swimming Pools

76 Deleted

77 Deleted

78 Deleted

79 Deleted

9. Modify conditions 81, 83 and 86 as follows:

81 The provision of a minimum number of ~~70~~ 72 carparking spaces (with minimum dimensions of 5.5 metres x 2.5 metres) generally in accordance with the layout shown on the approved plans, amended in red and in accordance with Council's Development Control Plan 2005 Chapter No 61 - Carparking. The carparking spaces and any off-street loading and unloading area must be constructed, sealed, marked, drained and maintained in accordance with Council's ~~Development Control Plan 2005 Chapter No 67—Engineering Requirements for Development~~ Civil Works Design Specification. All work must be completed prior to occupation/use of the development.

83 The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's ~~Development Control Plan 2005 Chapter No 67—Engineering Requirements for Development~~ Civil Works Design and Construction Specification. All works must be approved by Council.

86 For safety, amenity and maintenance reasons, the waste storage area must be constructed to the following standards:

- Floors must be constructed of concrete, graded and drained to an approved drainage outlet connected to the sewer and finished to a smooth even trowelled surface;
- Walls must be constructed with solid impervious material and shall be cement rendered internally to a smooth even steel trowelled surface;
- All intersections between the walls and floors shall be coved with coving having a minimum radius of 25mm;

- All entry points into the room must be banded to prevent the escape of liquid waste. Bunding shall be for 110% of the likely liquid storage waste and constructed in such a manner that does not obstruct the removal of waste receptacles from the room or create a safety risk to users;
- Adequate ventilation shall be provided;
- Adequate lighting shall be provided;
- The ceiling must have a minimum height of 2.1m from floor level and be finished with a smooth faced non-absorbent material capable of being easily cleaned;
- Waste storage areas shall prevent the access of vermin;
- Waste receptacles used shall be compatible with Wyong Council's waste collection service;
- The door to the storage area shall be weatherproof and shall be openable from the inside at all times;
- Hot and cold water hose cocks shall be located inside or within close proximity to the waste storage areas to facilitate cleaning.
- A maximum 3% grade in the temporary bin holding area and waste truck servicing at the front of the temporary bin holding area.

10. Add new condition 87A and 93A as follows:

87A Prior to the release of any Occupation Certificate, a certificate of compliance, prepared by a suitably qualified acoustic consultant, must be submitted to Council certifying the attenuation measures recommended for the temporary bin holding area have been implemented.

93A The waste bins are to be moved to the temporary bin holding area no earlier than the day before waste collection and are to be moved back to the basement waste storage room no later than the day of waste collection.

11. Modify conditions 94 as follows:

Original condition 94:

94 The approved landscape design prepared by Narelle Sonter Botanica, including the private front courtyards, is to be maintained to maturity with watering and mulch. Any trees that die are to be replaced.

12. Add new condition 95 as follows:

95 Furniture on the rooftop communal open space is to be safely secured and/or stored during high wind events to prevent the furniture from being blown off the building.