



Development Application

**Hizan Holding P/L & DL Gynge
at 3 - 5 Fingal Street
Brunswick Heads
being Lots 1 & 2 DP 112944**

Demolition of Existing Structures, Tree Removal and
Proposed Mixed Use Development Comprising
Ground Floor Commercial and Carparking
and 13 Apartments Above

PLANNERS NORTH, October 2025

COMPLIANCE AND USAGE STATEMENT

This Development Application has been prepared and submitted under Part 4 of the *Environmental Planning and Assessment Act 1979* by:

Preparation

Name: Kate Singleton
Company: PLANNERS NORTH
Address: 6 Porter Street, Byron Bay, Bundjalung Country NSW, 2481
In respect of: Demolition of Existing Structures, Tree Removal and Proposed Mixed Use Development

Application

Proponent: Hizan Holdings P/L & DL Gyngell
Address: c/ - PLANNERS NORTH
6 Porter Street, Byron Bay, Bundjalung Country NSW, 2481
Land to be developed: Lots 1 & 2 DP112944, 3-5 Fingal Street Brunswick Heads
Proposed development: Demolition of Existing Structures, Tree Removal and Proposed Mixed Use Development
Environmental Assessment: Statement of Environmental Effects

Certificate

I certify that I have prepared the content of this Development Application and to the best of my knowledge:

- it is in accordance with the Act and Regulations, and
- it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

Notice

The plans to this document were prepared for the exclusive use of the proponent and are not to be used for any other purpose or by any other person or corporation. PLANNERS NORTH accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for purposes other than the proposed development.

Plans accompanying this document may not be reproduced, stored or transmitted in any form unless this note is included.

PLANNERS NORTH declares that it does not have, nor expects to have, a beneficial interest in the subject project. Nor does it have any reportable political donations within the meaning of Section 10.4 of the Act to declare.

No extract of text from this document may be reproduced, stored or transmitted in any form without the prior consent of PLANNERS NORTH.



Kate Singleton RPIA
PARTNERSHIP PRINCIPAL



ABN 56 291 496 553
6 Porter Street,
Byron Bay NSW 2481
T: 1300 66 00 87



Ref: K_2005.4919
Date: October 2025

EXECUTIVE SUMMARY

i

PLANNERS NORTH has been engaged by Hizan Holdings Pty Ltd and DL Gyngell in respect to the preparation of a Statement of Environmental Effects in relation to a proposed mixed use development at 3-5 Fingal Street, Brunswick Heads, Lots 1 & 2 DP112944. The proposal involves the demolition of the existing structures, tree removal and construction of a mixed used development comprising ground floor commercial, at-grade car parking and 13 units above.

The proposal provides for the demolition of the existing commercial building and residential dwellings and the removal of existing landscaping vegetation. Ground floor commercial premises front Fingal Street and Balun Lane. Car parking for a total of 42 vehicles is proposed, and a loading bay is provided. The proposal includes a ground level through site connection linking Fingal Street and Balun Lane. The upper levels of the building provide for 13 apartments, comprising 5 x 2 bedroom apartments and 8 x 3 bedroom apartments.

The building has been designed to provide a high level of amenity for residents in terms of open space provision, solar access and ventilation whilst also incorporating a design that will contribute to the existing streetscape of both Fingal Street and Balun Lane. As detailed in this submission, the proposal seeks approval for a variation in relation to the building height and floor space ratio (FSR) provisions of Byron Local Environmental Plan 2014 (BLEP14). As detailed in the accompanying Clause 4.6 variations, the proposal is considered to satisfy the underlying objectives of these provisions and provide for a building which is appropriate and consistent with existing surrounding development and the desired future character of the Brunswick Heads town centre.



Artist view of proposed development – Fingal Street.

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

ii

TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1	Background	1
1.2	Structure of Report and its Scope	1
1.3	Consultation	1
1.4	Specialist Technical Advice	1
1.5	Further Information	2
2.	THE SITE AND ITS CONTEXT	4
2.1	Cadastral Description	4
2.2	Site Context	4
2.3	Site Analysis	4
3.	THE DEVELOPMENT PROPOSAL	6
3.1	Site Planning Objectives	6
3.2	General Description of proposal	6
3.3	Statistical Description of proposal	7
3.4	Ancillary Approvals	8
4.	STATUTORY AND POLICY PLANNING	10
4.1	Statutory Considerations	10
4.1.1	Deemed Environmental Planning Instruments	10
4.1.2	Local Environmental Plans	10
4.1.3	Development Control Plans	21
4.1.4	State Environmental Planning Policies	49
4.1.5	Certified Draft Plans	60
4.1.6	Specific Environmental Planning & Assessment Act Requirements	60
4.1.7	Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994	60
4.1.8	Integrated Development Considerations	60
4.2	Contribution Plans	60
4.3	Local Policy Controls	61
4.4	State Government Policy	61
4.5	Ancillary Legislation	61
5.	ENVIRONMENTAL INTERACTIONS	62
5.1	Context and Setting	62
5.2	Design	62
5.3	Amenity	63
5.4	Landscaping and open space	63
5.5	Traffic and Parking	63
5.6	Energy	63
5.7	Cultural Considerations	63
5.8	Services	64
5.9	Hazards	64
5.10	Stormwater	64
5.11	Construction Considerations	64
6.	CONCLUSION	65
	REFERENCES	66

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

iii

LIST OF PLANS

Plan 1.1	Site Locality Plan _____	3
Plan 2.1	The Site _____	5
Plan 3.1	Development Proposal _____	9

LIST OF TABLES

Table 3.1	Land Use Budget _____	7
Table 3.2	Commercial Floor Area Table _____	7
Table 3.3	Floor Plan Residential _____	8

LIST OF APPENDICES

APPENDIX A	Clause 4.6 Variation Height of Buildings	A1
APPENDIX B	Clause 4.6 Variation Floor Space Ratio	B1
APPENDIX C	Apartment Design Guide Assessment	C1

1. INTRODUCTION

This section of the report identifies the nature of client instructions, relevant background information and the structure of the report.

1.1 BACKGROUND

PLANNERS NORTH has been engaged by Hizan Holdings P/L & DL Gyngell to provide Town Planning advice with respect to the preparation and lodgement of a development application with Byron Shire Council in regard to land described as Lots 1 & 2 DP112944.

Plan 1.1 illustrates a site locality plan identifying the subject land.

1.2 STRUCTURE OF REPORT AND ITS SCOPE

Section 2 of this report describes the physical characteristics of the subject land and its planning context. Section 3 describes in detail the development proposal. Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (the Act), Section 4 sets out an examination of the statutory and policy planning status relating to the land, with particular regard to the development proposal described in Section 3. Section 5 looks at the environmental interactions of the proposal, particularly as specified by Section 4.15(1)(b) and (c) of the Act. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project considering the planning controls applying to the land, land use needs in the locality and matters set out for consideration in Section 4.15(1)(e).

1.3 CONSULTATION

Prelodgement discussions were held with Byron Shire Council officers. In addition to this, as the proposal provides for more than 10 dwellings, the site is identified as Community Significant Development in accordance with Byron Shire Councils' Community Participation Plan. Pre lodgement community consultation was undertaken in accordance with the requirements of the Community Participation Plan and Byron Development Control Plan 2014



Existing three storey building to the immediate west, at 7 Fingal Street.

(BDCP14) Part A 13.4. A report detailing the consultation process and outcomes has been prepared by Lanie Loughlin Community Engagement and accompanies this submission.

1.4 SPECIALIST TECHNICAL ADVICE

Specialist advice was sought from:

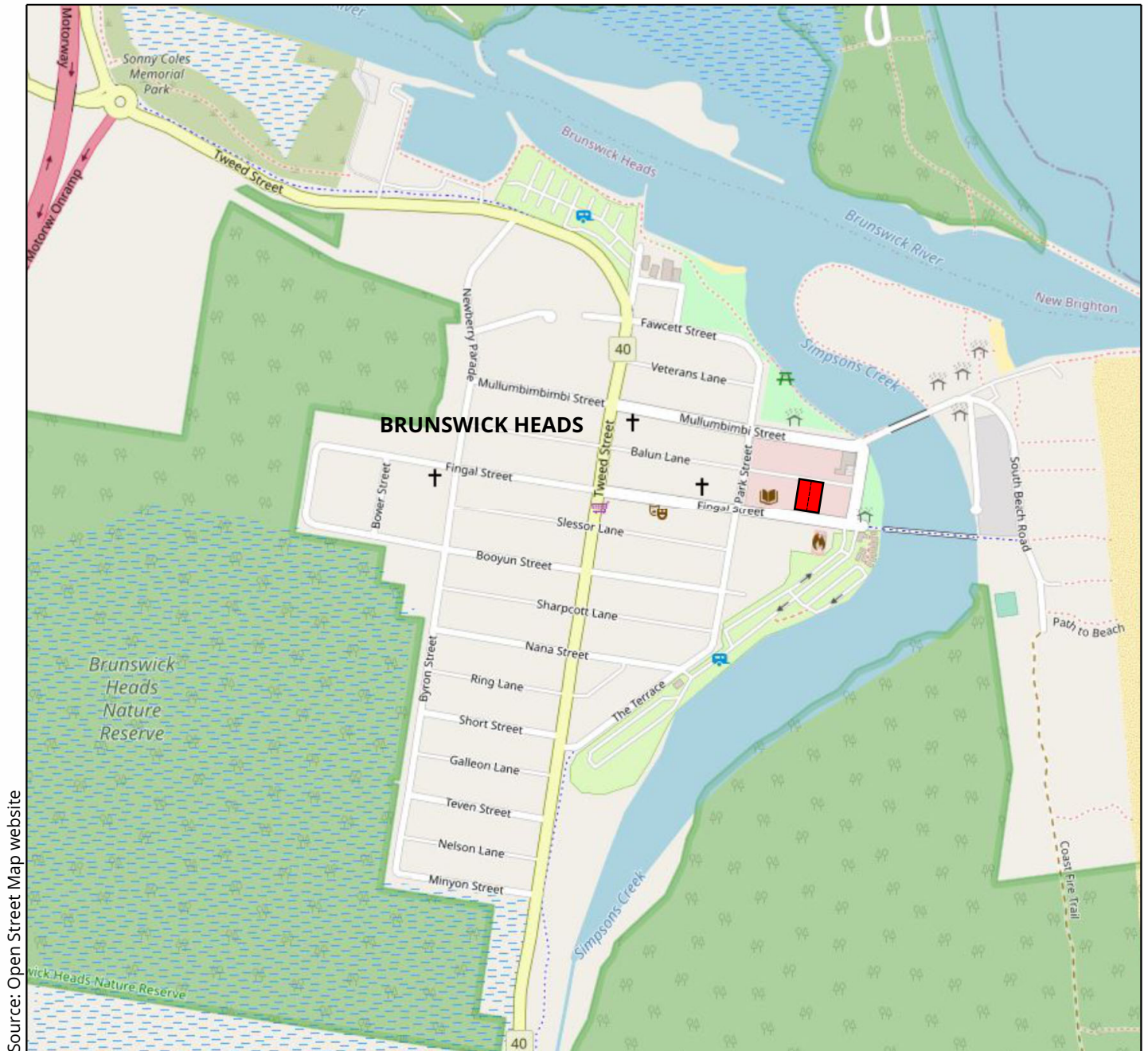
- Architecture - CHROFI
- Traffic Impact Assessment – Genesis Traffic
- Community Consultation – Lanie Loughlin Community Engagement
- Preliminary Site Investigation – HMC Environmental Consulting
- Access – Lindsay Perry Access
- BASIX/Section J – AGA Consultants
- National Construction Code – Jensen Hughes
- Geotech – OB Geotechnics
- Waste – Modus Engineering
- Quantity Surveying – Mitchell Brandtman
- Flooding – Stephens Consulting Engineers
- Stormwater – BG & E
- Services - Neuron

This advice is embodied in this Statement of Environmental Effects and the reports accompany the submission of the development application.

1.5 FURTHER INFORMATION

Should Council require any additional information or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with **Kate Singleton** prior to the determination of this application.


MIXED USE DEVELOPMENT
3 - 5 FINGAL STREET BRUNSWICK HEADS



Source: Open Street Map website



Legend

 Subject site

Plan 1.1
LOCALITY
PLAN

2. THE SITE AND ITS CONTEXT

This section of the report identifies the subject site and describes its environmental planning context.

2.1 CADASTRAL DESCRIPTION

The subject site, as illustrated in **Plan 2.1**, is described in Real Property terms as 3-5 Fingal Street, Brunswick Heads Lots 1 & 2 DP112944. The site has an area of 2024m² and is rectangular in shape.

2.2 SITE CONTEXT

The site is located within the Brunswick Heads town centre and adjoins existing mixed use commercial and residential development to the east and west, Hotel Brunswick to the north and the Brunswick Heads Police Station and Fire Station lie to the south. The site has 40.23 metres frontage to Fingal Street to the south and 40.2 metres to Balun Lane to the north.

2.3 SITE ANALYSIS

Lot 1 DP112944 contains an existing one and two storey residential development containing 3 x 2 bedroom units and 1 x 1 bedroom unit. The site also contains garages at the rear access via Balun Lane.



The rear car park and garages at 3 Fingal Street and existing three storey development at 1 Fingal Street.

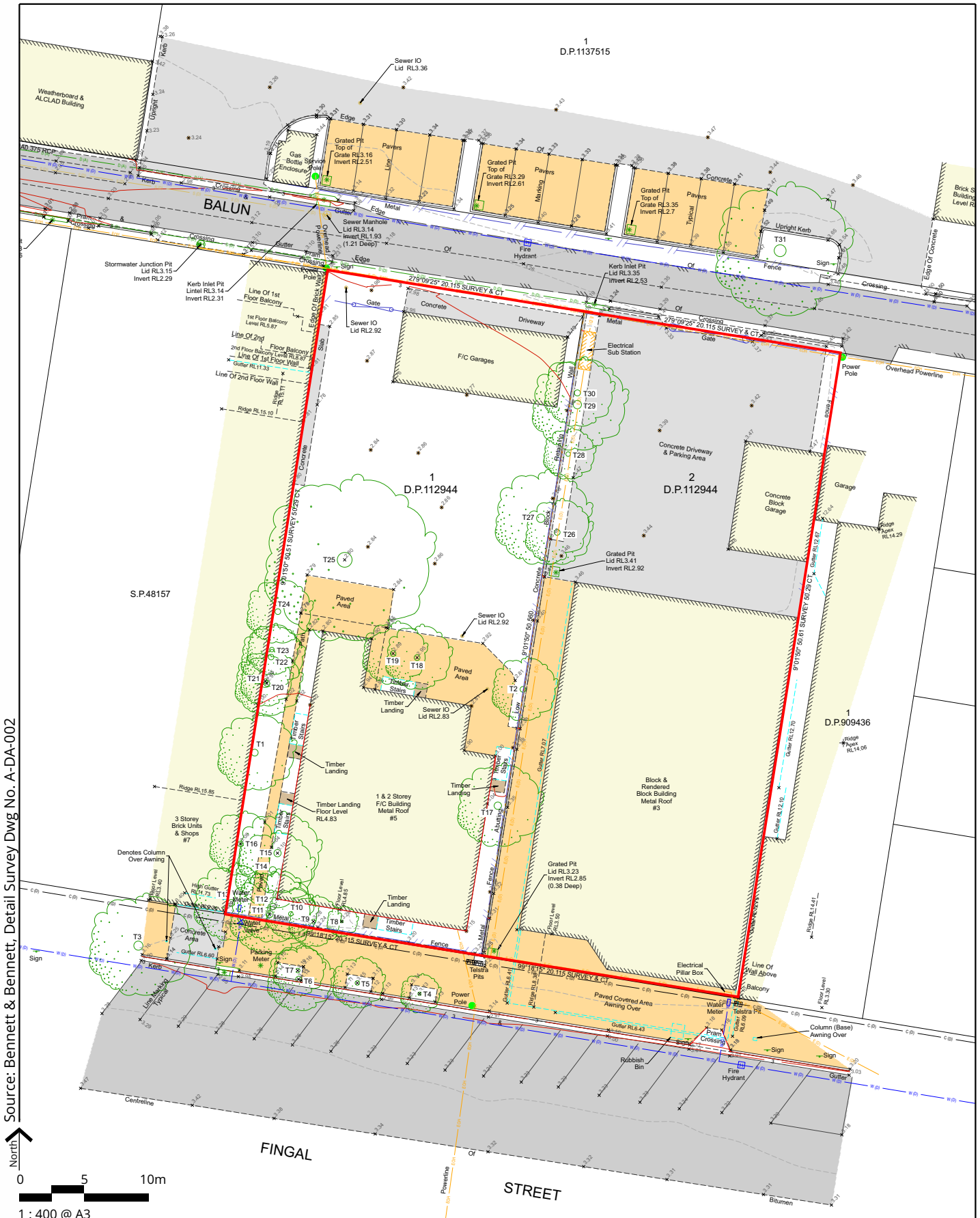


Development to the immediate west at 7 Fingal Street.

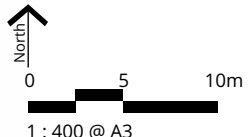
Lot 2 DP112944 contains a rendered block building presently occupied by Centrelink with a block garage and car parking at the rear off Balun Lane.

The site contains existing trees primarily comprising Palms which are proposed to be removed. A Tuckeroo, Eucalypt, Melaleuca, Pandanus, Poinciana and Grevilleas are also proposed to be removed. Existing vegetation along the western boundary and adjoining 7 Fingal Street will be retained.

MIXED USE DEVELOPMENT
3 - 5 FINGAL STREET BRUNSWICK HEADS



Source: Bennett & Bennett, Detail Survey Dwg No. A-DA-002



Legend
 Subject site

Plan 2.1
SITE PLAN

3. THE DEVELOPMENT PROPOSAL

This section of the report defines the site planning objectives utilised in schematic design. Further, this section describes the project by way of text, mapping and statistical information.

3.1 SITE PLANNING OBJECTIVES

The primary objective of this proposal is to create a mixed use commercial and shop top housing development with a high level of design excellence that contributes to the Brunswick Heads town centre.

For the purposes of project design criteria the following site planning objectives have been adopted:

- To ensure the building contributes to the Fingal Street and Balun Lane streetscapes.
- To create an active ground plane and provide refuge for pedestrians from the elements.
- To ensure the building design appropriately responds to existing development on adjacent sites.
- To carry out the development in a manner which optimises the amenity of residents while preserving the amenity of surrounding neighbours.
- To provide for private open space and implement an appropriate planting scheme to the ground plane and apartment terraces.
- To ensure adequate provision for bicycle parking, car parking and loading is made and the proposal does not adversely impact on the existing local street network.
- To ensure the building adopts appropriate energy and water and waste minimisation.
- Ensure the development does not impact on items of early European or Aboriginal significance.
- To provide for public utilities to service the needs of the proposed development.
- Review potential site planning hazards with respect to Acid Sulfate Soils and flooding.



Existing residential dwellings 5 Fingal Street.

- Ensure the quality and quantity of stormwater exiting the site is not adversely affected by the proposed development and that existing drainage patterns are not materially altered.
- Ensure construction works are appropriately managed to minimise site erosion and maintain the current quality of water exiting the site.

3.2 GENERAL DESCRIPTION OF PROPOSAL

The Development Consent is sought to demolish the existing buildings on the site, undertake tree removal and construct a mixed use development comprising ground floor commercial and shop top housing above.

The development is described as follows:

Ground Floor:

Commercial development comprising 4 tenancies fronting Fingal Street and 1 tenancy fronting Balun Lane.

At-grade car parking for 42 vehicles

Loading Bay and ancillary services including electrical substation, waste rooms and fire pumps etc.

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

First Floor:

First floor and upper level containing 8 x 3 bedroom and 5 x 2 bedroom apartments each over two levels.

A publicly accessible site through link is proposed connecting Fingal Street to Balun Lane. This link will provide for connectivity between key areas of the town centre and be secured outside the hours of operation of the commercial premises.

Development Consent is also sought for ancillary signage for the commercial premises and residential entry.

**3.3 STATISTICAL DESCRIPTION
OF PROPOSAL**

Key site planning data applicable to Council's assessment of the development application is tabulated below in **Tables 3.1** and **3.2**. This information is, of course, subject to final survey, detailed engineering design and Council's conditions of consent.

TABLE 3.1 LAND USE BUDGET

Land Use	Area (m²)
Site Area	2024
Residential floor area	1667
Commercial floor area	339
Total floor area	2044
Floor Space Ratio	1.01:1
Landscaped Area	195
Building Height	10.3

Parking	Area	Spaces
Commercial 1 per 20m ²	339	17
Residential (2 per 3 bed, 1 per 2 bed)		
8 x 3 bed		16
5 x 2 bed		5
1 visitor per 4 dwelling		4
Total required		42
Total proposed		42

Note:

TABLE 3.2 COMMERCIAL FLOOR AREA TABLE

Land Use	Area (m²)
Retail	
Retail commercial 01	91
Retail commercial 02	48
Retail commercial 03	48
Food & bev/commercial 04	107
Retail commercial 05	40

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

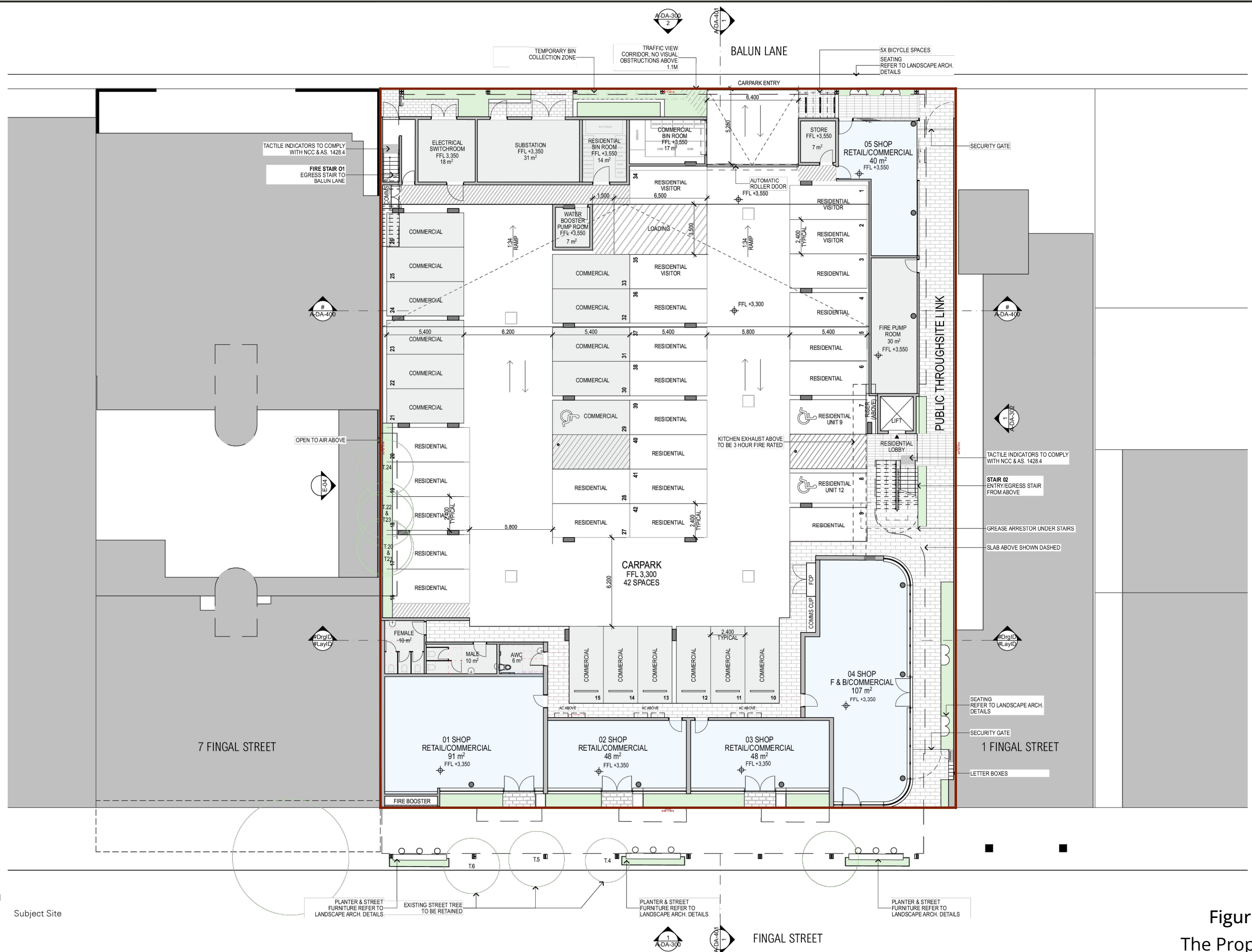
8

TABLE 3.3 FLOOR PLAN RESIDENTIAL

Apartment	No. of Bedrooms	Level	Floor plan area (m ²)	Terrace 1 (m ²)	Terrace 2 (m ²)	Total Private Open Space (m ²)
1	3	First floor	84	20	8	
		Upper level	50	8	-	
		Total	134	28	8	
2	2	First floor	59	22	13	
		Upper level	49	7	-	
		Total	108	29	13	
3	2	First floor	59	22	13	
		Upper level	49	7	-	
		Total	108	29	13	
4	2	First floor	59	22	13	
		Upper level	49	7	-	
		Total	108	29	13	
5	2	First floor	59	22	13	
		Upper level	49	7	-	
		Total	108	29	13	
6	2	First floor	59	22	13	
		Upper level	49	7	-	
		Total	108	29	13	
7	3	First floor	83	25	8	
		Upper level	50	8	-	
		Total	133	33	8	
8	3	First floor	80	20	6	
		Upper level	49	3	-	
		Total	129	23	6	
9 Adaptable	3	First floor	86	20	11	
		Upper level	49	3	-	
		Total	135	23	11	
10	3	First floor	80	20	14	
		Upper level	49	3	-	
		Total	129	23	14	
11	3	First floor	80	20	14	
		Upper level	49	3	-	
		Total	129	23	14	
12 Adaptable	3	First floor	86	20	11	
		Upper level	49	3	-	
		Total	135	23	11	
13	3	First floor	80	20	6	
		Upper level	49	3	-	
		Total	129	23	6	

3.4 ANCILLARY APPROVALS

There are no ancillary approvals sought from Council.



Legend
 Subject Site

Figure 3.1
The Proposal
 3 - 5 Fingal Street, Brunswick Heads

Source: Drawing A-DA-200 (Revision 05) Dated 16/9/25 // Project 210220 - CHROFI Architects

4. STATUTORY AND POLICY PLANNING

Section 4.1 documents the range of planning controls applicable in the subject case pursuant to Section 4.15 (1)(a) of the Act and tabulates the effect of these instruments in the circumstances of the development proposal described at Section 3. Section 4.2 examines policy adopted by Council or other authority applicable in the subject matter which, whilst relevant, are not controls within the meaning of Section 4.15(1)(a).

4.1 STATUTORY CONSIDERATIONS

Pursuant to the Environmental Planning & Assessment Act, 1979, a number of statutes are potentially applicable to any single development proposal. This section reviews the range of instruments and notes their application in terms of the subject development application proposal.

4.1.1 DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS

No deemed environmental planning instruments apply to the subject land.

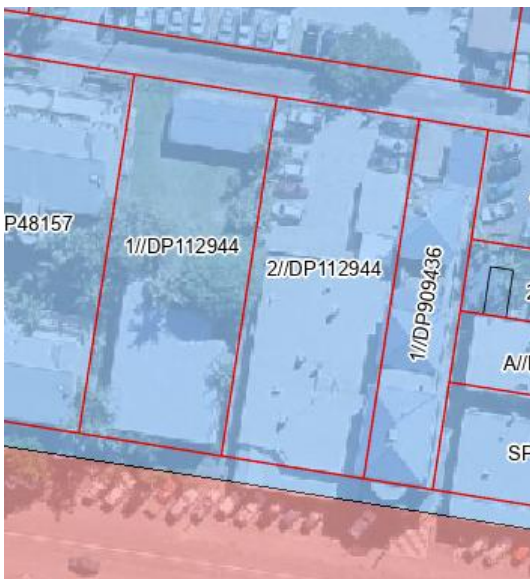
4.1.2 LOCAL ENVIRONMENTAL PLANS


Name: Byron Local Environmental Plan 2014, (BLEP14)

Application in Subject Case:

Zone: The land is zoned E1 Local Centre

Zoning Map



Legend  E1 Local Centre

Permissibility: The proposed mixed use development is permissible with Council's consent.

Concurrence: No concurrence is required for the proposed development.

Advertising: Advertising of this development is not required under BLEP14.

Arrangements: Prior to granting of the development consent, arrangements in relation to public art are required to be in place. The proponent seeks to offer to enter into a Voluntary Planning Agreement in relation to the provision of public art and the payment of a monetary contribution.

Special Provisions Applicable: The following provisions of the BLEP14 are applicable to Council's consideration of the subject proposal:

Clause 2.3- Zone Objectives and Land Use Table:

2.3 Zone objectives and Land Use Table

(1) The Land Use Table at the end of this Part specifies for each zone—

- (a) the objectives for development, and
- (b) development that may be carried out without development consent, and
- (c) development that may be carried out only with development consent, and
- (d) development that is prohibited.

(2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

(3) In the Land Use Table at the end of this Part—

(a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and

(b) a reference to a type of building or other thing does not include (despite any definition in this

Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.

(4) This clause is subject to the other provisions of this Plan.

The objectives of the relevant zone are set out below.

Zone E1 Local Centre

1 Objectives of zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To maximise public transport patronage and encourage walking and cycling.

2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation facilities (indoor); Respite day care centres; Service stations; Shop top housing; Tank-based aquaculture; Veterinary hospitals; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Research stations; Residential accommodation; Rural industries; Sewerage systems; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies

Comment:

The proposed development is permissible with consent and consistent with the zone objectives. The proposal will provide for a range of uses to serve the needs of the people who live in, work and visit Brunswick Heads. The proposal will contribute to employment opportunities and economic growth. The provision of 13 residential apartments will contribute to a vibrant and active local centre. The proposal provides for non-residential land uses on the ground floor. The provision of bicycle parking and a through site link seek to encourage walking and cycling.

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


12 Use of certain land in Zone E1

(1) This clause applies to land in Zone E1 identified as "Area 1" on the [Additional Permitted Uses Map](#).

(2) Development for the purposes of tourist and visitor accommodation is permitted with development consent.

Additional Permitted Uses Map



Legend:  Additional Permitted Uses

Comment:

The proposal does not seek consent for tourist and visitor accommodation.

2.7 Demolition requires development consent

The demolition of a building or work may be carried out only with development consent.

Note—

If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Plan or [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#), as exempt development, the Act enables it to be carried out without development consent.

Comment:

Development consent is sought for the demolition of the existing buildings.

4.3 Height of buildings

(1) The objectives of this clause are as follows—

(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,

(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,

(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

Height of Buildings Map



Legend:  9m

Comment:

The building has a maximum height of 10.3 metres, exceeding the maximum building height permitted by 1.3 metres. The component of the building exceeding the height comprises part of the upper level and the pitched roof form. It is submitted that the building height is consistent with adjacent development and the

setting back of the upper level reduces the perception of the building height from the street level and surrounds. A variation in accordance with Clause 4.6 of BLEP14 accompanies the application.

4.4 Floor space ratio

Floor Space Ratio Map



Legend:  0.75:1

- (1) The objectives of this clause are as follows—
- (a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,
 - (b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,
 - (c) to provide floor space in employment and mixed use zones adequate for the foreseeable future,
 - (d) to regulate density of development and generation of vehicular and pedestrian traffic,
 - (e) to set out maximum floor space ratios for dual occupancy in certain areas.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).
- (2A) (Repealed)

Comment:

The proposed development seeks consent for a floor space ratio of 1.01:1, exceeding the permissible floor space of 0.75:1. A Clause 4.6 variation accompanies the subject application. It is submitted that the provision of residential accommodation within the existing town centre in the form and scale proposed warrants support for the requested variation.

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows—
- (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.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- Note—**
- The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) The consent authority must keep a record of its assessment carried out under subclause (3).
- (5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 6.11.

Comment:

As noted above the proposed development seeks to vary the building height and floor space ratio controls provided in Clauses 4.3 and 4.4 of BLEP14. The clause 4.6 variations are provided at **Appendix A** and **B** to this report.

5.10 Heritage conservation

Local Heritage Map



Legend: Local Heritage - General

Note—

Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the [Heritage Map](#) as well as being described in Schedule 5.

(1) Objectives The objectives of this clause are as follows—

(a) to conserve the environmental heritage of Byron,

(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,

(c) to conserve archaeological sites,

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

(2) Requirement for consent Development consent is required for any of the following—

(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—

(i) a heritage item,

(ii) an Aboriginal object,

(iii) a building, work, relic or tree within a heritage conservation area,

(b) altering a heritage item that is a building by making structural changes to its interior or by

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

15



The rear of the site to right of picture and number 1 Fingal Street to left of picture as viewed from Balun Lane.

making changes to anything inside the item that is specified in Schedule 5 in relation to the item,

(c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,

(d) disturbing or excavating an Aboriginal place of heritage significance,

(e) erecting a building on land—

(i) on which a heritage item is located or that is within a heritage conservation area, or

(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,

(f) subdividing land—

(i) on which a heritage item is located or that is within a heritage conservation area, or

(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

(3) When consent not required However, development consent under this clause is not required if—

(a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development—

(i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site

or a building, work, relic, tree or place within the heritage conservation area, and

(ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or

(b) the development is in a cemetery or burial ground and the proposed development—

(i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and

(ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or

(c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or

(d) the development is exempt development.

(4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment The consent authority may, before granting consent to any development—

(a) on land on which a heritage item is located, or

(b) on land that is within a heritage conservation area, or

(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans The consent authority may require, after considering

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

16

the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) Archaeological sites The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the [Heritage Act 1977](#) applies)—

(a) notify the Heritage Council of its intention to grant consent, and

(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.



The rear car park and garages at 3 Fingal Street and existing three storey development at 1 Fingal Street adjacent to the site.

(8) Aboriginal places of heritage significance The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—

(a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and

(b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

(9) Demolition of nominated State heritage items The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item—

(a) notify the Heritage Council about the application, and

(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) Conservation incentives The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—

(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and

(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and

(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and

(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and

(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

Comment:

The subject site is located to the south of the Hotel Brunswick and to the east of the Brunswick Heads Primary School which are both identified as Local Items. The design, scale and relationship of the proposed development in relation to these nearby items is not considered to warrant a heritage assessment report. The proposed development is consistent with the bulk and scale of existing surrounding development and is not likely to impact on the items or their setting. In relation to the Hotel Brunswick it is noted that the rear

of the site has been substantially altered and the proposal will not impact on this Item or its setting.

5.21 Flood planning

Flood Information Map - North Byon 2020
100yr 2100 CC Hazard



Legend:  Low

(1) The objectives of this clause are as follows—

(a) to minimise the flood risk to life and property associated with the use of land,

(b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,

(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,

(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

(a) is compatible with the flood function and behaviour on the land, and

(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the

potential flood affectation of other development or properties, and

(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

(d) incorporates appropriate measures to manage risk to life in the event of a flood, and

(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

(a) the impact of the development on projected changes to flood behaviour as a result of climate change,

(b) the intended design and scale of buildings resulting from the development,

(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood

(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.

(5) In this clause—

Considering Flooding in Land Use Planning Guideline means the Considering Flooding in Land Use Planning Guideline published on the Department's website on 14 July 2021.

flood planning area has the same meaning as it has in the Flood Risk Management Manual.

Flood Risk Management Manual means the Flood Risk Management Manual, ISBN 978-1-923076-17-4, published by the NSW Government in June 2023.

Comment:

An assessment in relation to flooding has been prepared by Stephens Consulting Engineers and accompanies the application. The report indicates the flood planning levels provided by Councils' Flood Information Certificate indicate RL 3.6m AHD for the 2050 flood planning level and RL 3.71m AHD for the 2100 flood planning level. The report recommends the building incorporates flood compatible materials below the 2050 flood planning level and notes that the residential floor level is set well above the minimum requirement for the 2100 flood planning level.

6.1 Acid sulfate soils

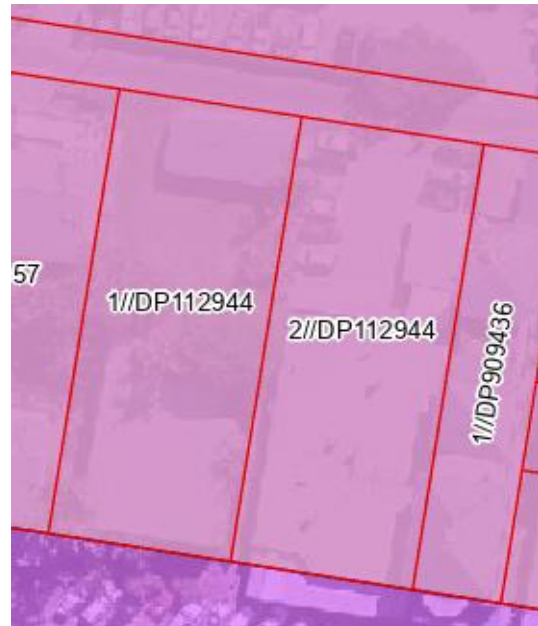
(1) *The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*

(2) *Development consent is required for the carrying out of works described in the table to this subclause on land shown on the [Acid Sulfate Soils Map](#) as being of the class specified for those works.*

Class Works

- 1 Any works.
- 2 Works below the natural ground surface.
Works by which the watertable is likely to be lowered.
- 3 Works more than 1 metre below the natural ground surface.
Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
- 4 Works more than 2 metres below the natural ground surface.
Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
- 5 Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height 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.

Acid Sulfate Soils Map



Legend:  Class 4

(3) *Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*

(4) *Despite subclause (2), development consent is not required under this clause for the carrying out of works if—*

(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 works, and*

(b) *the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

(5) *Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power)—*

(a) *emergency work, being the repair or replacement of the works of the public authority,*

required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,

(b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),

(c) minor work, being work that costs less than \$20,000 (other than drainage work).

(6) Despite subclause (2), development consent is not required under this clause to carry out any works if—

(a) the works involve the disturbance of less than 1 tonne of soil, and

(b) the works are not likely to lower the watertable.

(7) Despite subclause (2), development consent is not required under this clause for the carrying out of works for the purpose of agriculture if—

(a) a production area entitlement is in force in respect of the land when the works are carried out, and

(b) the works are carried out in accordance with a drainage management plan, and

(c) the works are not carried out in respect of a major drain identified on the [Acid Sulfate Soils Map](#), and

(d) the works are not carried out on land identified as “coastal wetlands” on the Coastal Wetlands and Littoral Rainforests Area Map, within the meaning of [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#), Chapter 2.

(8) In this clause—

drainage management plan means an irrigation and drainage management plan that—

(a) is prepared in accordance with the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005), and

(b) is endorsed by the Sugar Milling Co-operative as being appropriate for the land.

NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005) means the guidelines approved by the Director-General of the

Department of Infrastructure, Planning and Natural Resources on 25 May 2005.

production area entitlement means a contractual arrangement between the Sugar Milling Co-operative and a grower member of that co-operative for the production of sugar cane for milling.

Sugar Milling Co-operative means the New South Wales Sugar Milling Co-operative Limited or its successor.

Note—

The NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005) is available on the Department of Planning and Infrastructure’s website.

Comment:

The site is identified as Class 4 potential Acid Sulfate Soils. Works are not located more than 2 metres below the natural ground surface and are unlikely to result in the lowering of the watertable more than 2 metres below the natural ground surface. At-grade car parking is proposed.

6.2 Earthworks

(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

(2) Development consent is required for earthworks unless the earthworks are exempt development under this Plan or another applicable environmental planning instrument.

(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,

(b) the effect of the development on the likely future use or redevelopment of the land,

(c) the quality of the fill or the soil to be excavated, or both,

- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Note—

The [National Parks and Wildlife Act 1974](#), particularly section 86, deals with harming Aboriginal objects.

Comment:

The subject application seeks consent for earthworks associated with the demolition and construction of the proposed development.



The rear of the site to right of picture and number 1 Fingal Street to left of picture as viewed from Balun Lane.

6.6 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any 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.

Comment:

The proposed development is able to be adequately serviced in terms of water supply, electricity, the disposal and management of sewage and stormwater drainage. A Stormwater Concept Plan has been prepared by BG & E.

As detailed in the Traffic Impact Assessment prepared by Genesis Traffic, adequate vehicular access is proposed for the subject development.

6.17 Affordable housing in employment, mixed use and residential zones

(1) The objectives of this clause are as follows—

- (a) to increase the supply of affordable housing,
- (b) to provide accommodation to support a diverse residential population inclusive of all income groups in Byron,
- (c) to ensure a housing mix and tenure choice including affordable housing,
- (d) to ensure affordable housing is—
 - (i) identified by the Council as in demand, and
 - (ii) located close to transport and services appropriate to the intended households.

(2) This clause applies to land in the following zones—

- (a1) Zone R1 General Residential,
- (a) Zone R2 Low Density Residential,
- (b) Zone R3 Medium Density Residential,
- (c) Zone E1 Local Centre,
- (d) Zone MU1 Mixed Use.

(3) Development consent must not be granted for the purposes of residential accommodation on, or to the subdivision of, land to which this clause applies unless the consent authority has considered the need for—

- (a) providing, maintaining or retaining affordable housing, and
- (b) imposing conditions relating to providing, maintaining or retaining affordable housing including—
 - (i) imposing covenants, and

(ii) the registration of restrictions on users.

Comment: The proposal provides for diversity of housing within the town centre location, providing for a mix of 2 and 3 bedroom apartments.

4.1.3 DEVELOPMENT CONTROL PLANS

The following development control plan provisions apply to the subject application.

Name: Byron Development Control Plan 2014] (BDCP14

Application in Subject Case:

This DCP (Name: Byron Development Control Plan 2014 (BDCP14)

Applicable components of Council's Development Control Plan are set out below.

	Provisions	Compliance
	Part A Preliminary.	
A14.5	Community Consultation Prior to Development Application Lodgement	Community consultation has been undertaken in accordance with the requirements of Part A and Councils' Community Participation Plan. A separate report accompanies the application prepared by Lanie Loughlin Community Engagement
	For all developments considered to be community significant development , consultation with the community is required prior to the lodgement of the development application. Development applications for community significant development must meet the minimum requirements for pre-lodgement community consultation. Evidence that this consultation has occurred is required to be submitted with the development application. These requirements are detailed within Byron Community Participation Plan	.
B1	Biodiversity	The proposal provides for the removal of a number of landscape species on the site. Some palms adjoining the western boundary will be retained to provide for a greater level of amenity for the adjacent property at no. 7 Fingal Street. A landscaping plan proposes to provide for appropriate landscaping within the town centre environment.

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

22

	Provisions	Compliance
	Part A Preliminary.	
B4	Traffic planning Vehicle Parking Circulation and Acces	
B4.2	Development Controls	
B4.2.1	Traffic Impact	A Traffic Impact Assessment has been prepared by Genesis Consulting and accompanies the application. As detailed in that report, the proposed development provides for adequately designed access, car parking and loading. The proposal generates a requirement for a total of 42 car parking spaces. 42 car parking spaces are provided onsite.
B5	Providing for Cycling	The proposal provides for 5 spaces which meets the DCP requirement.
B7	Mosquitoes and Biting Midges	Appropriate screening will be provided in accordance with the DCP requirements.
B8	Waste Management	A Demolition and Construction Waste Management Plan has been prepared by Modus Transport and Traffic Engineering addressing the provisions of Chapter B8. An Operational Waste Management Plan has been prepared by Modus Transport and Traffic Engineering. As detailed in the report, the proposal provides for a refuse room adjacent to Balun Lane.
B9	Landscaping	A landscape package has been prepared by Conzept Landscape Architects and accompanies the development application.
B10	Signage	Proposed signage is included in the Architectural Plan Set.

Chater B11 Planning for Crime Prevention

	Provisions	Compliance
B11.1	Introduction	
	<p>The former Department of Urban Affairs and Planning (now NSW Department of Planning and Infrastructure) in April 2001 published <i>“Crime Prevention and the Assessment of Development Applications – Guidelines under Section 79C of the Environmental Planning and Assessment Act 1979”</i>. The Guidelines recognise the principles of Crime Prevention Through Environmental Design (CPTED), and establish two levels of assessment of crime risk for consideration of Development Applications:</p> <ol style="list-style-type: none"> 1. A formal Crime Risk Assessment is required for any development that, in the Council’s opinion, is likely to create a risk of crime. 2. CPTED principles must be considered in the assessment of all Development Applications. <p>The Department of Planning’s CPTED initiatives are implemented in conjunction with the NSW Police Force’s Safer by Design program.</p>	
B11.1.1	Aims of this Chapter	
	<ol style="list-style-type: none"> 1. To ensure that all development plays a role in enhancing the safety of our communities. 2. To reduce the vulnerability of our community to crime through good urban design. 3. To require developers to work with the community and the NSW Police Force to create a safer environment and be active in practical crime prevention. 	
B11.1.2	Application of this Chapter	
	This Chapter applies to all development on land subject to Byron LEP 2014.	
B11.2	Development Controls	
B11.2.1	Development that Requires a Formal Crime Risk Assessment	
	Objectives	
	<ol style="list-style-type: none"> 1. <i>To specify those developments that must be accompanied by a formal Crime Risk Assessment prepared in accordance with NSW Police Force Safer by Design guidelines.</i> 2. <i>To promote community safety and crime prevention in Byron Shire through the development process.</i> 	
	Performance Criteria	
	There are no Performance Criteria for this item	
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. Council will expect a formal Crime Risk Assessment for the following types of development: <ol style="list-style-type: none"> a) new or refurbished shopping centres or transport interchanges; or b) residential developments or subdivisions comprising more than 20 dwellings or 20 lots; 	The proposed development provides for a total of 13 dwellings and it is submitted that the ancillary car parking

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

24

	Provisions	Compliance
		does not comprise a “carpark” as it is ancillary to the proposed mixed use development. On this basis it is submitted that the proposal does not trigger the requirement for a formal Crime Risk Assessment.
	c) any subdivision that creates pedestrian egress from the end of a cul-de-sac to another public road, public reserve or the like; or	
	d) car parks with more than 20 spaces; or	
	e) any commercial premises involving the construction or alteration of basement car parking; or	
	f) development or redevelopment of a mall or other public place;	
	g) health services facilities, nightclubs, pubs, registered clubs, restricted premises, sex services premises, small bars; and	
	h) other developments that, in the Council's opinion, are likely to create a risk of crime.	
	2. Development Applications for the proposals listed in 1. above must be accompanied by a formal Crime Risk Assessment prepared by or on behalf of the applicant in accordance with NSW Police Force guidelines. The Crime Risk Assessment shall:	
	a) assess the crime risk characteristics of the area	
	b) make provision in the design process to minimise crime risk; and	
	c) address the CPTED principles as they apply to the proposed development.	
B11.2.2	Applying CPTED where Crime Risk Assessment is not required	
	Objectives	
	<ol style="list-style-type: none"> 1. <i>To promote community safety and crime prevention in Byron Shire through the development process.</i> 2. <i>To ensure that all Development Applications address the principles of Crime Prevention Through Environmental Design and deliver optimum community safety through the design process.</i> 3. <i>To specify community safety design principles that must be addressed in the assessment of all Development Applications that do not require a formal Crime Risk Assessment.</i> 	
	Performance Criteria	
	<ol style="list-style-type: none"> 1. Designing for safe environments is an essential and integral part of the initial design process for all development. Two issues in particular that must be addressed through urban design are: 	The proposal has been designed to provide a safe environment and the proposed through site link and carpark will be secured outside the hours of operation of the commercial premises.

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

25

	Provisions	Compliance
	<p>a) increasing the public's sense of safety when using streets and other public spaces which, in turn, may lead to increasing public use and safety in numbers; and</p>	<p>The proposal has been designed to provide an attractive pedestrian thoroughfare which will operate during daylight hours and it is anticipated that this will be well utilised.</p>
	<p>b) discouraging the potential for crime, including breaking into buildings and damaging property, through a combination of obvious security measures and other more subtle deterrents.</p>	<p>The combination of obvious security measures and the creation of an active pedestrian environment seek to discourage the potential for crime.</p>
	<p>2. Council will consider the CPTED principles where relevant in assessing all Development Applications. Statements of Environmental Effects accompanying all Development Applications must include a comprehensive assessment of the CPTED principles that are relevant to the proposed development.</p>	<p>Whilst the proposal does not trigger a formal CPTED assessment, these principles inform the proposed development.</p>
	<p>3. The four CPTED principles that must be addressed in the assessment of Development Applications to minimise the opportunity for crime are:</p> <ul style="list-style-type: none"> a) surveillance; b) access control; c) territorial reinforcement; d) space management. 	<p>The proposed development provides for surveillance, access control, territorial reinforcement and space management. As indicated on the plans accompanying the application casual surveillance will be provided by the residents of the apartments which front both Fingal Street and Balun Lane as well as the ground floor commercial tenancies. The through site access will be controlled and pedestrians will not be able to access this area outside the hours of operation of the commercial tenancies. The car parking area will also be secured.</p>
	<p>4. Guidelines for application of those principles include the following:</p>	
	<p>a) <u>Surveillance</u> Providing opportunities for effective surveillance, both natural and technical, can reduce the attractiveness of crime targets. Good surveillance means that people can see what others are doing. People feel safe in public areas when they can easily see and interact with others. Would-be offenders are often deterred from committing crime in areas with high levels of surveillance. Casual surveillance from homes, businesses and public streets is often a very effective means of deterring antisocial behaviour.</p>	<p>Surveillance is provided via the ground floor commercial tenancies and the residential apartments above. Car parking spaces will be appropriately lit and secured at nighttime. The proposed landscaping will contribute to the building whilst not providing opportunities for</p>

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

	Provisions	Compliance
	<p>Well designed lighting can markedly improve night time surveillance. Solar and low wattage technology has made lighting an effective and affordable investment. Toughened glass lamps or shields may be required in higher risk areas and are essential where human scale lighting is used in public areas.</p> <p>Achieving continuous lighting of public spaces is not always feasible. In those cases it may be appropriate to identify popular routes along which lighting is concentrated, in association with other measures such as signage, opportunities for casual surveillance, clear sightlines, paving, straight routes and appropriate landscaping.</p> <p>Some ways of promoting deterrence through surveillance include:</p> <ul style="list-style-type: none"> i) ensure clear sightlines between public and private places; ii) provide effective lighting of public places; iii) design landscaping that makes places attractive, but does not provide offenders with a place to hide or entrap victims. 	<p>offenders to conceal themselves.</p>
	<p>b) <u>Access control</u></p> <p>Physical and symbolic barriers can be used to attract, channel or restrict the movement of people. They minimise opportunities for crime and increase the effort required to commit crime.</p> <p>By making it clear where people are permitted to go or not go, it becomes difficult boundary markers and confusing spatial definition make it easy for criminals to make excuses for being in restricted areas. However, care needs to be taken to ensure that the barriers are not tall or hostile, creating the effect of a compound.</p> <p>Effective access control can be achieved by creating:</p> <ul style="list-style-type: none"> i) landscapes and physical locations that channel and group pedestrians into activity areas; ii) public spaces which attract, rather than discourage people from gathering; iii) restricted access to internal areas or high-risk areas (like car parks or other rarely visited areas). This is often achieved through the use of physical barriers. 	<p>The pedestrian thoroughfare will be open during the operation of the commercial premises but will be restricted outside operation hours as will the car park.</p>
	<p>c) <u>Territorial reinforcement</u></p> <p>Community ownership of public space sends positive signals. People often feel comfortable in, and are more likely to visit places that feel owned and cared for. Well-used places also reduce opportunities for crime and increase risk to criminals.</p> <p>If people feel that they have some ownership of public space, they are more likely to gather and to enjoy that space. Community ownership also increases the likelihood that people who witness crime will respond by quickly reporting it or by attempting to prevent it. Territorial reinforcement can be achieved through:</p> <ul style="list-style-type: none"> i) design that encourages people to gather in public space and to feel some responsibility for its use and condition; ii) design with clear transitions and boundaries between public and private space; iii) clear design cues on who is to use space and what it is to be used for. Care is needed to ensure that territorial 	<p>The proposed relationship of the building to the adjacent public domain seeks to create an area which will be well used and will encourage interaction. The premises will be maintained and managed to a high standard.</p>

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

27

	Provisions	Compliance
	<p>reinforcement is not achieved by turning public spaces into pseudo private spaces, through gates and enclosures.</p> <p>d) <u>Space management</u> Popular public space is often attractive, well maintained and well used space. Linked to the principle of territorial reinforcement, space management ensures that space is appropriately utilised and well cared for. Space management strategies include activity coordination, site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out pedestrian and car park lighting and the removal or refurbishment of decayed physical elements. Encouraging a range of complementary land use activities that takes into account public activity in particular areas can be an effective means of discouraging antisocial behaviour.</p>	<p>The proposed design seeks to incorporate elements to encourage people to utilise the space including seating in the vicinity of the through site connection and retail premises fronting the street. Appropriate lighting will be incorporated.</p>
	Prescriptive Measures	
	There are no Prescriptive Measures.	
B11.2.3	CPTED Design Opportunities	
	Objectives	
	<i>1. To provide some examples of design opportunities to improve community safety in the development process.</i>	
	Performance Criteria	
	Some opportunities for increasing people's safety and security through implementation of CPTED principles in the design process include:	
	<p>1. <u>Surveillance</u> a) orientate building frontages and entrances towards a public street and avoid screens, high walls, carports and landscaping that would obscure direct views to public areas;</p>	Buildings are orientated to both the Fingal Street and Balun Lane frontages.
	b) place building entrances opposite each other, or group entrances onto a commonly visible area to maximise mutual surveillance;	Entrances to the building are located to connect to the street and lane way and adjacent commercial premises.
	c) arrange living areas, windows, access ways and balconies to overlook recreation areas and to provide observation points to activity areas such as entrances and car parks ;	The proposed units provide for observation opportunities over the car park and the streetscape
	d) restrict access to the rear of sites to reduce opportunities for people to wander around, e.g. using gates or a continuation of side fencing to the building;	Access to car parking will be restricted outside commercial operation hours.
	e) reduce opportunities for people to be unobserved in building foyers by providing direct access from the street and by placing windows to ensure the area can be observed before entering.	The proposed entry to the residential building is directly adjacent to the public thoroughfare and will be well observed.
	<p>2. <u>Lighting</u> a) achieve consistency in lighting to reduce contrast between shadows and illuminated areas;</p>	Appropriate lighting will be provided.

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

28

Provisions	Compliance
b) ensure lighting is directed towards pedestrian pathways and public spaces, taking into account the mature height of landscaping and other impediments;	
c) provide for ample lighting of common areas such as entrances, stairwells and parking areas;	
d) locate bright lights in heavily used spaces, but ensure they do not create a 'wall of darkness' or create glare for pedestrians and motorists.	
3. <u>Land use mix</u> a) balance facilities such as bars and discos with other night-time uses such as restaurants and entertainment for a range of users;	The proposal seeks to balance the commercial and residential land uses and will provide for an appropriate level of activity during both daytime and evening hours.
b) mix uses at compatible scales within business, commercial and activity centres;	Consistent
c) in commercial and activity areas mixed uses should provide a range of day and night-time activities in close proximity and should not segregate perceived 'nuisance' users such as youth from other age groups after hours;	Consistent
d) mix land uses vertically as well as horizontally, e.g. promote shop top housing with views to public areas;	The proposal provides for shop top housing with views to public areas.
e) design premises of after hours activities so that the public realm is visible to patrons, e.g. provide for outdoor seating.	Consistent
4. <u>Landscaping</u> a) avoid vegetation that conceals paths, building entrances or windows;	Consistent
b) consider the mature height and spread of landscaping to preserve surveillance and important sightlines, e.g. from pedestrian and cycle pathways.	Consistent
5. <u>Pedestrian and cycle routes</u> a) focus pedestrian movement after dark along a few well used and observable entry and exit routes that follow direct and logical paths between commonly visited locations;	Consistent – the through site link will be secured outside the operation of the commercial premises.
b) provide comfortable places to sit and socialise in activity areas and near building entrances;	The proposal provides for comfortable places to sit and socialise.
c) provide separate areas for young people to sit or socialise so that territorial conflicts do not occur, but ensure that these 'territories' do not violate security of dwelling s or other buildings, or compromise safety of pedestrians or cyclists;	Noted
d) provide adequate, vandal proof lighting which does not cast dark shadows;	Consistent
e) locate dwelling s of particularly vulnerable groups (e.g. elderly, families with small children) close to services and facilities they frequently use;	Consistent
f) minimise the likelihood of potentially intimidating groups taking over some space by locating facilities for them elsewhere	Noted

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

29

	Provisions	Compliance
	6. <u>Centres</u> a) development within centres should provide car parking areas and transport facilities adjoining after hours uses such as video outlets, fast food shops, latenight chemists and entertainment facilities;	Noted
	b) ensure a mix of activities and uses aimed at extending hours and levels of activity;	Consistent
	c) public spaces should be bounded by a range of compatible day and after hours activities such as schools, local shopping facilities and community facilities;	Consistent
	d) pathways and public spaces should be identifiable, legible, appropriately lit and visible;	Consistent
	e) entry and exit points should be well-defined and signposted;	Consistent
	f) casual surveillance should be possible from adjacent developments;	Consistent
	g) landscaping should enhance security, e.g. avoid dense shrubbery that will conceal attackers, specify high-branching trees;	Consistent
	h) locate ATMs in well lit and highly visible areas, preferably adjoining other after hours activities.	Noted
	8. <u>Vandalism</u> a) specify materials that withstand normal hard use and can be easily replaced;	Noted
	b) use standard size panels, light globes, panes, fittings and the like to facilitate speedy replacement;	Noted
	c) avoid obvious 'problem' materials that encourage wilful damage;	Noted
	d) use textured or 'fluted' surfaces, paint walls different colours, or plant vines to cover large wall spaces to avoid graffiti.	Noted
	Prescriptive Measures	
	There are no Prescriptive Measures.	

Chapter B13 Access Mobility

	Provisions	Compliance
B13.1	Introduction	
B13.1.1	Statutory Requirements and Obligations	
	<p>The Commonwealth Disability Discrimination Act 1992 (DDA) is the primary Australian statute that aims to eliminate discrimination on the grounds of disability. Section 23 of the DDA makes it unlawful to discriminate against people with a disability or their associates in relation to access to and use of premises that the public enter or use. Exemptions may be made for 'unjustifiable hardship'.</p> <p>While this DCP provides guidelines to help with design and construction of appropriate access to both new and refurbished buildings, the final responsibility for ensuring compliance with the DDA rests with the owner or other person responsible for a building.</p>	Noted

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

30

	Provisions	Compliance
	<p>Various other Acts and statutory instruments and Australian Standards deal with equity of access and mobility, including (but not limited to):</p> <ol style="list-style-type: none"> 1. Anti-Discrimination Act 1977 (ADA). This New South Wales Act is similar in its intent to the Disability Discrimination Act; 2. Local Government Act 1993: Section 8 of the Local Government Act sets out a charter which commits Councils to consultation and to providing adequate, equitable and appropriate services and facilities to the community; 3. Building Code of Australia (BCA). The BCA sets out technical requirements for design and construction of buildings. It specifies minimum requirements for access to new buildings and buildings undergoing refurbishment. It requires the provision of access for people with mobility disabilities to all classes of buildings except residential buildings; 4. Australian Standards. The Australian standards work in conjunction with the BCA to provide detailed technical requirements for individual building elements, e.g. in size and shapes of ramps, doors, rooms and lifts. 	
B13.1.2	Byron Disability Access and Inclusion Plan 2008-2013	
	In 2008 Council adopted the Disability Access and Inclusion Plan 2008-2013 (DAIP). The DAIP reflects Council's commitment to ensuring that the community environment is accessible for, and inclusive of people with disabilities, their families and carers. Its strategic actions are reflected in this DCP.	Noted
B13.1.3	Aims of this Chapter	The proposed development is consistent with the aims of this chapter.
	The Aims of this Chapter are:	
	1. To implement Council's obligations under the Disability Discrimination Act 1992 in the development process.	
	2. To ensure that the development process provides for equitable access to community facilities and services, places of work, leisure and community activity.	
	3. To establish standards for Council's assessment of provision of access to all new and upgraded buildings, services and places.	
	4. To ensure that the range of housing opportunities available for people with disabilities or other special mobility needs is representative of the local market in terms of access , size, location, orientation and general amenity of accommodation.	
	5. To inform the community, including building owners and developers, of their obligations under the Disability Discrimination Act 1992 and the Anti-Discrimination Act 1997 in the development process.	
	6. To provide guidance on the type of work required to provide non-discriminatory access to premises.	
B13.1.4	Application of this Chapter	Noted
	This Chapter applies to all residential accommodation in addition to development that is intended to be used by the public or entered by the public on land subject to Byron LEP 2014.	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

31

	Provisions	Compliance
	<p>For all such development, access must be provided to and within the facilities in accordance with the provisions of the BCA and AS1428.1 – Design for Access and Mobility –General Requirements for Access – New Buildings.</p> <p>For all such development, parking must be provided in accordance with Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities.</p>	
B13.1.5	Unjustifiable Hardship	
	<p>Council is bound by the requirements of the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993 to ensure that adequate access is provided for people with disabilities. However, the DDA makes provision for discrimination against a person with a disability where to do otherwise would cause unjustifiable hardship. Such cases of hardship must be proven to the Human Rights and Equal Opportunity Commission (HREOC).</p> <p>The matters to be considered when deciding if the provision of access will cause unjustifiable hardship include:</p>	Not applicable.
	1. <i>the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and</i>	
	2. <i>the effect of the disability of a person concerned; and</i>	
	3. <i>the financial circumstances and the estimated expenditure required to be made by the person claiming unjustifiable hardship; and</i>	
	4. <i>in the case of the provision of services, or the making available of facilities – an action plan given to the Commission under Section 64 of the DDA.</i>	
	The DDA does not provide any specific exemptions for buildings or places of heritage significance.	
B13.1.6	Special Requirements for Development Applications	
	Development Applications must include evidence to demonstrate that the requirements of the Disability Discrimination Act have been considered and addressed in the design of the development. If the case for unjustifiable hardship is made, a copy of the decision of the Australian Human Rights Commission must be provided to Council with a Development Application.	The application and design development of the scheme have been informed by advice from an access consultant
B13.2	Development Controls	
B13.2.1	Dwellings, Dwelling Houses, Semi – Detached Dwellings and Dual Occupancies	
	Objectives	
	1. <i>To encourage the provision of equitable access in new and refurbished dwelling houses and dual occupancy developments.</i>	
	Performance Criteria	
	In recognition of the objectives, principles and goals of the Byron Disability Access and Inclusion Plan 2008 – 2013, proponents are encouraged to provide Design and Access in accordance with AS 4299 - Adaptable Housing.	
	Prescriptive Measures	
	There are no Prescriptive Measures.	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

32

	Provisions	Compliance
B13.2.2	Multi Dwelling Housing, Attached Dwellings, Residential Flat Buildings, Shop Top Housing and Serviced Apartments	
	Objectives	
	<p>1. To implement the requirements and objectives of the Disability Discrimination Act, 1992, relevant equitable access legislation and the Byron Disability Access and Inclusion Plan 2008 - 2013.</p> <p>2. To nominate adaptable housing standards for multi unit residential development in Byron Shire.</p>	
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	1. Design and Access in accordance with AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings (for class 3, 5, 6, 7, 8 and 9 buildings) and AS 4299 - Adaptable Housing must be provided to and within new developments and major alterations for residential development to which this Section applies as follows:	
	<p>a) Dwelling Units: A minimum of 10% of units, rounded up to the nearest whole number should be adaptable housing. Where a development is undertaken in stages after commencement of this DCP (including where earlier stages have been subdivided subsequently from the subject land) the calculation of the 'minimum 10% of units' shall include the units provided in those earlier stages.</p> <p>The adaptable housing units must be located throughout the development with a variety of outlooks. Access to the upper level of townhouses can be by lift, stair lift, chair lift, inclinor or platform lift or ramp in accordance with the relevant Australian Standards. Any lift must comply with the relevant Australian Standards.</p>	Provision of a minimum of 10% of units as adaptable housing results in a requirement for 1.3 adaptable dwellings (to be rounded to 2). The proposal provides for 2 adaptable dwellings in accordance with the requirements of the DCP.
	<p>b) Access: A continuous accessible path of travel in accordance with AS1428 or an inclinor/ lift/ hoist (in accordance with AS1735) as appropriate must be provided between the main street entrance to the residential complex, adaptable housing units, access or car parking spaces, letterboxes, garbage storage area, recreation areas and clothes drying areas.</p>	Consistent
	<p>c) Car Parking: At least one accessible car parking space for the disabled must be provided for each adaptable housing unit, if a parking space is provided or if it is required pursuant to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access or any other Chapter of this DCP. These spaces must be located close to and accessible from the entrance to the adaptable housing units and from the main entrance to the building. The spaces must be attached to the title of the adaptable housing unit in any Strata Plan or Community Title plan. Car parking must be in accordance with the requirements of BCA Section D Part D3.5 and Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities.</p>	Consistent

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

33

	Provisions	Compliance
	2. In the interest of promoting the objectives, principles and goals of the Byron Disability Access and Inclusion Plan 2008 – 2013, the above standards are also encouraged in the case of refurbishment of existing buildings and developments that do not include major alterations.	
B13.2.4	Commercial Premises and Industrial Premises – BCA Classes 5, 6, 7 & 8.	
	Objectives	
	<p>1. To implement the requirements and objectives of the Disability Discrimination Act, 1992, relevant equitable access legislation and the Byron Disability Access and Inclusion Plan 2008 - 2013.</p> <p>2. To nominate access standards for BCA Class 5, 6, 7, 8 and 9 development including Office/ Commercial, Retail and Service and Industrial Development in Byron Shire.</p>	
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	<p>1. For new developments and development involving major alterations and / or extensions: Design and access in accordance with AS1428.1 – Design for Access and Mobility –General Requirements for Access – New Buildings must be provided to and within all the areas or facilities of the development where there is a reasonable expectation of access by any owner, occupier, employee or visitor. This must at least consist of the entrance floor and any other floor to which vertical access is provided in accordance with AS 1428.1 by way of a ramp, step ramp, kerb ramp or passenger lift. It does not include service/ plant areas.</p>	Consistent

Chapter B15 Public Art

	Provisions	Compliance
B15	Public Art	
B15.1	Introduction	
	<p>Public Art is defined in the broadest sense as artistic works or activities accessible to the public. The work is of a permanent nature, located in or part of a public space or facility provided by both the public and private sector. Public art also includes the conceptual contribution of an artist to the design of public spaces and facilities and could include Creative Industries Precincts or other arts and cultural infrastructure outcomes. Council supports Public Art as outlined in the:</p> <ul style="list-style-type: none"> • Public Art Policy • Public Art Strategy • Public Art Guidelines and Criteria <p>Council has an internal reference group to consider public art submitted through the application of this chapter.</p> <p>An external Arts and Creative Industries Committee is made up of community members with specialist expertise,</p>	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

	Provisions	Compliance
	<p>experience and interest in the field of creative industries. The committee will be notified of public art plans submitted as a result of this chapter and have the opportunity to provide comments through the exhibition of the development application.</p> <p>More about public art can be found on Council's website. https://www.byron.nsw.gov.au/Community/Arts-and-culture/Public-Art</p>	
B15.1.1	Aims of this Chapter	
	<p>The Aims of this Chapter are:</p> <ol style="list-style-type: none"> 1. To implement relevant Strategic Actions and provisions of the Byron Public Art Strategy and Public Art Policy where they apply to the development process. 2. To recognise the importance of artistic expression to community well-being. 3. To cultivate a climate in which innovative and creative design, and well-integrated ecologically sustainable public art contribute to the cultural life, liveability and amenity of Byron Shire. 4. To encourage public art that is: <ol style="list-style-type: none"> a. Integral to social and cultural development as outlined in the Byron Shire Community Strategic Plan. b. Developed and managed by appropriate procedures and processes c. Created considering standards of excellence, in a professional manner d. Adequately planned with relevant stakeholders throughout the project duration, with partnerships and collaboration encouraged e. Meaningful, aesthetically stimulating and site specific f. Consistent with current planning, heritage and environmental policies and Plans of Management g. Aimed to provide a cultural outcome <ol style="list-style-type: none"> h. Supportive of local creative industries 5. To facilitate the provision of public art through the development process that: <ol style="list-style-type: none"> a. Encourages innovation, and demonstrates artistic excellence b. Is reflective and responsive to local culture, including the local Aboriginal context, if relevant c. Encourages the use of innovative materials including environmentally sustainable and eco-friendly material d. Is durable, robust, and of quality, low-maintenance materials, and if applicable, be treated with anti-graffiti coating e. Comply with all relevant Australian Standards and Building Codes and Regulations with regard to public safety f. Enhance existing public art assets of the Shire. 6. To specify considerations for the assessment of murals. 	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

	Provisions	Compliance
	<p>7. To enable equivalent financial contributions in lieu of providing public art.</p> <p>8. To specify documents to be provided with a development application for the provision of public art.</p>	
B15.1.2	Application of this Chapter	
	<p>1. This Chapter applies to Development Applications for projects that:</p> <p>a) have an estimated cost greater than \$2,000,000 (calculated in accordance with the Environmental Planning & Assessment Regulation); and</p> <p>b) are located on land (partly or wholly) within zones RU2, RU5, B1, B2, B3, B4, B7, SP3 or W2; and</p> <p>c) include development for one or more of the following purposes:</p> <p style="margin-left: 20px;">i) business premises</p> <p style="margin-left: 20px;">ii) entertainment facility</p> <p style="margin-left: 20px;">iii) function centres</p> <p style="margin-left: 20px;">iv) marina</p> <p style="margin-left: 20px;">v) office premises</p> <p style="margin-left: 20px;">vi) recreation area</p> <p style="margin-left: 20px;">vii) recreation facility (indoor, major and/ or outdoor)</p> <p style="margin-left: 20px;">viii) registered club</p> <p style="margin-left: 20px;">ix) retail premises</p> <p style="margin-left: 20px;">x) tourist and visitor accommodation.</p> <p>2. This chapter applies to residential subdivision of land within zones R1, R2 and R3 resulting in 20 lots or greater, with an estimated project cost greater than \$2,000,000 (calculated in accordance with the Environmental Planning & Assessment Regulation)</p> <p>3. This chapter applies to the provision of murals requiring development consent under Byron LEP 2014, Part 5.10 – Heritage Conservation.</p> <p>4. This chapter does not apply to alterations and additions to existing buildings where the overall use is not changing.</p>	<p>Provisions of this chapter apply to the proposed development.</p>
	<p>Note:</p> <p>Unsolicited offers of permanent public art works to which this chapter does not apply, both existing and proposed, will be referred to the Arts and Creative Industries Committee for consideration. The committee will consider the art work in the context of Council's:</p> <ul style="list-style-type: none"> • Public Art Policy • Public Art Strategy • Public Art Guidelines and Criteria <p>The recommendations of the committee will be presented to Council as required.</p> <p>Unsolicited offers of permanent public art to be located on Council owned or managed land are to be managed in accordance with Council's Public Art Guidelines & Criteria.</p>	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

	Provisions	Compliance
B15.2	General Provisions	
B15.2.1	Provision of Public Art	
	This section enables two assessment pathways for the provision of public art. A flow chart is provided in Appendix B15.1 that provides an overview of the assessment pathway options	
	Objectives	
	1. <i>To facilitate the provision of public art through the development process.</i>	
	Performance Criteria	
	<ol style="list-style-type: none"> 1. In lieu of providing public art, the applicant could enter into a Voluntary Planning Agreement with Council to provide an equivalent financial contribution for the installation of public art in a suitable location. 2. Public art may be located on public land in any of the towns and villages in Byron Shire at the discretion of Council and the Arts and Creative Industries Advisory Committee. Council is to be consulted prior to lodgement of a development application for installations on public land. 	In accordance with provisions of B15.2.1 the applicant would like to request that Council agrees to enter into a Voluntary Planning Agreement in relation to the provision of a contribution for public art.
	Note: Preparation of a Voluntary Planning Agreement (VPA) is to be coordinated with Council's Section 7.11 Officer.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> 1. Development to which this Section applies must include the provision of public art to the value of at least 2.5% of development costs (calculated in accordance with the Environmental Planning & Assessment Regulation) up to \$2 million, and 1% of further development costs exceeding \$2 million. 2. A Public Art Plan is to be prepared that provides sufficient details of the proposed public art and must be submitted as part of the Development Application documentation. Council is to be consulted prior to lodgement of a development application. The Public Art Plan must include the following details to the satisfaction of Council: <ol style="list-style-type: none"> a) A statement that explains the rationale behind the artwork and demonstrates how it will relate to the proposed development and site. A concept design is strongly encouraged. b) Details of the nature, materials and form of the proposed public art. c) Define and illustrate the intended location and approximate size of the artwork d) Provide a program with timelines for documentation, fabrication and installation, and integration with the construction program for the development. e) Deaccessioning considerations and agreements as required in accordance with Council's Public Art Guidelines & Criteria. 	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

	Provisions	Compliance
	<ul style="list-style-type: none"> f) Evidence of partnerships and/or collaboration and funding sources for the public art project where applicable. Written evidence of support and consultation with traditional owners is to be provided if the applicant proposes to engage an Aboriginal Artist or use artworks or designs including Aboriginal Cultural Content. g) Evidence of Public Liability Insurance to cover construction and installation of the work. h) Itemised expenditure for the public art including artist fees and fabrication costs and a budget for ongoing maintenance. <p>3. The Public Art Plan must also demonstrate how the proposed public art meets the following Design Selection Criteria:</p> <ul style="list-style-type: none"> a) The artwork demonstrates artistic excellence and local and cultural appropriateness. b) The public art must be permanent and durable, with consideration given to maintenance requirements and potential for vandalism. c) The design is consistent with the themes outlined in the Public Art Policy and Strategy. d) Public art must be provided in a location that allows users of the public domain an unobstructed view of the artwork and the ability to freely access and interact with the artwork. Public art will not be considered inside buildings, except for public buildings. e) Meets relevant building and safety standards. 	
B15.2.2	Requirements for a development application for the provision of public art	
	<p>1. Development applications for the provision of public art are to include the following two documents:</p> <ul style="list-style-type: none"> a) Public Art Plan to be submitted by the applicant at the development application stage. The Public Art Plan must address the Prescriptive Measures outlined in B15.2.1 and demonstrate how the proposed work will accord with this DCP chapter. Once submitted, the Public Art Plan will be referred by Council assessment officers to the Internal Reference Group for review and notify the Arts and Creative Industries Advisory Committee for the opportunity to provide comment. b) Public Art Report to be submitted by the applicant at the Occupation Certificate Stage. The Public Art Report is to satisfy Council that the public art has been delivered and the public art commitments have been fulfilled. This will enable the Occupation Certificate to be released. The Public Art Report should provide information about the artworks and artist, the fabrication and installation of the work, the documentation and engineers' drawings, the maintenance requirements, any additional relevant 	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

	Provisions	Compliance
	<p>information regarding ownership, and copyright of the work. The Public Art Report is a condition of Occupation Certificate.</p>	
	<p>2. Where the development application for Public art is associated with a staged development, the following three documents are required:</p> <p>a) Preliminary Public Art Plan to be submitted with the concept development application or with the Stage 1 development application.</p> <p>The Preliminary Public Art Plan should include an analysis of the locational context, planning requirements and any studies pertinent to the public art objectives. It should identify public art opportunities, propose a methodology for the selection and commissioning of artists and provide an estimated budget and program for the inclusion of artists. Once submitted, the Preliminary Public Art Plan will be referred to the Internal Reference Group for review.</p> <p>b) Public Art Plan to be submitted by the applicant at the DA Stage of a Master Plan site subject to a concept development application or with the Stage 2 development application.</p> <p>The Public Art Plan must address the Prescriptive Measures outlined in B15.2.1 and demonstrate how the proposed work will accord with this DCP chapter.</p> <p>Once submitted, the Public Art Plan will be referred by Council assessment officers to the Internal Reference Group for review and the Arts and Creative Industries Advisory Committee notified .</p> <p>c) Public Art Report to be submitted at Occupation Certificate Stage</p> <p>The Public Art Report is to satisfy the Council that the public art has been delivered and the public art commitments have been fulfilled. This will enable the Occupation Certificate to be released. The Public Art Report should provide information about the artworks and artist, the fabrication and installation of the work, the documentation and engineers' drawings, the maintenance requirements, any additional relevant information regarding ownership, and copyright of the work. The Public Art Report is a condition of Occupation Certificate.</p>	
B15.3	Provision of Murals	
	<p>This Subchapter applies to the provision of murals requiring development consent under Byron LEP 2014, Part 5.10 – Heritage Conservation. This may include murals that impact on a heritage item or are located within a heritage conservation area, or may include murals that impact on an Aboriginal object or Aboriginal place of heritage significance.</p>	
	Objectives	
	<ol style="list-style-type: none"> 1. To conserve the environmental heritage of Byron Shire. 2. To facilitate the provision of murals that are appropriate for the location and the community. 	
	Performance Criteria	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

39

	Provisions	Compliance
	<p>The following considerations are to be addressed in a development application for a mural requiring development consent under Byron LEP 2014, Part 5.10 – Heritage Conservation:</p> <p>a) Is the artwork suited to a diverse audience?</p> <p>b) Does the mural add to the character and integrity of the location?</p> <p>c) Is the artwork a mural as defined in this DCP or does it meet the definition of signage?</p> <p>Consideration is to be given to the use of mediums that will not affect the original fabric of the heritage item (e.g. mural may be painted on removable ply boards).</p> <p>Development applications must include a heritage impact statement in accordance with Byron LEP 2014, Part 5.10(4).</p> <p>Where the mural is considered to be of minor impact, applicants are to consult with Council prior to lodgement of a development application to determine if Byron LEP 2014, Part 5.10(10) is applicable.</p>	
	Prescriptive Measures	
	There are no prescriptive measures.	
	<p>Note:</p> <p>Murals that do not require development consent under Byron LEP 2014, Part 5.10 – Heritage Conservation do not require a development application. Where development consent is not required, developers and artists are encouraged to submit their concept to the Arts and Creative Industries Advisory Committee for review.</p>	

Chapter C1 Non-Indigenous Heritage

	Provisions	Compliance
C1	Non-Indigenous Heritage	<p>The subject site adjoins the Hotel Brunswick to the north and the Brunswick Heads Primary School to the south west. These sites are identified as Local Heritage Items in accordance with BLEP14. As previously addressed in this report, the proposed development is not considered likely to adversely impact on these items and it is considered that a Statement of Heritage Impact is not required in the circumstances.</p>

Chapter C2 – Areas Affected by Flood

	Provisions	Compliance
C2	Areas Affected by Flood	The proposal is accompanied by a flood assessment prepared by Stephens Consulting Engineers. That assessment indicates that the site is suitable for the proposed development.

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones

	Provisions	Compliance
D1.2	General Provisions	The following provisions of Chapter D1 apply to proposals for shop top housing.
D1.10	Shop Top Housing	
	This Section applies to shop top housing , which includes dwelling s located above ground floor retail premises or business premises .	
D1.10.1	Density Control	
	Objectives 1. <i>To provide affordable shop top housing accommodation close to transport, employment and services.</i>	
	Performance Criteria	
	The siting, design and density of the dwelling component of the development must be consistent with the character of the surrounding area and must provide a mix of dwelling sizes to accommodate different family profiles.	The proposal provides for a mix of 2 and 3 bedroom apartments.
	Prescriptive Measures	
	1. The density of the dwelling component of the development must not be greater than one (1) dwelling per 150 square metres of site area where no floor space ratio restriction applies under Byron LEP 2014. 2. A minimum of 25% of the floor space of the entire development, not including car parking, must be set aside for commercial/ retail purposes. All ground floor space fronting the street must be devoted to retail premises and/or business premises .	The proposal provides for 17% of the floor space of the entire development for commercial/retail purposes. It is submitted that this variation is acceptable in the circumstances having regard for the following: <ul style="list-style-type: none"> • Commercial floor space is provided to front both Fingal Street and Balun Lane. • Areas required for refuse, plant, substations and the like require significant room at ground level on a reasonably small site. • The car parking requirements for commercial development provide for limited car parking capacity on the site which informs the total amount of commercial floor

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

41

	Provisions	Compliance
		<p>space that is able to be accommodated whilst maintaining compliance with car parking provisions.</p> <ul style="list-style-type: none"> The site is considered to appropriately respond to the existing town centre whilst seeking to provide for the optimum provision of residential accommodation.
D1.10.2	Accessibility	
	Objectives	
	1. <i>To ensure accessible and direct entrance to and exit from the residential component of a development.</i>	
	Performance Criteria	
	Development must be designed to ensure that adequate direct resident access is provided to the residential component of the development.	
	Prescriptive Measures	
	Each dwelling must have direct access from the main street frontage of the premises (or side street where located on a corner). This may be by means of a separate, isolated passage or stairway connecting to the street frontage, which would allow unrestricted access to the dwelling without the need to pass through any associated retail premises or business premises . Alternatively, such an access arrangement may be shared with development on adjoining land with a similar residential component, provided suitable arrangements are made to ensure that legal access is available and guaranteed in perpetuity.	A residential entry is provided off Fingal Street. The entry is appropriately located and does not require residents to pass through retail or business premises.
D1.10.3	Private Open Space	
	Objectives	
	1. <i>To ensure that the residential component of a development contains adequate, accessible and well designed private open space to meet the needs of occupants.</i>	
	Performance Criteria	
	Each dwelling must be provided with an adequate area of private open space for sole use by the occupants of that dwelling . The private open space must be located to provide solar access and a sense of territory, privacy and safety for residents.	The proposal provides for appropriate open space.
	Prescriptive Measures	
	<ol style="list-style-type: none"> Each dwelling must be provided with private open space for sole use by the occupants of that dwelling. Where the private open space cannot be provided at ground level the dwelling must be provided with a balcony or roof terrace. The private open space, whether at ground level or not, must have a minimum area of 15m² and a minimum width of 2.5 metres. Part of the private open space must be a minimum of 10 square metres and directly accessible from a living area. 	<p>Each apartment is provided with a private open space terrace with a minimum area of 20m² and minimum dimensions of 2.5m.</p> <p>The apartments are also provided with a secondary terrace on the first floor and small upper level terraces</p>

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

42

	Provisions	Compliance
	<p>3. The private open space must have solar access to 50% of its area for at least 3 hours per day. Enclosure of balconies that provide private open space to a dwelling will not be permitted.</p> <p>4. The private open space area must be located to maximise privacy for residents. If necessary the area must be screened by vegetation, a wall or fence, to ensure that the area is private.</p> <p>5. The private open space must be located to ensure that residents are provided with an outlook to public areas rather than overlooking directly onto adjoining buildings, and must not diminish the commercial/retail character of the street frontage at ground level.</p>	<p>adjacent to the upper level bedrooms. The private open space complies with the solar access requirements.</p> <p>The private open space has been located to maximise privacy for residents with appropriate fixed screening as well as landscaping as depicted on the landscaping plan set accompanying the application.</p> <p>The private open space is located to ensure that residents are provided with an outlook to public areas. This is achieved via the provision of the separation of the buildings and multiple areas of private open space. It is submitted that the private open space contributes to the presentation of the building to both the Fingal Street and Balun Lane frontages.</p>
D1.10.4	Sound Proofing	
	Objectives	
	1. <i>To ensure that an adequate acoustic environment is provided for residents.</i>	
	Performance Criteria	
	Development must be designed to minimise the potential for noise impact upon the occupants of the dwelling s, both from within the development and from adjoining developments, public areas and streets.	Apartments will be appropriately treated to minimise potential acoustic impacts.
	Prescriptive Measures	
	<p>1. Development must be designed to minimise external noise impacts on residents and to ensure that noise sensitive areas are screened from noise sources. This can be facilitated through the design process, eg by locating noise tolerable areas towards noise sources (e.g. kitchens, laundries etc located toward major frontages with sleeping areas screened from road frontages, garbage collection areas, accessways and parking areas). Noise transmission between dwellings can be minimised by not locating living areas or garages adjacent to bedrooms of other dwellings.</p> <p>2. Walls or ceilings of dwellings that are attached must have a sound transmission class (STC) of not less than that required by the Building Code of Australia.</p> <p>3. Applicants must demonstrate to Council's satisfaction that the design of dwellings in shop top housing adequately addresses the issue of sound proofing. A specialist acoustic report may be required to demonstrate that the</p>	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

	Provisions	Compliance
	development adequately achieves acceptable sound proofing for residential amenity.	
D1.10.5	Clothes Drying Area	
	Objectives	
	1. <i>To ensure that adequate, effective space is provided for clothes drying.</i>	
	Performance Criteria	
	<ol style="list-style-type: none"> Where feasible, outdoor clothes drying facilities must be provided to meet projected needs and located to facilitate privacy and sunlight access. The clothes drying area must be screened from view from the street. Dwellings without private open space at ground level must provide internal laundry facilities in each unit and must provide either a clothes drying area on site, or a space for a clothes dryer in each unit. 	Clothes drying facilities are provided. The clothes lines provided to the apartments facing Balun Lane are set back from the laneway and appropriately located to minimise potential visual impacts. The clothes lines provided for the apartments fronting Fingal Street are well screened from the covered walkway and will not be visible from the street.
	Prescriptive Measures	
	There are no Prescriptive Measures.	
D1.10.6	Site Facilities	
	Objectives	
	1. <i>To ensure that adequate site facilities are provided for the development and its residents.</i>	
	2. <i>To ensure that sediment and nutrient laden car wash runoff does not impact on the water quality of the Shire's waterways.</i>	
	Performance Criteria	
	There are no Performance Criteria.	
	Prescriptive Measures	
	<ol style="list-style-type: none"> Mailboxes must be provided for each dwelling, located to ensure convenient access for residents and Australia Post. The street number must be clearly displayed and all mailboxes must be clearly identified with the unit number. Where an Owners' Corporation or equivalent has been created an additional mailbox must be provided for Corporation correspondence. All dwellings must be wholly independent of the commercial portion of the building in respect of such amenities and facilities as toilets, laundries, kitchens, bathrooms and the like. Common television antennae and/or dishes must be provided to meet the expected needs of residents. A separate water meter must be provided for each dwelling. A lockable storage facility of 8 cubic metres for each dwelling must be provided. This may form part of a carport or garage. 	<p>Mailboxes are appropriately located to provide for convenient access to mail collection.</p> <p>Dwellings are wholly independent of the commercial portion of the building.</p> <p>An appropriate condition of consent can address this issue in the event antenna or dishes are provided.</p> <p>A separate water meter will be required by Council.</p> <p>Appropriate storage, compliant with the Apartment Design Guide is provided within the</p>

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

44

	Provisions	Compliance
	<p>6. A car washing area must be provided at a general rate of 1 per every 10 dwelling units, with a minimum of one wash area being provided for each multi-unit housing development containing more than 10 residential units. The car wash area must have minimum dimensions of 7.6m x 3m. This may be part of a visitor car space, driveway or turning area where it can be shown that it will not cause undue conflict of use. This area must have water and electricity available and must be drained by on site disposal. Where there are separate internal driveway systems within a site, each must have a car washing area.</p>	<p>proposed apartments. Storage is not proposed to be located within the at-grade car parking.</p> <p>It is not proposed to provide for a car wash area for the proposed development.</p>

Chapter E4 – Brunswick Heads

	Provisions	Compliance
E4.3	General Provisions	
E4.3.1	Character, Bulk and Scale of Development	
	<p>Objectives</p> <ol style="list-style-type: none"> <i>To ensure that all development is consistent with, and will maintain and enhance the low-key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads.</i> <i>To ensure that business, office and retail development in the B2 and B4 zone contributes to a unified and recognisable town centre character and applies sustainable development principles that further enhance the centre's role as a dynamic local business sector.</i> <i>To ensure that residential development in Brunswick Heads will complement, support and strengthen the town's unique character, living amenity and tourist potential.</i> 	<p>As detailed in the Design Report prepared by CHROFI. The design concept was developed following a detailed assessment of the context and neighbourhood character. This assessment included consideration of the future neighbourhood character having regard for recently approved development in the locality. The proposal seeks to maintain and enhance the coastal village character of Brunswick Heads. It is submitted the proposed scale and form of the building will contribute to and strengthen the town's unique character and living amenity. The proposal adopts sustainable elements throughout the building.</p>
	<p>Performance Criteria</p> <p>The existing and desired future character of Brunswick Heads is defined by the following characteristics:</p> <ol style="list-style-type: none"> <u>Natural Environment</u> <p>The Brunswick Heads Urban Area is bounded and strongly influenced by natural elements including the sea, the Brunswick River, wetlands, remnant forests, bushland and parklands. Development within the Brunswick Heads Urban Area is located, designed and oriented to support, complement and foster community access to and</p>	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

45

	Provisions	Compliance
	<p>understanding of those natural elements. Development is designed to protect and enhance their integrity and to respect their natural edges. Where feasible, development allows and encourages the natural elements to expand into the development site.</p> <p><u>2. Residential Areas</u></p> <p>a) The residential areas of Brunswick Heads contain a varied and compatible range of architectural styles, materials, landscapes and streetscapes. Housing comprises mainly low density, low rise single and attached dwellings with low-impact bulk and scale. New development is designed to respect the integrity and character of heritage items, consistent with Chapter C1 Non-Indigenous Heritage.</p> <p>b) New residential development is consistent with the requirements of Chapter D1 Residential Development in Urban and Special Purpose Zones. Development is designed to enhance the low key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads. Landscaping is provided in accordance with the requirements of Chapter B9 Landscaping.</p> <p><u>3. Business and Mixed Use Areas</u></p> <p>a) Land zoned B2 and B4 (along Tweed Street between Mullumbimbi and Booyun Streets) provides a safe, low traffic speed, pedestrian/cycle friendly environment that encourages outdoor dining and community activity in the street. Land zoned B4 along Tweed Street north of Mullumbimbi Street and south of Booyun Street provides a transition area between town centre business zones and residential areas. Development in this area uses setbacks, planting and design elements to contribute positively to village amenity and create a pedestrian/cycle friendly streetscape.</p> <p>b) New commercial and retail development is consistent with the requirements of Chapter D4 Commercial and Retail Development. Development is designed to enhance the low key, family-friendly, coastal village character, streetscape and scale of Brunswick Heads. Shop-top housing is encouraged.</p> <p>c) New development respects the north coast climatic conditions and adopts sustainable design principles. It incorporates footpath awnings and sun and rain protection for pedestrians. Landscaping is provided in accordance with the requirements of Chapter B9 Landscaping. Development respects heritage items and where relevant is consistent with Chapter C1 Non-Indigenous Heritage. It is compatible in design and character with its neighbours.</p> <p>d) Development should minimise excavation and provide vehicle access and parking at ground level.</p> <p>e) Development applications must demonstrate that:</p>	<p>The proposal provides for shop top housing.</p> <p>The development respects the north coast climatic conditions and adopts sustainable design principles. The proposal incorporates an awning for sun and rain protection for pedestrians and a landscape plan accompanies the application. The proposal minimises excavation with at-grade car parking proposed.</p> <p>It is submitted that the character bulk, scale, density, streetscape and landscape treatment of the</p>

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

46

	Provisions	Compliance
	<ul style="list-style-type: none"> i) the character, bulk, scale, density, streetscape and landscape treatment of proposed development will be compatible with and will enhance the low-key, family-friendly, coastal village character, scale and streetscape of Brunswick Heads, its built environment and its surrounds; ii) the proposed development will be consistent and compatible with the relevant characteristics and criteria described above in: 1. Natural Environment, 2. Residential Areas and 3. Business and Mixed Use areas inclusive. iii) building materials, textures, finishes and colours will be compatible with and enhance the coastal village character and scale of Brunswick Heads, its built environment and its surrounds; iv) where applicable the proposed development is consistent with the requirements of other provisions of this DCP, including but not limited to Chapters B9 Landscaping, C1 Non-Indigenous Heritage, D1 Residential Development in Urban and Special Purpose Zones and D4 Commercial and Retail Development. 	<p>development will be compatible with the existing scale and character of Brunswick Heads town centre.</p> <p>The proposed development is consistent and compatible with the characteristics of the area. Building materials, textures, finishes and colours are compatible with and will enhance the coastal village character of Brunswick Heads. As detailed in the Design Report accompanying the application, the façade incorporates “natural tones, textured materials and integrated greenery. Fine-grain detailing provides shade, visual interest and human scale, while soft landscaping cools and animates the street edge. The material palette reflects the town’s identity promoting longevity and climatic sensitivity”. Proposed materials include timber battens, soft brick palette and integrated landscaping.</p>
	<p>Prescriptive Measures</p> <ul style="list-style-type: none"> 1. Excavated parking basements are not permitted within Brunswick Heads. 2. Additional vehicle footpath crossings are to be minimised in the business and mixed use zones. 3. The built form is to be limited to two storeys within the 9 metre height limit to reflect the low rise character of Brunswick Heads. 4. To maintain residential privacy, roof top decks are not permitted. 	<p>No excavated basement for car parking is proposed. Vehicular access is proposed via Balun Lane.</p> <p>The proposal provides for a recessed upper level. Whilst not strictly compliant with the two storey limit it is submitted that the proposal is entirely appropriate for this location having regard for the existing built form in the immediate vicinity of the site, the design of the building to be set back at the upper levels, and the need to achieve some verticality on a site with a frontage of more than 40 metres.</p> <p>No roof top decks are provided. The proposal provides for a pitched roof to appropriately</p>

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

47

	Provisions	Compliance
	5. Front setbacks are to be maintained in accordance with Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones, with front yards landscaped with lawn, and garden vegetation.	reflect the existing character of the town centre. Not applicable
E4.3.2	Development in Tweed Street	The proposal is not located in Tweed Street.
	Objectives 1. To promote integration of the character of the former Pacific Highway precinct with the remainder of the town. 2. To implement the adopted Tweed Street Masterplan	
	Performance Criteria Development applications that include land with frontage to Tweed Street, or that adjoin land with frontage to Tweed Street, must demonstrate: a) that the development is consistent with and/or complementary to the Tweed Street Masterplan ; b) that the design of the project will contribute to the unified design, streetscape and landscape themes set out in the Tweed Street Masterplan; and c) that the development addresses and, where relevant, incorporates changes in the public realm set out in the Tweed Street Masterplan.	
	Prescriptive Measures There are no Prescriptive Measures.	
E4.3.3	Development Adjoining and Near the Brunswick River	The proposal is not adjoining Brunswick River.
	Objectives 1. To ensure that development adjoining and near the river will foster and reinforce the restoration and protection of the riverside environment of Brunswick Heads.	
	Performance Criteria 1. Development applications that include land adjoining or near the Brunswick River must demonstrate that the proposed development will not adversely impact, and where feasible will enhance, the recreation, tourism, fisheries, ecological and landscape values of the River and its environs. 2. Buildings are to be suitably set back to ensure the visual amenity of the Brunswick River foreshore is maintained.	
	Prescriptive Measures 1. A minimum setback of 10m is required to the rear boundary for any building on land Zoned R2 adjoining the Brunswick River. 2. No stormwater is to be directed to the Brunswick River from buildings or hardstand areas. 3. Landscaping is to be dominated by native species endemic to an estuarine/ coastline environment.	
E4.3.4	Pedestrian and Cycle Access	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

48

	Provisions	Compliance
	<p>Objectives</p> <ol style="list-style-type: none"> 1. To assist in the delivery of Council's adopted Byron Shire Bike Strategy and Action Plan where possible. 2. To provide an expansion of the existing pedestrian/ cycleways to improve connectivity throughout Brunswick Heads. 3. To ensure that the development of pedestrian and cycle pathways will incorporate water sensitive urban design measures and foster the protection and restoration of ecological and hydrological functions and values of riparian corridors. 	Not applicable to the proposed development.
	<p>Performance Criteria</p> <ol style="list-style-type: none"> 1. Development applications must demonstrate that the pedestrian/ cycleway network illustrated on Map E4.1 and detailed in Council's adopted Byron Shire Bike Strategy and Action Plan will be incorporated into new developments. 2. Any proposed internal pathway network must be integrated with the pedestrian/ cycleway system as indicated on Map E4.1 and in accordance with Chapter B5 Providing for Cycling. 3. Development applications must demonstrate that the pedestrian/cycleway will not adversely impact, and where feasible will enhance the ecological and hydrological values of the river and its riparian corridor. 	
	<p>Prescriptive Measures</p> <ol style="list-style-type: none"> 1. A minimum setback of 10m is required from the Brunswick River to any pedestrian or cycle pathway. 2. Where feasible, riparian corridors adjacent to pedestrian or cycle pathways are to be protected and enhanced by appropriate plantings of locally indigenous vegetation. 	
E4.3.5	Biodiversity Conservation	
	<p>Objectives</p> <ol style="list-style-type: none"> 1. To ensure that development takes into account and, where appropriate, contributes to the biodiversity values of Brunswick Heads and its surrounds. 	
	<p>Performance Criteria</p> <p>Development applications must:</p> <ol style="list-style-type: none"> a) address and identify biodiversity, connectivity, corridor and riparian values of the site, including its relationship to adjoining land, riparian areas, open space areas and the wider locality; b) where biodiversity, connectivity, corridor and/ or riparian values are present, outline a strategy to protect and enhance those values; c) include a strategy for removal and ongoing management of weeds and Camphor Laurel trees on the site. 	The proposal provides for the removal of existing landscape vegetation and the provision of appropriate landscaping species for the new development. Existing landscaping adjacent to the western boundary has been retained to maximise amenity for adjoining residents.
	<p>Prescriptive Measures</p> <p>There are no Prescriptive Measures.</p>	

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

49

4.1.4 STATE ENVIRONMENTAL PLANNING POLICIES

No State Environmental Planning Policies apply to the subject development type or site.

A search undertaken on the NSW Planning Portal on 25 March 2025 indicated that the following SEPPs as being applicable to the land.

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Housing) 2021
- SEPP (Industry and Employment) 2021
- SEPP (Planning Systems) 2021
- SEPP (Primary Production) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Resources and Energy) 2021
- SEPP (Sustainable Buildings) 2022
- SEPP (Transport and Infrastructure) 2021

Of these, the following SEPPs are of particular relevance to the subject application.

Title: SEPP (Sustainable Buildings) 2022

Gazetted: 01.10.2023

Abstract:

The aims of this Policy are as follows—

- (a) to encourage the design and delivery of sustainable buildings,
- (b) to ensure consistent assessment of the sustainability of buildings,
- (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,
- (d) to monitor the embodied emissions of materials used in construction of buildings,
- (e) to minimise the consumption of energy,
- (f) to reduce greenhouse gas emissions,
- (g) to minimise the consumption of mains-supplied potable water,
- (h) to ensure good thermal performance of buildings

Chapter 2 Standards for residential development—BASIX

2.1 Standards for BASIX development and BASIX optional development

(1) Schedule 1 sets out the standards that apply to BASIX development referred to in paragraphs (a) and (b) of the definition of BASIX development in the Environmental Planning and Assessment Regulation 2021.

(2) Schedule 2 sets out the standards that apply to—



Existing site development.

(a) BASIX development referred to in paragraph (c) or (d) of the definition of BASIX development in the Environmental Planning and Assessment Regulation 2021, and

(b) BASIX optional development if the development application or the application for a complying development certificate was accompanied by a BASIX certificate.

(3) The standard specified in Schedule 2, section 4 extends to a swimming pool or spa that has a capacity of less than 40,000L if the swimming pool or spa is part of development referred to in paragraph (c) of the definition of BASIX development in the Environmental Planning and Assessment Regulation 2021.

(4) A standard specified in Schedule 1 or 2 does not apply to development involving a heritage item or in a heritage conservation area to the extent that the Planning Secretary is satisfied that the development is not capable of achieving a standard because of other development controls that apply.

(5) Development consent must not be granted to development to which the standards

MIXED USE DEVELOPMENT
3-5 FINGAL STREET BRUNSWICK HEADS

50

specified in Schedule 1 or 2 apply unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.

Comment

A BASIX Certificate accompanies the subject application.

Chapter 3 Standards for non-residential development

3.1 Application of Chapter

(1) This Chapter applies to development, other than development for the purposes of residential accommodation, that involves—

- (a) the erection of a new building, if the development has a capital investment value of \$5 million or more, or
- (b) alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.

(2) This Chapter does not apply to the following development—

- (a) development that is permitted with or without consent or that is exempt or complying development under—
 - (i) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, or
 - (ii) State Environmental Planning Policy (Resources and Energy) 2021, Chapter 2, or
 - (iii) State Environmental Planning Policy (Transport and Infrastructure) 2021, Chapter 5,
- (b) development on land wholly in any of the following zones—
 - (i) Zones RU1, RU2 or RU3,
 - (ii) Zone E5,
 - (iii) Zone IN3,
 - (iv) Zones C1, C2 or C3,
 - (v) Zones W1, W2, W3 or W4,
- (c) development for the purposes of residential care facilities.

(3) To avoid doubt, this Chapter does not apply to development to which Chapter 2 applies.

Comment

Chapter 2 applies to the proposed development and therefore the provisions of Chapter 3 are not applicable.



Balun Lane

Title: State Environmental Planning Policy (Housing) 2021

Published: 23 September 2024

Abstract:

The principles of this Policy are as follows—

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,
- (e) minimising adverse climate and environmental impacts of new housing development,
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,

(h) mitigating the loss of existing affordable rental housing.

Chapter 4 Design of residential apartment development

142 Aims of chapter

(1) The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes—

(a) to ensure residential apartment development contributes to the sustainable development of New South Wales by—

(i) providing socially and environmentally sustainable housing, and

(ii) being a long-term asset to the neighbourhood, and

(iii) achieving the urban planning policies for local and regional areas,

(b) to achieve better built form and aesthetics of buildings, streetscapes and public spaces,

(c) to maximise the amenity, safety and security of the residents of residential apartment development and the community,

(d) to better satisfy the increasing demand for residential apartment development, considering—

(i) the changing social and demographic profile of the community, and

(ii) the needs of a wide range of people, including persons with disability, children and seniors,

(e) to contribute to the provision of a variety of dwelling types to meet population growth,

(f) to support housing affordability,

(g) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,



5 & 7 Fingal Street as viewed from Balun Lane.

(h) to facilitate the timely and efficient assessment of development applications to which this chapter applies.

(2) This chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high quality design.

Comment:

The proposed development is considered to contribute to sustainable development by providing sustainable housing which will be a long-term asset to the neighbourhood and achieve the urban planning policies for the local area. It is submitted that the proposal will achieve “better” built form in terms of the aesthetics of the building, streetscape and public spaces. The proposal is also to be considered to be consistent with maximising amenity, safety and security of residents of residential apartment development and the community. The proposal is considered to satisfy the needs of the changing demographic profile of the community providing for 2 and 3 bedroom apartments within the Brunswick Heads town centre. It is submitted that the proposed development is consistent with the objectives of this chapter.

143 Land to which chapter applies

This chapter applies to the whole of the State, other than land to which [State Environmental Planning Policy \(Precincts—Regional\) 2021](#), Chapter 4 applies.

Comment:

Noted

144 Application of chapter

(1) In this policy, development to which this chapter applies is referred to as *residential apartment development*.

(2) This chapter applies to the following—

(a) development for the purposes of residential flat buildings,

(b) development for the purposes of shop top housing,

(c) mixed use development with a residential accommodation component that does not include boarding houses or co-living housing, unless a local environmental plan provides that mixed use development including boarding houses or co-living housing is residential apartment development for this chapter.

(3) This chapter applies to development only if—

(a) the development consists of—

(i) the erection of a new building, or

(ii) the substantial redevelopment or substantial refurbishment of an existing building, or

(iii) the conversion of an existing building, and



The subject site as viewed from the car park of Hotel Brunswick.

(b) the building is at least 3 storeys, not including underground car parking storeys, and

(c) the building contains at least 4 dwellings.

(4) If particular development comprises development for the purposes specified in subsection (2) and development for other purposes, this chapter applies only to the part of the development for the purposes specified in subsection (2).

(5) This chapter does not apply to development that involves only a class 1a or 1b building within the meaning of the *Building Code of Australia*.

(6) To avoid doubt, development to which Chapter 2, Part 2, Division 1, 5 or 6 or Chapter 5 applies may also be residential apartment development under this chapter.

(7) In this section—

underground car parking storey means a storey used for car parking that is—

(a) below ground level (existing), or

(b) less than 1.2m above ground level (existing).

145 Referral to design review panel for development applications

(1) This section applies to a development application for residential apartment development, other than State significant development.

(2) Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development.

(3) This section does not apply if—

(a) a design review panel has not been constituted for the local government area in which the development will be carried out, or

(b) a competitive design process has been held.

(4) In this section—

competitive design process means a design competition held in accordance with the *Design Competition Guidelines* published by the Department in September 2023.

Comment:

The proposal provides for shop top housing and is 3 storeys in height, containing at least 4 dwellings. The provisions of this chapter therefore apply to the development.



Existing development at 7 Fingal Street.

146 Referral to design review panel for modification applications

(1) This section applies to a modification application for residential apartment development, other than State significant development.

(2) If the statement by the qualified designer required to accompany the modification application under the [Environmental Planning and Assessment Regulation 2021](#), section 102(1) does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel for advice before determining the modification application.

(3) The consent authority may also refer a modification application for residential apartment development to the relevant design review panel for advice before determining the modification application.

(4) The design review panel must advise whether the modification—

(a) diminishes or detracts from the design quality of the original development, or

(b) compromises the design intent of the original development.

(5) Subsection (2) does not apply if—

(a) a design review panel has not been constituted for the local government area in which the development will be carried out, or

(b) a competitive design process has been held.

(6) In this section—

competitive design process means a design competition held in accordance with the *Design Competition Guidelines* published by the Department in September 2023.

relevant design review panel means the design review panel for the local government area in which the development will be carried out.

Comment:

The proposal is accompanied by a Design Verification Statement in accordance with the requirements of Clause 146.

147 Determination of development applications and modification applications for residential apartment development

(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—

(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,

(b) the Apartment Design Guide,

(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

(2) The 14-day period referred to in subsection (1)(c) does not increase or otherwise affect the period in which a development application or modification application must be determined by the consent authority.

(3) To avoid doubt, subsection (1)(b) does not require a consent authority to require

compliance with design criteria specified in the Apartment Design Guide.

(4) Subsection (1)(c) does not apply to State significant development.

Comment:

The proposal is evaluated in accordance with the design principles for residential apartment development set out in Schedule 9 as follows. In addition, the Apartment Design Guide provisions are evaluated in **Appendix C** to this report.

Context and neighbourhood character

(1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.

(2) Responding to context involves identifying the desirable elements of an area's existing or future character.

(3) Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

(4) Consideration of local context is important for all sites, including sites in the following areas—

- (a) established areas,
- (b) areas undergoing change,
- (c) areas identified for change.



The rear of the site as viewed from Balun Lane, with 7 Fingal Street to the right.

Comment

The design of the proposed development follows detailed consideration of the context of the site and the surrounding locality. The proposal addresses the street frontages of Fingal Street and Balun Lane. The proposed building design will provide a high level of amenity for the community and the residents of the apartments.

2 Built form and scale

(1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

(2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—

- (a) building alignments and proportions,
- (b) building type,
- (c) building articulation,
- (d) the manipulation of building elements.

(3) Appropriate built form—

- (a) defines the public domain, and
- (b) contributes to the character of streetscapes and parks, including their views and vistas, and
- (c) provides internal amenity and outlook.

Comment:

The scale, bulk and height of the proposed development are an appropriate response to the site and existing surrounding development. The built form defines the public domain and will make a positive contribution to the character of the streetscape. The proposed articulation of the building and use of materials further contribute to the streetscape.

3 Density

(1) Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

(2) Appropriate densities are consistent with the area's existing or projected population.

(3) Appropriate densities are sustained by the following—

- (a) existing or proposed infrastructure,
- (b) public transport,
- (c) access to jobs,
- (d) community facilities,
- (e) the environment.

Comment:

The density of the proposed development is considered appropriate for the subject location. The site is appropriately located within the Brunswick Heads town centre within close proximity to services and facilities. The proposed development will contribute to the vibrancy of the local centre.

4 Sustainability

- (1) Good design combines positive environmental, social and economic outcomes.
- (2) Good sustainable design includes—
 - (a) use of natural cross ventilation and sunlight for the amenity and liveability of residents, and
 - (b) passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs.
- (3) Good sustainable design also includes the following—
 - (a) recycling and reuse of materials and waste,
 - (b) use of sustainable materials,
 - (c) deep soil zones for groundwater recharge and vegetation.

Comment:

The design provides for natural cross ventilation and sunlight for the amenity of residents. The supporting documentation prepared by CHROFI details proposed measures to optimise the sustainability of the design, including passive thermal design for ventilation, heating and cooling and reducing the reliance on technology and operation costs. Water efficiency is also incorporated in the design of the proposal.

5 Landscape

- (1) Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.

(2) A positive image and contextual fit of well designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.

(3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—

- (a) the local context,
 - (b) co-ordinating water and soil management,
 - (c) solar access,
 - (d) micro-climate,
 - (e) tree canopy,
 - (f) habitat values,
 - (g) preserving green networks.
- (4) Good landscape design optimises the following—
- (a) usability,
 - (b) privacy and opportunities for social interaction,
 - (c) equitable access,
 - (d) respect for neighbours' amenity.
- (5) Good landscape design provides for practical establishment and long term management.



The rear of Hotel Brunswick as viewed from the subject site.

Comment:

The proposal provides for an integrated landscape design which will contribute to the built form and the existing streetscape. The development provides for appropriate landscaping on the ground floor plane including

in the vicinity of the through site link, Fingal Street and Balun Lane. The proposal also incorporates generous terraces and balconies for the apartments.

6 Amenity

- (1) Good design positively influences internal and external amenity for residents and neighbours.
- (2) Good amenity contributes to positive living environments and resident well-being.
- (3) Good amenity combines the following—
 - (a) appropriate room dimensions and shapes,
 - (b) access to sunlight,
 - (c) natural ventilation,
 - (d) outlook,
 - (e) visual and acoustic privacy,
 - (f) storage,
 - (g) indoor and outdoor space,
 - (h) efficient layouts and service areas,
 - (i) ease of access for all age groups and degrees of mobility.

Comment:

The proposed development incorporates design principles to achieve a high level of amenity for residents including appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, and visual and acoustic privacy. Generous private open space areas are also provided.

7 Safety

- (1) Good design optimises safety and security within the development and the public domain.
- (2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose.
- (3) Opportunities to maximise passive surveillance of public and communal areas promote safety.
- (4) A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The proposal provides for casual surveillance via the ground floor activation with the provision of retail and food and beverage tenants and orientation of proposed apartments.

8 Housing diversity and social interaction

- (1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.
- (2) Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix.
- (3) Good design involves practical and flexible features, including—
 - (a) different types of communal spaces for a broad range of people, and
 - (b) opportunities for social interaction among residents.



Existing development at 3 Fingal Street and 1 Fingal Street.

Comment:

The proposed development incorporates a mix of apartment types with 2 and 3 bedroom apartments proposed. The proposal provides for opportunities for social interactions within the building design.

9 Aesthetics

- (1) Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.
- (2) Good design uses a variety of materials, colours and textures.

(3) The visual appearance of well designed residential apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Site footer

We acknowledge the traditional owners of this land and pay respect to Elders, past, present and emerging.

Comment:

The proposed building comprises a variety of materials, colours and textures. The design of the building responds to the existing and future local context and will contribute to the aesthetics of the existing town centre.

148 Non-discretionary development standards for residential apartment development—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

(2) The following are non-discretionary development standards—

(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,

Comment

The proposed car parking is consistent with the requirements of the Apartment Design Guide.

(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,

Comment

The internal area for the 2 bedroom and 3 bedroom apartments exceed the minimum

specified in the Apartment Design Guide of 70m² and 90m² respectively.

(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

149 Apartment Design Guide prevails over development control plans

Comment

The ceiling height for the building exceed the Apartment Design Guide requirement of 2.7m for residential habitable levels and the proposed floor to ceiling height of the ground floor of 3.3m is consistent with the minimum for commercial use. However, it is noted that the recommendation to increase this to 4m for café and restaurant is not provided in the proposed design.

(1) A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—

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

(2) This section applies regardless of when the development control plan was made.

Comment:

Noted

Title: State Environmental Planning Policy (Resilience and Hazards) 2021

Published: 1 March 2022

Abstract:

The aim of this policy it to specify specific arrangements for Coastal management;

hazardous and offensive development and remediation of land.

Chapter 2 Coastal management

Part 2.2 Development controls for coastal management areas

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

Coastal Environment Area Map



Legend: Coastal Environment Area

- (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,
 - (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.
- (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.
 - (3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The proposed development is consistent with the coastal environment area requirements. The proposal incorporates adequate measures to protect the biophysical, hydrological and ecological environments. The proposal will not impact on open space or access to and along the foreshore. The development is not likely to adversely impact on Aboriginal cultural heritage practice and places. It is submitted that the proposal is consistent with the provisions of 2.10.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

Coastal Use Area Map



Legend: Coastal Use Area

- (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, and
 - (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
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The proposed development is consistent with the coastal use area provisions providing for an appropriate development which is unlikely to impact on access to or along the foreshore, public places, visual amenity and scenic qualities of the coast, Aboriginal cultural heritage or cultural and built heritage.

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—
 - (a) it has considered whether the land is contaminated, and
 - (b) 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, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is—*
- (a) *land that is within an investigation area,*
- (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—*
- (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
- (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Comment:

A Preliminary Site Investigation has been prepared by HMC Environmental Consulting Pty Ltd. That report recommends that prior to the commencement of works a detailed site investigation be undertaken in relation to potential hazardous building materials used in construction of the existing and former structures located on the site and potential

application of persistent termite treatment chemicals to under slab prior to June 1995.

It is anticipated that these recommendations will be addressed via appropriate condition of development consent.

4.1.5 CERTIFIED DRAFT PLANS

No draft plan is known to exist which would impinge upon the subject proposal.

4.1.6 SPECIFIC ENVIRONMENTAL PLANNING & ASSESSMENT ACT REQUIREMENTS

The proposed development does not comprise designated development in accordance with the Environmental Planning And Assessment Act or Regulation. The proposal does not rely on existing use rights. The development does not comprise Exempt Development, Complying Development or State Significant Development.

4.1.7 PART 7 OF BIODIVERSITY CONSERVATION ACT 2016 AND PART 7A OF FISHERIES MANAGEMENT ACT 1994

Pursuant to Section 1.7, "This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment."

The site is not mapped as containing biodiversity values. The vegetation proposed for removal does not exceed relevant clearing thresholds triggering the requirement for a Biodiversity Assessment Report.

The existing landscaping proposed for removal is not considered likely to result in significant adverse impacts on threatened species or ecological communities or their habitats. The proposal will provide for landscaping in accordance with the requirements of BDCP14.

4.1.8 INTEGRATED DEVELOPMENT CONSIDERATIONS

No integrated approvals within the meaning of Section 4.46 apply to this project.

4.2 CONTRIBUTION PLANS

The Byron Shire Council Contribution Plan applies to development of this land. Under this

plan Council may condition a consent with respect to the following matters:

Public open space acquisition

Public open space embellishment

Bike ways

Street trees

Road upgrading

Community facilities

Water

Bulk water

Sewer

It is noted that any contributions levied will take into account existing site credits.

4.3 LOCAL POLICY CONTROLS

Other than the provisions described in the above, it is understood that no specific policy of Council is applicable to the subject project.

4.4 STATE GOVERNMENT POLICY

No State Government Policies have particular relevance to the proposed development.

4.5 ANCILLARY LEGISLATION

The applicant is aware that in addition to the consent authority's approval of the subject application, the provisions of the following statutes may regulate development in the manner proposed:

Conveyancing Act 1919 No 6

Dividing Fences Act 1991 No 72

Food Act 2003 No 43

Liquor Act 2007 No 90

Local Government Act 1993 No 30

Strata Schemes Management Act 2015 No 50

Surveying and Spatial Information Act 2002 No 83



Existing three storey development located at 1 Fingal Street in centre of photo.

5. ENVIRONMENTAL INTERACTIONS

This section of the report expands on the contextual description of the physical environment given in Section 2, and undertakes an analysis of environmental interactions (particularly those at aspects of S.4.15 (1) (b) and (c) relevant in the subject circumstances) applicable to the proposed development with specific reference to the site planning objectives specified in Section 3.1 of the report. Further, this section reviews a range of comprehensive environmental management measures, again aimed at specifically addressing adopted site planning objectives.

5.1 CONTEXT AND SETTING

Objective

To ensure the building contributes to the Fingal Street and Balun Lane streetscapes.

The building has been designed to appropriately relate to existing surrounding development in terms of bulk, scale and form. As detailed in the design report the vision for the site can be summarised as follows:

Taking cues from the surrounding character, the project is conceived as a series of homes sitting above a landscaped verandah. Within the verandah fine-grain shops are located with landscaping and a new laneway connection, improving walkability and sense of community in the town centre.

It is submitted that the proposed built form is appropriate incorporating a façade design that:

"...responds to Brunswick Heads coastal climate and character through natural tones, textured materials and integrated greenery.

Fine-grain detailing provides shade, visual interest and human scale, while soft landscaping cools and animates the street edge. The material palette reflects the town's identity promoting longevity and climate sensitivity.

The material palette draws from Brunswick Heads' natural and built environment timber, light masonry and soft greenery evoke a sense of place. These elements weather gracefully, enhancing the buildings' character over time. Subtle variation in textures and tones ensures the façade remains engaging and responsive to changing light conditions.

This approach fosters a tactile, grounded architecture that feels both contemporary and familiar. A deliberate shift in materiality distinguishes public and private. Durable, textured finishes define the active commercial ground plane,

while lighter, softer materials above signal the transition to private residential space."



The site as viewed from Balun Lane.

5.2 DESIGN

Objective

To create an active ground plane and provide refuge for pedestrians from the elements.

To ensure the building design appropriately responds to existing development on adjacent sites.

The ground level fronting Fingal Street provides for retail and food and beverage tenancies that will contribute to the vibrancy of the town centre. As detailed in the Design Report, "activated frontages encourage street level interaction, while entries are clearly defined and softened with planning and natural finishes". Outdoor seating has been integrated into the public domain to encourage interaction.

As illustrated in the perspectives provided the building is set back at the upper levels and is compatible with existing surrounding development.

5.3 AMENITY

Objective

To carry out the development in a manner which optimises the amenity of residents while preserving the amenity of surrounding neighbours.

The building has been designed to consider the location of private open space and landscaped areas and potential impacts on adjoining sites. The predominant outlook, ventilation and solar access for adjoining apartments at both 7 and 1 Fingal Street have been carefully considered. It is submitted that the alignment of the terraces at the first floor with development to the immediate west in particular, will minimise potential adverse impacts on adjoining properties.

Solar access diagrams have been prepared and are provided in the Plan Set.



7 Fingal Street.

5.4 LANDSCAPING AND OPEN SPACE

Objective

To provide for private open space and implement an appropriate planting scheme to the ground plane and apartment terraces.

Landscaping has been incorporated to the ground plane through the site link and on both the Fingal Street and Balun Lane frontages. The landscape design will contribute to the building design and encourage social interaction with the use of the seating incorporated.

The apartment terraces promote cross ventilation, natural light enabling interaction whilst making appropriate provision for privacy. The apartments are dual aspect providing for excellent daylight, air flow and thermal comfort.

5.5 TRAFFIC AND PARKING

Objective

To ensure adequate provision for bicycle parking, car parking and loading is made and the proposal does not adversely impact on the existing local street network.

As detailed in the report prepared by Genesis Traffic, the proposal provides car parking, including accessible car parking, bicycle parking and loading and servicing, in accordance with the requirements of Council's Development Control Plan and relevant Australian Standards. The assessment concludes that the traffic generated by the proposed development will not be perceptible in the context of the existing road network.

5.6 ENERGY

Objective

To ensure the building adopts appropriate energy and water and waste minimisation.

The proposal has been designed to adopt best practice principles in terms of energy efficiency. Appropriate energy, water and waste minimisation will be adopted in the operational phase of the development.

5.7 CULTURAL CONSIDERATIONS

Objective

Ensure the development does not impact on items of early European or Aboriginal significance.

The site is disturbed and AHIMS undertaken indicates that there are no items of Aboriginal cultural heritage. A search of the AHIMS database indicates that there have been no Aboriginal sites declared within 50 metres of the subject site. A search of the database with a buffer of 200 metres indicates that 1 Aboriginal site is located within 200 metres of the subject land. It is submitted that no further investigation is

warranted however, standard conditions of consent will apply to the proposed development.

impacts of construction in terms of erosion sedimentation control.

5.8 SERVICES

Objective

To provide for public utilities to service the needs of the proposed development.

This site is able to be adequately serviced in terms of water, sewer, electricity supply and stormwater.

5.9 HAZARDS

Objective

Review potential site planning hazards with respect to Acid Sulfate Soils and flooding.

The proposed development is unlikely to adversely impact on potential Acid Sulfate Soils or flooding. It is submitted that the site is suitable for the development as proposed.

5.10 STORMWATER

Objective

Ensure the quality and quantity of stormwater exiting the site is not adversely affected by the proposed development and that existing drainage patterns are not materially altered.

A Concept Stormwater Management Plan has been prepared by BG & E and accompanies the Development Application. That report demonstrates that the development is able to be designed to ensure the quality and quantity exiting the site is not adversely affected by the proposed development.

5.11 CONSTRUCTION CONSIDERATIONS

Objective

Ensure construction works are appropriately managed to minimise site erosion and maintain the current quality of water exiting the site.

It is submitted that standard conditions of development consent to cater for potential

6. CONCLUSION

This section sets out our concluding remarks in relation to the Development Application.

The proposal by Hizan Holdings Pty Ltd and DL Gyngell to undertake the demolition of existing buildings on site, tree removal and the construction of a mixed use development comprising ground floor commercial and shop-top housing apartments above is a product of many factors. Those factors include:

- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for mixed use development and the provision of housing;
- strong demand for mixed use and residential development in particular; and
- the site planning opportunities presented by the site.

The proposed development application is permissible under the BLEP 2014 and is consistent with the provisions of BDCP 2014 and the Apartment Design Guide (ADG).

In our opinion, the development can be seen to satisfy a legitimate need for housing supply in particular and the development is capable of construction and use in a manner which mitigates potential adverse impacts consistent with the zone objectives detailed in Council's LEP. We submit its approval would be in the public interest within the meaning of Section 4.15(1)(e) of the Act.

Kate Singleton RPIA
PLANNERS NORTH

REFERENCES

- ANZECC. (1992). *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*. Australian and New Zealand Environment and Conservation Council.
- BSC. (2014). *Byron Local Environmental Plan 2014*. Byron Shire Council
- BSC. (2014). *Byron Development Control Plan 2014*. Byron Shire Council
- DECCW. (2010). *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*. Department of Environment Climate Change and Water. Issued 13 September 2010.
- DoPE. (2022). *The North Coast Regional Plan 2041*. Department of Planning & Environment.
- DUAP. EPA. (1998). *Managing Land Contamination Planning Guidelines SEPP55 - Remediation of Land*. Prepared by the Department of Urban Affairs and Planning and the NSW Environment Protection Authority.
- Morse et al. (1993). *Soil and Water Management for Urban Development*. Morse & McVey & Associates for NSW Department of Housing.
- RTA. (1993). *Guide to Traffic Generating Development*. Roads and Traffic Authority.

APPENDICES

A-1

APPENDIX A

Clause 4.6 Variation - Height of Building

Clause 4.6 Objection to Clause 4.3 - Height of Buildings under Byron Local Environmental Plan 2014 (BLEP14)

Introduction

I, Kate Singleton, of PLANNERS NORTH, 6 Porter Street, Byron Bay, on behalf of the owners of the subject site, object under Clause 4.6 Byron Local Environmental Plan 2014 (BLEP14) to the Development Standard relating to Building Height at Clause 4.3 of BLEP14.

I contend for the reasons set out following that the Development Standard prescribed at Clause 4.3 of BLEP14 is unreasonable and unnecessary in the circumstances of the subject case. Further, I am of the view that the proposed development raises no matters of adverse significance in Local, Regional or State terms and no public benefit will result from the maintenance of the subject standard in this case.

This objection is to be considered in conjunction with the Statement of Environmental Effects (SEE) published for a Development Application for a development comprising the demolition of existing development, tree removal and construction of a three (3) storey mixed use development comprising ground floor commercial and thirteen (13) shop top housing dwellings above at Lots 1 & 2 DP112944 3-5 Fingal Street, Brunswick Heads.

Structure of Objection

This objection:

- describes the variation proposed;
- provides justification for the exemption;
- reviews the proposal with respect to the guidance provided by *Wehbe v Pittwater Council*;
- reviews the proposal in light of the guidance provided by *Winten Developments v North Sydney Council*;
- examines considerations relevant to the public interest and State and regional planning significance; and
- provides a summary justification of the objection.

Clause 4.6 Objection

Development Standard

Pursuant to Clause 4.6 of the BLEP14, this objection seeks to vary the building height standard stipulated in Clause 4.3 which states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The relevant portion of the Heights of Building Map of the BLEP14 is shown below. It specifies a maximum height of 9 metres for the site.

APPENDICES

A-2

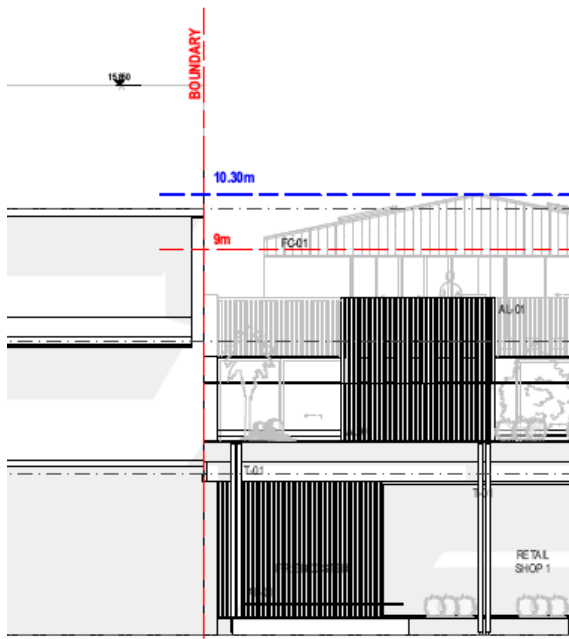
Height of Buildings Map



Legend:  9m

Extract from BLEP14

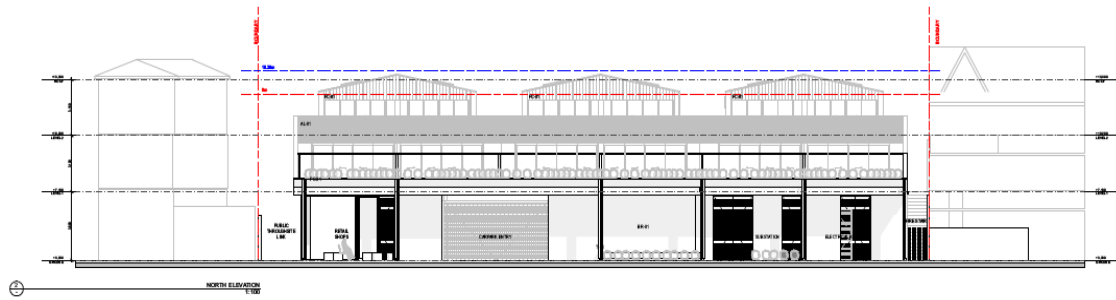
The plan extract below illustrates the proposed building and those elements that exceed 9m. As indicated on the plans accompanying the development application, the proposed upper floor and pitched roof line exceed the maximum 9m building height by 1.3m, resulting in a maximum building height of 10.3m.



In terms of the extent of the encroachment, as described above, the encroachment comprises 1.3m or 14.4%. The encroachment comprises part of the upper level and the roof form. As can be seen in the following section from Fingal Street to Balun Lane.

APPENDICES

A-3



The roof form is set well back from the street frontages where the encroachment occurs. The proposed variation will result in a building which is lower in height than existing adjoining buildings.

Justification for the exception and matters for consideration

Compliance to Clause 4.6 BLEP14

The following provides the justification with regard to the objectives of Clause 4.6 of BLEP14:

(1) *The objectives of this clause are as follows:*

- (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*

Comment:

The proposed variation sought is 14.4% in relation to the upper level and pitched roof form. The proposed building is set well back from the street frontages at the upper level and it is submitted that the building presents as a two storey building as viewed from the street. The bulk and scale of the building are consistent with the context of the existing streetscape.

The application of an appropriate degree of flexibility in relation to the building height standard provides for a greater level of amenity for the proposed development. The proposed variation is sought in relation to the roof form only, and it is submitted that the built form proposed does not result in significant adverse impacts on the existing streetscape or surrounding development. Allowing flexibility in the application of this clause will result in a building design that provides a superior outcome in building design.

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

The proposed building height standards is not expressly excluded from the operation of this clause.

(3) *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*

Comment:

This submission seeks to detail our written request to justify the contravention of the development standard and demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

APPENDICES

A-4

Compliance with the development standard is considered to be unreasonable or unnecessary for the following reasons:

1. The proposed encroachments will not adversely impact on the streetscape.
2. The proposed variation sought does not add to the bulk or scale of the proposed building. Strict compliance with the development standard would likely result in the removal of the pitched roof and replacement with a flat roof which would be considered to be a less desirable building design.
3. The proposed variation will not adversely impact on adjoining properties in terms of views, solar access or privacy.

Given the above, it is submitted that compliance with the 9m building height is unreasonable and unnecessary in the circumstances of the case. The proposed variation is consistent with the objectives of the Environmental Planning and Assessment Act 1979 (the Act) and promotes the orderly and economic use and development of the land.

Clause 4.6 of the BLEP14 allows a proponent to seek approval from the Council for consent to be granted to an application that contravenes a development standard. As outlined in this SEE, the proposed development complies with all other standards of BLEP14 and BDCP14 will create a minimal impact on the locality and its surrounds.

The consistency with the objectives of Cl. 4.3 Height of buildings as described above satisfies the “*Wehbe test*” and the absence of any environmental impacts, demonstrates that strict compliance with the building height standard is both unreasonable and unnecessary in this instance.

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

Comment

The proposed variation to the building height will not result in adverse impacts on adjoining properties in terms of solar access or views. The proposed roof form is sited so as not to not disrupt views from surrounding properties or the public street. The proposed development incorporates a public access through the site to link Fingal Street and Balun Lane and the provision of this accessway is considered to be in the public interest.

(4) Development consent must not be granted unless:

(a) the consent authority is satisfied that:

(i) the written request has addressed sub clause (3)

Comment

This Appendix is our formal written request.

(ii) the proposed development is in the public interest (consistent with the objectives of the standard and the zone)

Comment

The objectives of the Building Height standard are provided as follows:

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to the finished roof or parapet,*
- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*

Whilst the building exceeds the specified maximum height the building remains consistent with existing adjacent development. The proposed height of the building complements the streetscape and character of the area. The height of the building proposed is consistent with development in the immediate vicinity. The roof form where it exceeds the 9m height limit is set back from both the Fingal Street and Balun Lane frontages.

The objectives of Zone E1 Local Centre are:

APPENDICES

A-5

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To maximise public transport patronage and encourage walking and cycling.

The above objectives of the zone are met by the proposal in the following ways:

The proposed mixed use development is consistent with the objectives of the E1 Local Centre, providing for retail uses to serve the needs of people who live in and visit the area.

The proposal provides for employment opportunities in an accessible location with the development located in the Brunswick Heads town centre. The site is within walking distance to retail, community and recreational offerings, including the beach, medical facilities and retail services. The provision of residential accommodation on this site will contribute to the vibrancy of the town centre. The proposal provides non residential land use on the ground floor of building. Bicycle parking is proposed to encourage cycling and the through site link encourages pedestrian activity.

(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

The proposed variation will not result in significant adverse visual impact. There will be no disruption of views or loss of privacy resulting from the proposed variation.

(b) the concurrence of the Secretary has been obtained.

Comment

We understand that the Council enjoy assumed concurrence from the Planning Secretary in relation to this matter.

(5) The Secretary must consider:

(a) whether contravention raises any matter of significance for State or regional environmental planning.

Comment

It is submitted that no issues of State or Regional Environmental Planning arise from the proposed variation. The proposed development is considered to be consistent with relevant objectives and directions of the *North Coast Regional Plan 2041* particularly in relation to the following:

- Objective 1: Provide well located homes to meet demand
- Objective 5: Manage and improve resilience to shocks and stresses, natural hazards and climate change
- Objective 6: Create a circular economy
- Objective 7: Promote renewable energy opportunities

Wehbe v Pittwater Council

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection maybe consistent with the aims of the policy.

Those five tests are considered in the table below.

APPENDICES

A-6

<p><i>(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard</i></p>	<p><i>The BLEP14 Clause 4.3 Height of Buildings and corresponding responses are as follows:</i></p> <p><i>(1) The objectives of this clause are as follows—</i></p> <p><i>(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,</i></p> <p><i>(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,</i></p> <p><i>(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i></p> <p>Comment</p> <p>The proposed height of the development is compatible with the streetscape and character of the area in which the building is located. The roof element exceeding the building height is set back from the streetscape. It is submitted that potential visual impacts and disruption of views, loss of privacy and solar access have been minimised.</p>
<p><i>(ii) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary</i></p>	<p>Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.</p>
<p><i>(iii) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i></p>	<p>Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.</p>
<p><i>(iv) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and</i></p>	<p>This objection to the development standard requested does not rely on this reason.</p>
<p><i>(v) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</i></p>	<p>This objection to development standard requested does not rely on this reason.</p>

APPENDICES

A-7

Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46

The objection to development standards request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

<p><i>A Is the planning control in question a development standard?</i></p>	<p>Yes, Cl. 4.3(2) of BLEP14 is a development standard.</p>
<p><i>B What is the underlying object or purpose of the standard?</i></p>	<p><i>The BLEP14 Clause 4.3 Height of Buildings and corresponding responses are as follows:</i></p> <p><i>(1) The objectives of this clause are as follows—</i></p> <p><i>(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,</i></p> <p><i>(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,</i></p> <p><i>(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i></p>
<p><i>C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?</i></p>	<p>Compliance with the development standard is unnecessary or unreasonable in the circumstances of the case because:</p> <ul style="list-style-type: none"> • The proposed non-conforming element of the building comprises the upper level and pitched roof form and will not impact the overall presentation of the building to the street and surrounding area. • The project is consistent with the general height of development in the locality. • The building articulation and massing seeks to reduce the perception of a single large building to Fingal Street and Balun Lane. • There is no disruption to views or loss of privacy or significant solar access resulting to the proposed variation.
<p><i>D. Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?</i></p>	<p>The arguments contained in this Clause 4.6 variation support the case to allow flexibility in the application of the standard.</p> <p>The non-compliance with the development standard allows for an orderly use of the land and has been designed with consideration to the desired future character of the area.</p> <p>Additionally, the Objects of the Act are satisfied as:</p> <ul style="list-style-type: none"> • The departure from the height standard in BLEP14 will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and • The departure from the height standard in BLEP14 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.

APPENDICES

A-8

<i>E. Is the objection well founded?</i>	As my Clause 4.6 exception to development standards request appropriately addresses <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827, I submit that the proposed variation is well founded.
------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Public interest and matters of State or regional significance

Is the proposal in the public interest?

Clause 4.6 exception to development standards request and the accompanying plans and technical reports contained within the SEE demonstrate the public advantages of developing the site. In summary:

- Strict compliance with the height control will result in an amended building design which incorporates a flat roof and a potential reduction in residential apartments within the town centre. Given the current setback of the built form it will have little impact of the presentation of the building to the street. It is submitted that a reduction in height may also see the removal of the through site connection at the ground level.
- The proposal provides for optimal utilisation of the site within the town centre and is consistent with Council's plans and strategies for Brunswick Heads town centre.
- The proposal provides for employment both during and post construction.
- No unreasonable public disadvantages result from the proposed variation.

Matters of State or Regional Significance

The non-compliance with Cl 4.3 Height of buildings standard does not raise matters of significance for State or regional planning. The proposed development is consistent with the aspirations of the *North Coast Regional Plan 2041*.

The public benefit of maintaining the standard

There is no public benefit in maintaining strict compliance with the development standard in this instance.

Summary justification

A summary of the matters set out in Clause 4.6 exceptions to development standards request to vary the height of building and wall standards are as follows:

- The proposed height of the building is consistent with that of existing surrounding development in the locality.
- The proposed variation to the height limit does not result in a materially different presentation to Fingal Street or Balun Lane.
- The proposed variation does not significantly impact on the bulk or scale of the proposed built form.
- The proposed development will not adversely impact on existing or future surrounding development in terms of view, privacy or solar access.
- The proposed variation satisfies the tests and considerations established in *Wehbe v Pittwater Council* [2007] NSW LEC 82 and *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

In summary, compliance with the development standard restricting building height is unreasonable and unnecessary. This is because the objectives of the development standard can still be achieved notwithstanding non-compliance. The development standard is not an end in itself but rather a means of achieving desired outcomes.

APPENDICES

B-1

APPENDIX B

Clause 4.6 Variation – Floor Space Ratio

Clause 4.6 Objection to Clause 4.4 – Floor Space Ratio under Byron Local Environmental Plan 2014 (BLEP14)

Introduction

I, Kate Singleton, of PLANNERS NORTH, 6 Porter Street, Byron Bay, on behalf of the owners of the subject site, object under Clause 4.6 Byron Local Environmental Plan 2014 (BLEP14) to the Development Standard relating to Floor Space Ratio at Clause 4.4 of BLEP14.

I contend for the reasons set out following that the Development Standard prescribed at Clause 4.4 of BLEP14 is unreasonable and unnecessary in the circumstances of the subject case. Further, I am of the view that the proposed development raises no matters of adverse significance in Local, Regional or State terms and no public benefit will result from the maintenance of the subject standard in this case.

This objection is to be considered in conjunction with the Statement of Environmental Effects (SEE) published for a Development Application for a development comprising the demolition of existing development, tree removal and construction of a three (3) storey mixed use development comprising ground floor commercial and thirteen (13) shop top housing dwelling above at Lots 1 & 2 DP112944 3-5 Fingal Street Brunswick Heads.

Structure of Objection

This objection:

- describes the variation proposed;
- provides justification for the exemption;
- reviews the proposal with respect to the guidance provided by *Wehbe v Pittwater Council*;
- reviews the proposal in light of the guidance provided by *Winten Developments v North Sydney Council*;
- examines considerations relevant to the public interest and State and regional planning significance; and
- provides a summary justification of the objection.

Clause 4.6 Objection

Development Standard

Pursuant to Clause 4.6 of the BLEP14, this objection seeks to vary the floor space ratio standard stipulated in Clause 4.4 which states:

(3) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The relevant Floor Space Ratio Map of BLEP14 is shown below. It specifies a maximum of 0.75:1 for the site.

APPENDICES

B-2

Floor Space Ratio



Extract from BLEP14.

The proposed development has a total Gross Floor Area of 2044m², resulting in a Floor Space Ratio (FSR) of 1.01:1. This exceeds the maximum permissible FSR of 0.75:1. This exceedance of 526m² represents a 35% variation to the FSR control. It is submitted that the proposed variation to the FSR enables the residential development on the site to be maximised whilst maintaining compatibility of the proposed building with the existing streetscape and surrounding development. It is submitted that the proposal can be undertaken whilst minimising impacts on the amenity of existing dwellings.

It is submitted that the proposed development is appropriate in terms of bulk, scale, design, external appearance and relationship to the existing surrounding development. The proposal to provide for residential development within the town centre is entirely appropriate in this location and can be undertaken without adversely impacting on the character or amenity of the village.

Justification for the exception and matters for consideration

Compliance to Clause 4.6 BLEP14

The following provides the justification with regard to the objectives of Clause 4.6 of BLEP14:

- (1) *The objectives of this clause are as follows:*
 - (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*

Comment:

The proposed variation sought provides an appropriate degree of flexibility in terms of encouraging well designed in-fill development within an existing accessible location. The building design achieved is appropriate for the locality and enables residential development to be maximised.

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

The proposed floor space ratio standard is not expressly excluded from the operation of this clause.

- (3) *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*

APPENDICES

B-3

Comment:

This submission seeks to detail our written request to justify the contravention of the development standard and demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with the development standard is considered to be unreasonable or unnecessary for the following reasons:

1. The proposed increase in floor area will not adversely impact on the streetscape.
2. The bulk and scale of the proposed building remains compatible with existing surrounding development. Strict compliance with the development standard would likely result in the removal of floor area equating to 5 x 2 bedroom apartments.
3. The proposed variation will not adversely impact on adjoining properties in terms of views, solar access or privacy.

Given the above, it is submitted that compliance with the 0.75:1 floor space ratio is unreasonable and unnecessary in the circumstances of the case. The proposed variation is consistent with the objectives of the Environmental Planning and Assessment Act 1979 (the Act) and promotes the orderly and economic use and development of the land.

Clause 4.6 of the BLEP14 allows a proponent to seek approval from the Council for consent to be granted to an application that contravenes a development standard. As outlined in this SEE, the proposed development complies with all other standards of BLEP14 and BDCP14 will create a minimal impact on the locality and its surrounds.

The consistency with the objectives of Cl. 4.4 Floor Space Ratio as described above satisfies the “*Wehbe test*” and the absence of any environmental impacts, demonstrates that strict compliance with the floor space ratio standard is both unreasonable and unnecessary in this instance.

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

Comment

The proposed variation to the FSR will not result in adverse impacts on adjoining properties in terms of solar access or views. The proposed building provides for public access through the site to link Fingal Street and Balun Lane. This accessway is considered to be in the public interest and contributes to the permeability of the town centre. Further, the proposed minor variation to the FSR ensures that the proposal is able to provide for a diversity of housing in terms of the provision of both 2 and 3 bedroom apartments.

(4) Development consent must not be granted unless:

(b) the consent authority is satisfied that:

(i) the written request has addressed sub clause (3)

Comment

This Appendix is our formal written request.

(ii) the proposed development is in the public interest (consistent with the objectives of the standard and the zone)

Comment

The objectives of the FSR standard are provided as follows:

(a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,

(b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,

APPENDICES

B-4

- (c) to provide floor space in employment and mixed use zones adequate for the foreseeable future,*
- (d) to regulate density of development and generation of vehicular and pedestrian traffic,*
- (e) to set out maximum floor space ratios for dual occupancy in certain areas.*

Whilst the building exceeds the specified maximum floor space ratio the building remains consistent with existing adjacent development. The building is entirely appropriate in relation to the character, amenity and environment of the locality. The proposal provides for a diversity of housing types and comprises low scale medium density housing in a suitable location. The proposal provides for commercial floor space and caters for the car parking generated by the development.

The objectives of Zone E1 Local Centre are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To maximise public transport patronage and encourage walking and cycling.*

The above objectives of the zone are met by the proposal in the following ways:

The proposed mixed use development is consistent with the objectives of the E1 Local Centre, providing for retail uses to serve the needs of people who live in and visit the area.

The proposal provides for employment opportunities in an accessible location with the development located in the Brunswick Heads town centre.

The site is within walking distance to retail, community and recreational offerings, including the beach, medical facilities and retail services. The provision of residential accommodation on this site will contribute to the vibrancy of the town centre. The proposal provides non residential land use on the ground floor of buildings encourage and bicycle parking is provided.

(b) the concurrence of the Secretary has been obtained.

Comment

We understand that the Council enjoy assumed concurrence from the Planning Secretary in relation to this matter.

(6) The Secretary must consider:

(b) whether contravention raises any matter of significance for State or regional environmental planning.

Comment

It is submitted that no issues of State or Regional Environmental Planning arise from the proposed variation. The proposed development is considered to be consistent with relevant objectives and directions of the *North Coast Regional Plan 2041* particularly in relation to the following:

- Objective 1: Provide well located homes to meet demand
- Objective 5: Manage and improve resilience to shocks and stresses, natural hazards and climate change
- Objective 6: Create a circular economy

APPENDICES

B-5

- Objective 7: Promote renewable energy opportunities

Wehbe v Pittwater Council

In his decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection maybe consistent with the aims of the policy.

Those five tests are considered in the table below.

<p><i>(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard</i></p>	<p><i>The BLEP14 Clause 4.4 Floor Space Ratio and corresponding responses are as follows:</i></p> <p><i>(1) The objectives of this clause are as follows—</i></p> <p><i>(a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,</i></p> <p><i>(b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,</i></p> <p><i>(c) to provide floor space in employment and mixed use zones adequate for the foreseeable future,</i></p> <p><i>(d) to regulate density of development and generation of vehicular and pedestrian traffic,</i></p> <p><i>(e) to set out maximum floor space ratios for dual occupancy in certain areas.</i></p> <p>Comment</p> <p>The proposed development is consistent with the objectives of the Floor Space Ratio control. The building is appropriately designed and located and will contribute to the character of the locality. The proposal incorporates a diversity of housing types and comprises low scale medium density housing in a suitable location. The proposal provides for commercial floor space and accommodates all the car parking generated by the development.</p>
<p><i>(ii) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary</i></p>	<p>Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.</p>
<p><i>(iii) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i></p>	<p>Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.</p>
<p><i>(iv) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and</i></p>	<p>This objection to the development standard requested does not rely on this reason.</p>

APPENDICES

B-6

<p><i>(v) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</i></p>	<p>This objection to development standard requested doesnot rely on this reason.</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------

Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46

The objection to development standards request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North SydneyCouncil* [2001] NSWLEC 46.

<p><i>A Is the planning control in question a development standard?</i></p>	<p>Yes, Cl. 4.4(2) of BLEP14 is a development standard.</p>
<p><i>B What is the underlying object or purpose of the standard?</i></p>	<p><i>The BLEP14 Clause 4.4 Floor Space Ratio and corresponding responses are as follows:</i></p> <p><i>(1) The objectives of this clause are as follows—</i></p> <p><i>(a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,</i></p> <p><i>(b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,</i></p> <p><i>(c) to provide floor space in employment and mixed use zones adequate for the foreseeable future,</i></p> <p><i>(d) to regulate density of development and generation of vehicular and pedestrian traffic,</i></p> <p><i>(e) to set out maximum floor space ratios for dual occupancy in certain areas.</i></p>
<p><i>C Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?</i></p>	<p>Compliance with the development standard is unnecessary or unreasonable in the circumstances of the case because:</p> <ul style="list-style-type: none"> • The proposed variation will not adversely impact on the relationship of the building to the street and surrounding area. • The project is consistent with the bulk and scale of existing surrounding development in the locality. • The building articulation and massing seeks to reduce the perception of a single large building to Fingal Street and Balun Lane. • There is no disruption to views or loss of privacy or significant solar access resulting to the proposed variation.

APPENDICES

B-7

<p><i>D. Is compliance with the development standard consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?</i></p>	<p>The arguments contained in this Clause 4.6 variation support the case to allow flexibility in the application of the standard.</p> <p>The non-compliance with the development standard allows for an orderly use of the land and has been designed with consideration to the desired future character of the area.</p> <p>Additionally, the Objects of the Act are satisfied as:</p> <ul style="list-style-type: none">• The departure from the floor space ratio standard in BLEP14 will have nonegative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and• The departure from the floor space ratio standard in BLEP14 allows for the orderly and economic use of the site in a manner which otherwise achieves the outcomes and objectives of the relevant planning controls.
<p><i>E. Is the objection well founded?</i></p>	<p>As my Clause 4.6 exception to development standards request appropriately addresses <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827, I submit that the proposed variation is well founded.</p>

Public interest and matters of State or regional significance

Is the proposal in the public interest?

Clause 4.6 exception to development standards request and the accompanying plans and technical reports contained within the SEE demonstrate the public advantages of developing the site. In summary:

- Strict compliance with the floor space ratio control will result in an amended building design which potentially includes the removal of the through site link and will result in a reduction in residential apartments. It is submitted that a similar built form will result in terms of the presentation of the building to the street and laneway.
- The proposal provides for optimal utilisation of the site within the town centre and is consistent with Council's plans and strategies for Brunswick Heads town centre.
- The proposal provides for employment both during and post construction.
- No unreasonable public disadvantages result from the proposed variation.

Matters of State or Regional Significance

The non-compliance with CI 4.4 Floor Space Ratio standard does not raise matters of significance for State or regional planning. The proposed development is consistent with the aspirations of the *North Coast Regional Plan 2041*.

The public benefit of maintaining the standard

There is no public benefit in maintaining strict compliance with the development standard in this instance.

Summary justification

A summary of the matters set out in Clause 4.6 exceptions to development standards request to vary the floor space ratio of the building is provided as follows:

APPENDICES

B-8

- The proposed building height, bulk and scale is consistent with that of existing surrounding development in the locality.
- The proposed variation to the floor space ratio limit does not result in a materially different presentation to Fingal Street or Balun Lane.
- The proposed variation does not significantly impact on the bulk or scale of the proposed built form.
- The proposed development will not adversely impact on existing or future surrounding development in terms of view, privacy or solar access.
- The proposed variations satisfy the tests and considerations established in *Wehbe v Pittwater Council* [2007] NSW LEC 82 and *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46.

In summary, compliance with the development standard restricting floor space ratio is unreasonable and unnecessary. This is because the objectives of the development standard can still be achieved notwithstanding non-compliance. The development standard is not an end in itself but rather a means of achieving desired outcomes.

APPENDICES

C-1

APPENDIX C

Apartment Design Guide Assessment

TABLE 4.2 APARTMENT DESIGN GUIDE

Provision	Comment
Part 3 Siting the Development	
3A Site Analysis	
Objective 3A-1	
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	CHROFI Architects has prepared a site analysis which demonstrates the opportunities and constraints provided by the site, including prevailing winds, solar access, view corridors and potential noise sources.
Design Guidance	
Each element in the Site Analysis Checklist should be addressed (see Appendix 1)	
3B Orientation	
Objective 3B-1	
Building types and layouts respond to the streetscape and site while optimising solar access within the development	
Design guidance	
Buildings along the street frontage define the street, by facing it and incorporating direct access from the street (see figure 3B.1) Where the street frontage is to the east or west, rear buildings should be orientated to the north Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west (see figure 3B.2)	Apartments are orientated towards the north. Central terraces are provided to increase solar access for dwellings located on the southern side of the site. The building design and separation of building has also been configured to minimise solar impacts on the south.
Objective 3B-2	
Overshadowing of neighbouring properties is minimised during mid winter	
Design guidance	
Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access Solar access to living rooms, balconies and private open spaces of neighbours should be considered Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20% If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy	Solar access diagrams have been prepared to assess the potential impacts on adjacent buildings. Solar access to private open space, balconies and living areas is not impacted by the proposed development.

APPENDICES

C-2

	Provision	Comment
	<p>Overshadowing should be minimised to the south or down hill by increased upper level setbacks</p> <p>It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development</p> <p>A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings</p>	
3C Public domain interface		
	Objective 3C-1	
	Transition between private and public domain is achieved without compromising safety and security	
	Design Guidance	
	<p>Terraces, balconies and courtyard apartments should have direct street entry, where appropriate</p> <p>Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings (see figure 3C.1)</p> <p>Upper level balconies and windows should overlook the public domain</p> <p>Front fences and walls along street frontages should use visually permeable materials and treatments. The height of solid fences or walls should be limited to 1m</p> <p>Length of solid walls should be limited along street frontages</p> <p>Opportunities should be provided for casual interaction between residents and the public domain. Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets</p> <p>In developments with multiple buildings and/or entries, pedestrian entries and spaces associated with individual buildings/entries should be differentiated to improve legibility for residents, using a number of the following design solutions:</p> <ul style="list-style-type: none"> • architectural detailing • changes in materials • plant species • colours <p>Opportunities for people to be concealed should be minimised</p>	<p>The proposal provides a clear transition between public and private areas. The apartments have a defined entry and the upper level terraces and balconies are set back to provide for surveillance on both the Fingal Street and Balun Lane frontages whilst also providing for adequate privacy for residents. Opportunities are provided for casual interaction between residents and the public domain. Seating has been provided and a through site thoroughfare is proposed.</p>
3C Public domain interface		
	Objective 3C-2	
	Amenity of the public domain is retained and enhanced	The amenity of the public domain will be enhanced with the provision of active street frontages to Fingal Street and Balun Lane.
	Design guidance	
	Planting softens the edges of any raised terraces to the street, for example above sub-basement car parking	The proposal provides for landscaping at the Fingal Street and Balun Lane frontages. No basement car parking is provided

APPENDICES

C-3

Provision	Comment
<p>Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided</p> <p>The visual prominence of underground car park vents should be minimised and located at a low level where possible.</p> <p>Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view</p> <p>Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels</p> <p>Durable, graffiti resistant and easily cleanable materials should be used.</p> <p>Where development adjoins public parks, open space or bushland, the design positively addresses this interface and uses a number of the following design solutions:</p> <ul style="list-style-type: none"> • street access, pedestrian paths and building entries which are clearly defined • paths, low fences and planting that clearly delineate between communal/private open space and the adjoining public open space • minimal use of blank walls, fences and ground level parking <p>On sloping sites protrusion of car parking above ground level should be minimised by using split levels to step underground car parking</p>	<p>in accordance with the requirements of BDCP14 for the Brunswick Heads town centre.</p> <p>Services are appropriately sited adjacent to the laneway and have been appropriately incorporated into the building design to minimise adverse impacts. Clearly defined pedestrian pathways and building entries are proposed.</p> <p>Minimal use of blank walls and fences have been provided.</p> <p>Ground level car parking is proposed in accordance with the requirements of the DCP.</p> <p>Service areas are well screened and will not be highly visible.</p> <p>Ramping for accessibility has been designed to transition within the site from the street.</p>
3D Communal and public open space	
Objective 3D-1	
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	
Design criteria	
<ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter) 	
Design guidance	
<p>Communal open space should be consolidated into a well designed, easily identified and usable area</p> <p>Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions</p> <p>Communal open space should be co-located with deep soil areas</p> <p>Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies</p> <p>Where communal open space cannot be provided at ground level, it should be provided on a podium or roof</p>	<p>Communal open space is not provided for the apartments given the scale and configuration of the apartments. As recognised in the guide, communal open space may be unable to achieve design criteria on sites within business zones. The proposal incorporates larger balconies and increased open space for apartments.</p> <p>It is also noted that the subject site is located within close proximity to</p>

APPENDICES

C-4

Provision	Comment
<p>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space 	<p>numerous areas of public open space including reserves adjacent to the river and beach.</p>
Objective 3D-2	
Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	As above.
Design guidance	
<p>Facilities are provided within communal open spaces and common spaces for a range of age groups (see also 4F Common circulation and spaces), incorporating some of the following elements:</p> <ul style="list-style-type: none"> • seating for individuals or groups • barbecue areas • play equipment or play areas • swimming pools, gyms, tennis courts or common rooms <p>The location of facilities responds to microclimate and site conditions with access to sun in winter, shade in summer and shelter from strong winds and down drafts Visual impacts of services should be minimised, including location of ventilation duct outlets from basement car parks, electrical substations and detention tanks</p>	<p>Seating has been incorporated at the ground floor adjacent to the retail premises.</p>
Objective 3D-3	
Communal open space is designed to maximise safety	
Design guidance	
<p>Communal open space and the public domain should be readily visible from habitable rooms and private open space areas while maintaining visual privacy. Design solutions may include:</p> <ul style="list-style-type: none"> • bay windows • corner windows • balconies <p>Communal open space should be well lit Where communal open space/facilities are provided for children and young people they are safe and contained</p>	Not applicable
Objective 3D-4	
Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood	Not applicable.
Design guidance	
<p>The public open space should be well connected with public streets along at least one edge The public open space should be connected with nearby parks and other landscape elements</p>	

APPENDICES

C-5

	Provision	Comment												
	<p>Public open space should be linked through view lines, pedestrian desire paths, termination points and the wider street grid</p> <p>Solar access should be provided year round along with protection from strong winds</p> <p>Opportunities for a range of recreational activities should be provided for people of all ages</p> <p>A positive address and active frontages should be provided adjacent to public open space</p> <p>Boundaries should be clearly defined between public open space and private areas</p>													
3E Deep soil zones														
	Objective 3E-1													
	Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality													
	Design criteria													
	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="background-color: #d3d3d3;">Site area</th> <th style="background-color: #d3d3d3;">Minimum dimensions</th> <th style="background-color: #d3d3d3;">Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td style="background-color: #ffe4c4;">less than 650m²</td> <td style="background-color: #ffe4c4;">-</td> <td rowspan="4" style="background-color: #ffe4c4; text-align: center; vertical-align: middle;">7%</td> </tr> <tr> <td style="background-color: #ffe4c4;">650m² - 1,500m²</td> <td style="background-color: #ffe4c4;">3m</td> </tr> <tr> <td style="background-color: #ffe4c4;">greater than 1,500m²</td> <td style="background-color: #ffe4c4;">6m</td> </tr> <tr> <td style="background-color: #ffe4c4;">greater than 1,500m² with significant existing tree cover</td> <td style="background-color: #ffe4c4;">6m</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	less than 650m ²	-	7%	650m ² - 1,500m ²	3m	greater than 1,500m ²	6m	greater than 1,500m ² with significant existing tree cover	6m	<p>As the provisions state, it may not be possible to achieve the deep soil zones in circumstances including within town centres, where there is 100% site coverage or non-residential land uses on the ground level. The proposal provides for landscaping on the Fingal Street and Balun Lane frontages as well as in the through site connection. The site provides for 82m² or 4% of the site area as deep soil zone and 130m² or 5.6% of the site area as permeable paving. The total landscaped area of 195m² represents 9.6% of the site area. It is also noted that the upper level terraces provide for landscaping.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
less than 650m ²	-	7%												
650m ² - 1,500m ²	3m													
greater than 1,500m ²	6m													
greater than 1,500m ² with significant existing tree cover	6m													
	Design guidance													
	<p>On some sites it may be possible to provide larger deep soil zones, depending on the site area and context:</p> <ul style="list-style-type: none"> • 10% of the site as deep soil on sites with an area of 650m² - 1,500m² • 15% of the site as deep soil on sites greater than 1,500m² <p>Deep soil zones should be located to retain existing significant trees and to allow for the development of healthy root systems, providing anchorage and stability for mature trees. Design solutions may include:</p> <ul style="list-style-type: none"> • basement and sub basement car park design that is consolidated beneath building footprints • use of increased front and side setbacks • adequate clearance around trees to ensure long term health 													

APPENDICES

C-6

	Provision	Comment												
	<ul style="list-style-type: none"> co-location with other deep soil areas on adjacent sites to create larger contiguous areas of deep soil <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres) there is 100% site coverage or non-residential uses at ground floor level <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure</p>													
3F Visual privacy														
	Objective 3F-1													
	Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy													
	Design criteria													
	<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" style="margin-left: 40px;"> <thead> <tr> <th style="background-color: #cccccc;">Building height</th> <th style="background-color: #cccccc;">Habitable rooms and balconies</th> <th style="background-color: #cccccc;">Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2) Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>The subject site is located within Brunswick Heads town centre and setback provisions from side boundaries do not apply for shop top housing. The design of the building seeks to ensure potential impacts on adjacent development are minimised. It is submitted that the proposed design is an acceptable response to existing adjacent development and the planning controls applicable to this location. The visual privacy between buildings has been maximised and the location of the proposed terraces seeks to ensure that existing private open space balconies on adjacent properties maintain privacy.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												
	Design guidance													
	<p>Generally one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance</p> <p>For residential buildings next to commercial buildings, separation distances should be measured as follows:</p> <ul style="list-style-type: none"> for retail, office spaces and commercial balconies use the habitable room distances for service and plant areas use the non-habitable room distances <p>New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:</p>	Not applicable												

APPENDICES

C-7

Provision	Comment
<ul style="list-style-type: none"> • site layout and building orientation to minimise privacy impacts (see also section 3B Orientation) • on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4) <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)</p> <p>Direct lines of sight should be avoided for windows and balconies across corners</p> <p>No separation is required between blank walls</p>	
Objective 3F-2	
<p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space</p>	<p>The building design incorporates elements to increase privacy between apartments and adjoining properties whilst optimising access to light and air. A generous break is provided between buildings on the subject site to minimise impacts on the outlook from adjoining properties.</p>
Design guidance	
<p>Communal open space, common areas and access paths should be separated from private open space and windows to apartments, particularly habitable room windows. Design solutions may include:</p> <ul style="list-style-type: none"> • setbacks • solid or partially solid balustrades to balconies at lower levels • fencing and/or trees and vegetation to separate spaces • screening devices • bay windows or pop out windows to provide privacy in one direction and outlook in another • raising apartments/private open space above the public domain or communal open space • planter boxes incorporated into walls and balustrades to increase visual separation • pergolas or shading devices to limit overlooking of lower apartments or private open space • on constrained sites where it can be demonstrated that building layout opportunities are limited, fixed louvres or screen panels to windows and/or balconies <p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas</p> <p>Balconies and private terraces should be located in front of living rooms to increase internal privacy</p> <p>Windows should be offset from the windows of adjacent buildings</p>	<p>Communal open space is not provided.</p>

APPENDICES

C-8

	Provision	Comment
	Recessed balconies and/or vertical fins should be used between adjacent balconies	
3G Pedestrian access and entries		
	Objective 3G-1	
	Building entries and pedestrian access connects to and addresses the public domain	
	Design guidance	
	Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge Entry locations relate to the street and subdivision pattern and the existing pedestrian network Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries Where street frontage is limited and multiple buildings are located on the site, a primary street address should be provided with clear sight lines and pathways to secondary building entries	The proposal has been designed to clearly distinguish between the residential and commercial entries. Multiple entries are provided to individual commercial tenancies on both Fingal Street and Balun Lane with a through site connection also proposed.
	Objective 3G-2	
	Access, entries and pathways are accessible and easy to identify	
	Design guidance	
	Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces The design of ground floors and underground car parks minimise level changes along pathways and entries Steps and ramps should be integrated into the overall building and landscape design For large developments 'way finding' maps should be provided to assist visitors and residents (see figure 4T.3) For large developments electronic access and audio/video intercom should be provided to manage access	All building access areas are clearly defined and visible.
	Objective 3G-3	
	Large sites provide pedestrian links for access to streets and connection to destinations	
	Design guidance	
	Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses, where appropriate	The proposed pedestrian link through the site is direct, has clear site lines, will be overlooked by the commercial premises and will be secure outside the hours of operation of commercial activity.
3H Vehicle access		
	Objective 3H-1	
	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Consistent – the vehicular access is proposed by the rear laneway.
	Design guidance	
	Car park access should be integrated with the building's overall facade. Design solutions may include:	The car park entry has been integrated with the building design

APPENDICES

C-9

Provision	Comment
<ul style="list-style-type: none"> • the materials and colour palette to minimise visibility from the street • security doors or gates at entries that minimise voids in the facade • where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed 	and materials and colour palette minimise visibility from the street.
Car park entries should be located behind the building line	Not applicable
Vehicle entries should be located at the lowest point of the site minimising ramp lengths, excavation and impacts on the building form and layout	Consistent
Car park entry and access should be located on secondary streets or lanes where available	Consistent
Vehicle standing areas that increase driveway width and encroach into setbacks should be avoided	Consistent
Access point locations should avoid headlight glare to habitable rooms	Consistent
Adequate separation distances should be provided between vehicle entries and street intersections	Consistent
The width and number of vehicle access points should be limited to the minimum	Consistent
Visual impact of long driveways should be minimised through changing alignments and screen planting	Consistent
The need for large vehicles to enter or turn around within the site should be avoided	Consistent
Garbage collection, loading and servicing areas are screened	Consistent
Clear sight lines should be provided at pedestrian and vehicle crossings	Consistent
Traffic calming devices such as changes in paving material or textures should be used where appropriate	Not applicable
Pedestrian and vehicle access should be separated and distinguishable. Design solutions may include: <ul style="list-style-type: none"> • changes in surface materials • level changes • the use of landscaping for separation 	Consistent
3J Bicycle and car parking	
Objective 3J-1	
Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	
Design criteria	
1. For development in the following locations: <ul style="list-style-type: none"> • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement 	Not applicable

APPENDICES

C-10

Provision	Comment
prescribed by the relevant council, whichever is less The car parking needs for a development must be provided off street	
Design guidance	
Where a car share scheme operates locally, provide car share parking spaces within the development. Car share spaces, when provided, should be on site	No car share spaces are proposed on site.
Where less car parking is provided in a development, council should not provide on street resident parking permits	The proposed car parking for the residential component of the development complies with Council's controls.
Objective 3J-2	
Parking and facilities are provided for other modes of transport	Bicycle parking is provided.
Design guidance	
Conveniently located and sufficient numbers of parking spaces should be provided for motorbikes and scooters	Motorbike and scooter parking is not required in accordance with Council's DCP.
Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas	Consistent
Conveniently located charging stations are provided for electric vehicles, where desirable	The electrical distribution board will have sufficient capacity to cater for electric vehicle charging.
Objective 3J-3	
Car park design and access is safe and secure	
Design guidance	
Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces	Consistent
Direct, clearly visible and well lit access should be provided into common circulation areas	Consistent
A clearly defined and visible lobby or waiting area should be provided to lifts and stairs	Consistent
For larger car parks, safe pedestrian access should be clearly defined and circulation areas have good lighting, colour, line marking and/or bollards	
Objective 3J-4	
Visual and environmental impacts of underground car parking are minimised	
Design guidance	
Excavation should be minimised through efficient car park layouts and ramp design	Consistent
Car parking layout should be well organised, using a logical, efficient structural grid and double loaded aisles	Consistent
Protrusion of car parks should not exceed 1m above ground level. Design solutions may include stepping car park levels or using split levels on sloping sites	Not applicable
Natural ventilation should be provided to basement and sub basement car parking areas	Not applicable

APPENDICES

C-11

Provision	Comment
Ventilation grills or screening devices for car parking openings should be integrated into the facade and landscape design	Not applicable
Objective 3J-5	
Visual and environmental impacts of on-grade car parking are minimised	The at-grade car parking proposed is well screened from both Fingal Street and Balun Lane.
Design guidance	
On-grade car parking should be avoided	At-grade parking is required in Brunswick Heads town centre.
Where on-grade car parking is unavoidable, the following design solutions are used: <ul style="list-style-type: none"> • parking is located on the side or rear of the lot away from the primary street frontage • cars are screened from view of streets, buildings, communal and private open space areas • safe and direct access to building entry points is provided • parking is incorporated into the landscape design of the site, by extending planting and materials into the car park space • stormwater run-off is managed appropriately from car parking surfaces • bio-swales, rain gardens or on site detention tanks are provided, where appropriate • light coloured paving materials or permeable paving systems are used and shade trees are planted between every 4-5 parking spaces to reduce increased surface temperatures from large areas of paving 	The at-grade car parking is located at the rear of the property and accessed via Balun Lane. Cars are screened from view of the streets by the buildings and landscaping. Safe and direct access to the building entry is provided and stormwater runoff will be appropriately managed.
Objective 3J-6	
Visual and environmental impacts of above ground enclosed car parking are minimised	Consistent
Design guidance	
Exposed parking should not be located along primary street frontages	Consistent
Screening, landscaping and other design elements including public art should be used to integrate the above ground car parking with the facade. Design solutions may include: car parking that is concealed behind the facade, with windows integrated into the overall facade design (approach should be limited to developments where a larger floor plate podium is suitable at lower levels) car parking that is 'wrapped' with other uses, such as retail, commercial or two storey Small Office/Home Office (SOHO) units along the street frontage (see figure 3J.9)	The at-grade car parking is screened by the building design from Fingal Street and commercial premises and integrated service areas as viewed from Balun Lane.
Positive street address and active frontages should be provided at ground level	Consistent

APPENDICES

C-12

	Provision	Comment
Part 4 Designing the building		
4A Solar and daylight access		
Objective 4A-1		
	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	
Design criteria		
	1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	
	2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter	The proposed development achieves full solar access compliance for all apartments as illustrated on drawing A-DA-602 Revision 03 . 100% compliance is a considerable achievement in any building design.
	3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	All buildings achieve 100% compliance.
Design guidance		
	The design maximises north aspect and the number of single aspect south facing apartments is minimised Single aspect, single storey apartments should have a northerly or easterly aspect Living areas are best located to the north and service areas to the south and west of apartments	No single storey apartments are proposed.
	To optimise the direct sunlight to habitable rooms and balconies a number of the following design features are used: <ul style="list-style-type: none"> • dual aspect apartments • shallow apartment layouts • two storey and mezzanine level apartments • bay windows 	The proposed design provides for dual aspect apartments and mezzanine apartments to optimise direct sunlight to habitable rooms.
	To maximise the benefit to residents of direct sunlight within living rooms and private open spaces, a minimum of 1m ² of direct sunlight, measured at 1m above floor level, is achieved for at least 15 minutes	Consistent
	Achieving the design criteria may not be possible on some sites. This includes: <ul style="list-style-type: none"> • where greater residential amenity can be achieved along a busy road or rail line by orientating the living rooms away from the noise source • on south facing sloping sites • where significant views are oriented away from the desired aspect for direct sunlight Design drawings need to demonstrate how site constraints and orientation preclude meeting the design criteria and how the development meets the objective	

APPENDICES

C-13

	Provision	Comment
	Objective 4A-2	
	Daylight access is maximised where sunlight is limited	
	Design guidance	
	Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms	Consistent
	Where courtyards are used : <ul style="list-style-type: none"> • use is restricted to kitchens, bathrooms and service areas • building services are concealed with appropriate detailing and materials to visible walls • courtyards are fully open to the sky • access is provided to the light well from a Communal area for cleaning and maintenance • acoustic privacy, fire safety and minimum privacy separation distances (see section 3F Visual privacy) are achieved 	
	Opportunities for reflected light into apartments are optimised through: <ul style="list-style-type: none"> • reflective exterior surfaces on buildings opposite south facing windows • positioning windows to face other buildings or surfaces (on neighbouring sites or within the site) that will reflect light • integrating light shelves into the design • light coloured internal finishes 	
	Objective 4A-3	
	Design incorporates shading and glare control, particularly for warmer months	
	Design guidance	
	A number of the following design features are used: <ul style="list-style-type: none"> • balconies or sun shading that extend far enough to shade summer sun, but allow winter sun to penetrate living areas • shading devices such as eaves, awnings, balconies, pergolas, external louvres and planting • horizontal shading to north facing windows • vertical shading to east and particularly west facing windows • operable shading to allow adjustment and choice • high performance glass that minimises external glare off windows, with consideration given to reduced tint glass or glass with a reflectance level below 20% (reflective films are avoided) 	Consistent
4B Natural ventilation		
	Objective 4B-1	
	All habitable rooms are naturally ventilated	
	Design guidance	
	The building's orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms	Consistent

APPENDICES

C-14

Provision	Comment
<p>Depths of habitable rooms support natural ventilation The area of unobstructed window openings should be equal to at least 5% of the floor area served Light wells are not the primary air source for habitable rooms Doors and openable windows maximise natural ventilation opportunities by using the following design solutions:</p> <ul style="list-style-type: none"> • adjustable windows with large effective openable areas • a variety of window types that provide safety and flexibility such as awnings and louvres • windows which the occupants can reconfigure to funnel breezes into the apartment such as vertical louvres, casement windows and externally opening doors 	<p>Consistent</p>
Objective 4B-2	
The layout and design of single aspect apartments maximises natural ventilation	
Design guidance	
<p>Apartment depths are limited to maximise ventilation and airflow (see also figure 4D.3) Natural ventilation to single aspect apartments is achieved with the following design solutions:</p> <ul style="list-style-type: none"> • primary windows are augmented with plenums and light wells (generally not suitable for cross ventilation) • stack effect ventilation / solar chimneys or similar to naturally ventilate internal building areas or rooms such as bathrooms and laundries • courtyards or building indentations have a width to depth ratio of 2:1 or 3:1 to ensure effective air circulation and avoid trapped smells 	
Design criteria	
<ol style="list-style-type: none"> 1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed 2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line 	<p>All apartments achieve compliance with ventilation requirements as illustrated on drawing A-DA-603 Revision 03.</p>
Design guidance	
<p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths In cross-through apartments external window and door opening sizes/areas on one side of an apartment (inlet side) are approximately equal to the external window and door opening sizes/areas on the other side of the apartment (outlet side) (see figure 4B.4)</p>	

APPENDICES

C-15

	Provision	Comment												
	Apartments are designed to minimise the number of corners, doors and rooms that might obstruct airflow Apartment depths, combined with appropriate ceiling heights, maximise cross ventilation and airflow													
4C	Ceiling heights													
	Objective 4C-1													
	Ceiling height achieves sufficient natural ventilation and daylight access													
	Design criteria													
	<p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="309 640 959 1167"> <tr> <td colspan="2" data-bbox="309 640 959 707">Minimum ceiling height for apartment and mixed use buildings</td> </tr> <tr> <td data-bbox="309 707 651 741">Habitable rooms</td> <td data-bbox="651 707 959 741">2.7m</td> </tr> <tr> <td data-bbox="309 741 651 775">Non-habitable</td> <td data-bbox="651 741 959 775">2.4m</td> </tr> <tr> <td data-bbox="309 775 651 976">For 2 storey apartments</td> <td data-bbox="651 775 959 976">2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td data-bbox="309 976 651 1066">Attic spaces</td> <td data-bbox="651 976 959 1066">1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td data-bbox="309 1066 651 1167">If located in mixed used areas</td> <td data-bbox="651 1066 959 1167">3.3m for ground and first floor to promote future flexibility of use</td> </tr> </table> <p>These minimums do not preclude higher ceilings if desired</p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>The ceiling heights throughout the development are compliant with Objective 4C-1. The ceiling height of all habitable and non-habitable rooms is 2.7 metres.</p> <p>The floor to ceiling height of the ground floor commercial area is 3.3 metres.</p>
Minimum ceiling height for apartment and mixed use buildings														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
	Design guidance													
	Ceiling height can accommodate use of ceiling fans for cooling and heat distribution	Consistent												
	Objective 4C-2													
	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms	Consistent												
	Design guidance													
	<p>A number of the following design solutions can be used:</p> <ul style="list-style-type: none"> the hierarchy of rooms in an apartment is defined using changes in ceiling heights and alternatives such as raked or curved ceilings, or double height spaces well proportioned rooms are provided, for example, smaller rooms feel larger and more spacious with higher ceilings ceiling heights are maximised in habitable rooms by ensuring that bulkheads do not intrude. The stacking of service rooms from floor to floor and coordination of bulkhead location above non-habitable areas, such as robes or storage, can assist 	Consistent												
	Objective 4C-3													
	Ceiling heights contribute to the flexibility of building use over the life of the building	Consistent												

APPENDICES

C-16

	Provision	Comment										
	Design guidance											
	Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-residential uses (see figure 4C.1)	Consistent										
	Ceiling heights contribute to the flexibility of building use over the life of the building	Consistent										
	Design guidance											
	Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-residential uses (see figure 4C.1)	The proposed ceiling height for the first floor apartments is 2.7 metres.										
4D Apartment size and layout												
	Objective 4D-1											
	The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity											
	Design criteria											
	<p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The following apartment sizes are provided:</p> <p>2 bedroom - minimum 108m² 3 bedroom - minimum 129.m²</p> <p>All apartment floor plan areas exceed the minimum internal area required.</p> <p>All habitable rooms 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 are not borrowed from other rooms.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
	Design guidance											
	<p>Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space)</p> <p>A window should be visible from any point in a habitable room</p> <p>Where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space with realistically scaled furniture layouts and circulation areas. These circumstances would be assessed on their merits</p>	<p>Kitchens are not part of primary circulation spaces.</p> <p>All minimum dimensions are met.</p>										
	Objective 4D-2											
	Environmental performance of the apartment is maximised											
	<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	The depth of the habitable rooms is compliant with the exception of the two adaptable units which are 8.2m. An operable skylight has been utilised to provide further										

APPENDICES

C-17

Provision	Comment
	<p>daylight and assist with ventilation to this room. All other rooms achieve minimum 8m to external window.</p> <p>The building design also incorporates terraces which provide for additional light and ventilation.</p>
Design guidance	
<p>Greater than minimum ceiling heights can allow for proportional increases in room depth up to the permitted maximum depths</p> <p>All living areas and bedrooms should be located on the external face of the building</p>	Consistent
Design criteria	
<ol style="list-style-type: none"> 1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space) 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space) 3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts 	Consistent
Design guidance	
<p>Access to bedrooms, bathrooms and laundries is separated from living areas minimising direct openings between living and service areas</p> <p>All bedrooms allow a minimum length of 1.5m for robes</p> <p>The main bedroom of an apartment or a studio apartment should be provided with a wardrobe of a minimum 1.8m long, 0.6m deep and 2.1m high</p> <p>Apartment layouts allow flexibility over time, design solutions may include:</p> <ul style="list-style-type: none"> • dimensions that facilitate a variety of furniture arrangements and removal • spaces for a range of activities and privacy levels between different spaces within the apartment • dual master apartments • dual key apartments Note: dual key apartments which are separate but on the same title are regarded as two sole occupancy units for the purposes of the Building Code of Australia and for calculating the mix of apartments • room sizes and proportions or open plans (rectangular spaces (2:3) are more easily furnished than square spaces (1:1)) 	Complies

APPENDICES

C-18

	Provision	Comment															
	<ul style="list-style-type: none"> efficient planning of circulation by stairs, corridors and through rooms to maximise the amount of usable floor space in rooms 																
4E Private open space and balconies																	
	Objective 4E-1																
	Apartments provide appropriately sized private open space and balconies to enhance residential amenity																
	Design criteria																
	<p>1. All apartments are required to have primary balconies as follows:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	All apartments are provided with terraces and balconies are well in excess of the minimum dimension and area requirements. The terrace areas range from a minimum of 20m ² to 25m ² and secondary balcony areas are provided for each apartment.
Dwelling type	Minimum area	Minimum depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	Design guidance																
	<p>Increased communal open space should be provided where the number or size of balconies are reduced</p> <p>Storage areas on balconies is additional to the minimum balcony size</p> <p>Balcony use may be limited in some proposals by:</p> <ul style="list-style-type: none"> consistently high wind speeds at 10 storeys and above close proximity to road, rail or other noise sources exposure to significant levels of aircraft noise heritage and adaptive reuse of existing buildings <p>In these situations, juliet balconies, operable walls, enclosed wintergardens or bay windows may be appropriate, and other amenity benefits for occupants should also be provided in the apartments or in the development or both. Natural ventilation also needs to be demonstrated</p>																
	Objective 4E-2																
	Primary private open space and balconies are appropriately located to enhance liveability for residents																
	Design guidance																
	Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space	Open space balconies are located adjacent to the living rooms.															
	Private open spaces and balconies predominantly face north, east or west	All dwellings have a private open space balcony facing north, east or west.															

APPENDICES

C-19

Provision	Comment
Primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms	The longer side of balconies is orientated outwards.
Objective 4E-3	
Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	Private open space balcony design is integrated and contributes to the overall architectural form of the development.
Design guidance	
Solid, partially solid or transparent fences and balustrades are selected to respond to the location. They are designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony. Solid and partially solid balustrades are preferred	Consistent
Full width full height glass balustrades alone are generally not desirable	Consistent
Projecting balconies should be integrated into the building design and the design of soffits considered	Not applicable
Operable screens, shutters, hoods and pergolas are used to control sunlight and wind	Not applicable
Balustrades are set back from the building or balcony edge where overlooking or safety is an issue	Not applicable
Downpipes and balcony drainage are integrated with the overall facade and building design	Consistent
Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design	Consistent
Where clothes drying, storage or air conditioning units are located on balconies, they should be screened and integrated in the building design	Consistent
Ceilings of apartments below terraces should be insulated to avoid heat loss	Not applicable
Water and gas outlets should be provided for primary balconies and private open space	Noted
Objective 4E-4	
Private open space and balcony design maximises safety	Consistent
Design guidance	
Changes in ground levels or landscaping are minimised	Consistent
Design and detailing of balconies avoids opportunities for climbing and falls	Consistent
Objective 4F-1	
Common circulation spaces achieve good amenity and properly service the number of apartments	Consistent
Design criteria	
<ol style="list-style-type: none"> 1. The maximum number of apartments off a circulation core on a single level is eight 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40 	The common circulation spaces provide for good amenity whilst exceeding the eight specified by this provision.
Design guidance	
Greater than minimum requirements for corridor widths and/ or ceiling heights allow comfortable movement and	Consistent

APPENDICES

C-20

	Provision	Comment
	access particularly in entry lobbies, outside lifts and at apartment entry doors	
	Daylight and natural ventilation should be provided to all common circulation spaces that are above ground	Consistent
	Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors	Not applicable
	Longer corridors greater than 12m in length from the lift core should be articulated. Design solutions may include: <ul style="list-style-type: none"> • a series of foyer areas with windows and spaces for seating • wider areas at apartment entry doors and varied ceiling heights 	Consistent
	Design common circulation spaces to maximise opportunities for dual aspect apartments, including multiple core apartment buildings and cross over apartments	Consistent
	Achieving the design criteria for the number of apartments off a circulation core may not be possible. Where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated, including: <ul style="list-style-type: none"> • sunlight and natural cross ventilation in apartments • access to ample daylight and natural ventilation in common circulation spaces • common areas for seating and gathering • generous corridors with greater than minimum ceiling heights • other innovative design solutions that provide high levels of amenity 	The proposed development incorporates articulation in the access to apartments and provides a high level of ventilation, sunlight and access to ample daylight and ventilation in the circulation spaces.
	Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level	Not applicable
	Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled	Consistent
4F Common circulation and spaces		
	Objective 4F-2	
	Common circulation spaces promote safety and provide for high level of passive surveillance within corridors and circulation spaces	Consistent
	Design guidance	
	Direct and legible access should be provided between vertical circulation points and apartment entries by minimising corridor or gallery length to give short, straight, clear sight lines	Direct and legible access is provided between the circulation points and apartment entries. Circulation spaces will be well-lit at night.
	Tight corners and spaces are avoided	
	Circulation spaces should be well lit at night	

APPENDICES

C-21

	Provision	Comment										
	Legible signage should be provided for apartment numbers, common areas and general wayfinding											
	Incidental spaces, for example space for seating in a corridor, at a stair landing, or near a window are provided											
	In larger developments, community rooms for activities such as owners corporation meetings or resident use should be provided and are ideally co-located with communal open space											
	Where external galleries are provided, they are more open than closed above the balustrade along their length											
4G Storage												
	Objective 4G-1											
	Adequate, well designed storage is provided in each apartment											
	Design criteria											
	<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="349 837 940 1010"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m³</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m³</td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m³</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m³</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment</p>	Dwelling type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	Compliant storage areas are provided within the apartments.
Dwelling type	Storage size volume											
Studio apartments	4m ³											
1 bedroom apartments	6m ³											
2 bedroom apartments	8m ³											
3+ bedroom apartments	10m ³											
	Design guidance											
	Storage is accessible from either circulation or living areas											
	Storage provided on balconies (in addition to the minimum balcony size) is integrated into the balcony design, weather proof and screened from view from the street											
	Left over space such as under stairs is used for storage											
	Objective 4G-2											
	Additional storage is conveniently located, accessible and nominated for individual apartments											
	Design guidance											
	Storage not located in apartments is secure and clearly allocated to specific apartments											
	Storage is provided for larger and less frequently accessed items											
	Storage space in internal or basement car parks is provided at the rear or side of car spaces or in cages so that allocated car parking remains accessible											
	If communal storage rooms are provided they should be accessible from common circulation areas of the building											
	Storage not located in an apartment is integrated into the overall building design and is not visible from the public domain											
4H Acoustic privacy												
	Objective 4H-1											

APPENDICES

C-22

Provision	Comment
Noise transfer is minimised through the siting of buildings and building layout	
Design guidance	
Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses (see also section 2F Building separation and section 3F Visual privacy)	The proposed building will be constructed to adequately address noise impacts.
Window and door openings are generally orientated away from noise sources	Consistent
Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas	Consistent
Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	Consistent
The number of party walls (walls shared with other apartments) are limited and are appropriately insulated	Consistent
Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms	Consistent
Objective 4H-2	
Noise impacts are mitigated within apartments through layout and acoustic treatments	
Design guidance	
Internal apartment layout separates noisy spaces from quiet spaces, using a number of the following design solutions: <ul style="list-style-type: none"> • rooms with similar noise requirements are grouped together • doors separate different use zones • wardrobes in bedrooms are co-located to act as sound buffers 	Consistent
Where physical separation cannot be achieved noise conflicts are resolved using the following design solutions: <ul style="list-style-type: none"> • double or acoustic glazing • acoustic seals • use of materials with low noise penetration properties • continuous walls to ground level courtyards where they do not conflict with streetscape or other amenity requirements 	
4j Noise and pollution	
Objective 4J-1	
In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings	
Design guidance	
To minimise impacts the following design solutions may be used: <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses 	It is considered that the proposed uses are unlikely to result in significant adverse noise impacts on the residential amenity of apartments or adjacent buildings. Appropriate conditions of consent will apply in this regard.

APPENDICES

C-23

Provision	Comment
<ul style="list-style-type: none"> • non-residential buildings are sited to be parallel with the noise source to provide a continuous building that shields residential uses and communal open spaces • non-residential uses are located at lower levels vertically separating the residential component from the noise or pollution source. Setbacks to the underside of residential floor levels should increase relative to traffic volumes and other noise sources • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • where solar access is in the same direction as the noise source, dual aspect apartments with shallow building depths are preferable (see figure 4J.4) • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	
<p>Achieving the design criteria in this Apartment Design Guide may not be possible in some situations due to noise and pollution. Where developments are unable to achieve the design criteria, alternatives may be considered in the following areas:</p> <ul style="list-style-type: none"> • solar and daylight access • private open space and balconies • natural cross ventilation 	
Objective 4J-2	
Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission	
Design guidance	
<p>Design solutions to mitigate noise include:</p> <ul style="list-style-type: none"> • limiting the number and size of openings facing noise sources • providing seals to prevent noise transfer through gaps • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties e.g. solid balcony balustrades, external screens and soffits 	
4K Apartment mix	
Objective 4K-1	
A range of apartment types and sizes is provided to cater for different household types now and into the future	
Design guidance	
A variety of apartment types is provided	The proposed development comprises a mix of 2 and 3 bedroom apartments.
<p>The apartment mix is appropriate, taking into consideration:</p> <ul style="list-style-type: none"> • the distance to public transport, employment and education centres • the current market demands and projected future demographic trends 	The proposed apartment mix is considered appropriate particularly given the lack of 2 bedroom apartments available in Byron Shire. The provision of 2 bedroom apartments in Brunswick Heads is

APPENDICES

C-24

	Provision	Comment
	<ul style="list-style-type: none"> the demand for social and affordable housing different cultural and socioeconomic groups 	considered appropriate and provides for a diversity of apartment size.
	Flexible apartment configurations are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households	The proposed floor plans will provide for flexibility in terms of the use of bedrooms in particular.
Objective 4K-2		
	The apartment mix is distributed to suitable locations within the building.	Consistent
	Design guidance	
	Different apartment types are located to achieve successful facade composition and to optimise solar access (see figure 4K.3)	Consistent
	Larger apartment types are located on the ground or roof level where there is potential for more open space and on corners where more building frontage is available	The apartments are configured to contain a main living area and upper level/mezzanine.
4L Ground floor apartments		
	Objective 4L-1	
	Street frontage activity is maximised where ground floor apartments are located	No ground floor apartments proposed.
	Design guidance	
	Direct street access should be provided to ground floor apartments	Not applicable
	Activity is achieved through front gardens, terraces and the facade of the building. Design solutions may include: <ul style="list-style-type: none"> both street, foyer and other common internal circulation entrances to ground floor apartments private open space is next to the street doors and windows face the street 	Not applicable
	Retail or home office spaces should be located along street frontages	Not applicable
	Ground floor apartment layouts support small office home office (SOHO) use to provide future opportunities for conversion into commercial or retail areas. In these cases provide higher floor to ceiling heights and ground floor amenities for easy conversion	Not applicable
	Objective 4L-2	
	Design of ground floor apartments delivers amenity and safety for residents	No ground floor apartments proposed.
	Design guidance	
	Privacy and safety should be provided without obstructing casual surveillance. Design solutions may include: <ul style="list-style-type: none"> elevation of private gardens and terraces above the street level by 1-1.5m (see figure 4L.4) landscaping and private courtyards window sill heights that minimise sight lines into apartments integrating balustrades, safety bars or screens with the exterior design 	Not applicable
	Solar access should be maximised through:	

APPENDICES

C-25

	Provision	Comment
	<ul style="list-style-type: none"> • high ceilings and tall windows • trees and shrubs that allow solar access in winter and shade in summer 	
4M Facades		
	Objective 4M-1	
	Building facades provide visual interest along the street while respecting the character of the local area	The building façade provides a high degree of visual interest along both Fingal Street and Balun Lane.
	Design guidance	
	Design solutions for front building facades may include: <ul style="list-style-type: none"> • a composition of varied building elements • a defined base, middle and top of buildings • revealing and concealing certain elements • changes in texture, material, detail and colour to modify the prominence of elements 	The proposed building design provides for a variety of elements and materials. The building has a clearly defined base with the upper levels stepped back from the street frontages. Changes in texture and materials are incorporated to provide visual interest along the street consistent with the character of Brunswick Heads.
	Building services should be integrated within the overall facade	Building services have been integrated into the building adjacent to the rear laneway to reduce visual impact.
	Building facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale. Design solutions may include: <ul style="list-style-type: none"> • well composed horizontal and vertical elements • variation in floor heights to enhance the human scale • elements that are proportional and arranged in patterns • public artwork or treatments to exterior blank walls • grouping of floors or elements such as balconies and windows on taller buildings 	The building design has been carefully resolved to ensure an appropriate scale and proportion to the streetscape. Fine-grain approach has been applied to the ground floor plane and tenancies have been appropriately sized to provide for the human scale. Elements of the building are proportional and arranged in patterns. The proposal provides for a pedestrian thoroughfare through the site. Upper floor balconies and terraces have also been designed to provide visual interest and reflect the character of the local area.
	Building facades relate to key datum lines of adjacent buildings through upper level setbacks, parapets, cornices, awnings or colonnade heights	Consistent
	Shadow is created on the facade throughout the day with building articulation, balconies and deeper window reveals	The proposed building form and materials will create shadow throughout the day with building articulation.
	Objective 4M-2	
	Building functions are expressed by the facade	Consistent
	Design guidance	
	Building entries should be clearly defined	Consistent

APPENDICES

C-26

Provision	Comment
Important corners are given visual prominence through a change in articulation, materials or colour, roof expression or changes in height	Not applicable
The apartment layout should be expressed externally through facade features such as party walls and floor slabs	Consistent
4N Roof design	
Objective 4N-1	
Roof treatments are integrated into the building design and positively respond to the street	Consistent
Design guidance	
Roof design relates to the street. Design solutions may include: <ul style="list-style-type: none"> • special roof features and strong corners • use of skillion or very low pitch hipped roofs • breaking down the massing of the roof by using smaller elements to avoid bulk • using materials or a pitched form complementary to adjacent buildings 	The proposed roof form provides for a pitched form to complement the adjacent surrounding development and the character of Brunswick Heads.
Roof treatments should be integrated with the building design. Design solutions may include: <ul style="list-style-type: none"> • roof design proportionate to the overall building size, scale and form • roof materials compliment the building • service elements are integrated 	The roof design is proportionate to the overall size, scale and form of the building. Service elements have been integrated into the building design.
Objective 4N-2	
Opportunities to use roof space for residential accommodation and open space are maximised	The building design effectively incorporates the use of the roof space for residential accommodation.
Design guidance	
Habitable roof space should be provided with good levels of amenity. Design solutions may include: <ul style="list-style-type: none"> • penthouse apartments • dormer or clerestory windows • openable skylights 	Not applicable
Open space is provided on roof tops subject to acceptable visual and acoustic privacy, comfort levels, safety and security considerations	Open space is not proposed on the roof top given the nature of existing adjacent development and the potential impacts on visual and acoustic privacy.
Objective 4N-3	
Roof design incorporates sustainability features	Consistent
Design guidance	
Roof design maximises solar access to apartments during winter and provides shade during summer. Design solutions may include: <ul style="list-style-type: none"> • the roof lifts to the north • eaves and overhangs shade walls and windows from summer sun 	Consistent
Skylights and ventilation systems should be integrated into the roof design	Not applicable
4O Landscape design	

APPENDICES

C-27

Provision	Comment
Objective 40-1	
Landscape design is viable and sustainable	Consistent
Design guidance	
Landscape design should be environmentally sustainable and can enhance environmental performance by incorporating: <ul style="list-style-type: none"> • diverse and appropriate planting • bio-filtration gardens • appropriately planted shading trees • areas for residents to plant vegetables and herbs • composting • green roofs or walls 	The proposed landscape design has been carefully considered to ensure viable and sustainable planting is incorporated in the design of the building. Landscaping is provided on the ground floor fronting Fingal Street and Balun Lane. The retention of existing trees adjacent to the western boundary is proposed to respond to concerns raised by the adjoining residents. Landscaping is also integrated on the upper terrace level.
Ongoing maintenance plans should be prepared	
Microclimate is enhanced by: <ul style="list-style-type: none"> • appropriately scaled trees near the eastern and western elevations for shade • a balance of evergreen and deciduous trees to provide shading in summer and sunlight access in winter • shade structures such as pergolas for balconies and courtyards 	
Tree and shrub selection considers size at maturity and the potential for roots to compete (see Table 4)	
Objective 40-2	
Landscape design contributes to the streetscape and amenity	The landscape design will contribute to the streetscape and amenity.
Design guidance	
Landscape design responds to the existing site conditions including: <ul style="list-style-type: none"> • changes of levels • views • significant landscape features including trees and rock outcrops 	The proposed landscaping responds to the existing site conditions.
Significant landscape features should be protected by: <ul style="list-style-type: none"> • tree protection zones (see figure 40.5) • appropriate signage and fencing during construction 	The existing trees proposed for retention will be protected via appropriate signage and fencing during construction.
Plants selected should be endemic to the region and reflect the local ecology	Consistent
4P Planting on structures	
Objective 4P-1	
Appropriate soil profiles are provided	
Design guidance	
Structures are reinforced for additional saturated soil weight	Consistent
Soil volume is appropriate for plant growth, considerations include:	Consistent

APPENDICES

C-28

Provision	Comment
<ul style="list-style-type: none"> • modifying depths and widths according to the planting mix anderw3f4 • 3fr irrigation frequency • free draining and long soil life span • tree anchorage 	
Minimum soil standards for plant sizes should be provided in accordance with Table 5	Noted
Objective 4P-2	
Plant growth is optimised with appropriate selection and maintenance	Consistent
Design guidance	
Plants are suited to site conditions, considerations include: <ul style="list-style-type: none"> • drought and wind tolerance • seasonal changes in solar access • modified substrate depths for a diverse range of plants • plant longevity 	Consistent
A landscape maintenance plan is prepared	
Irrigation and drainage systems respond to: <ul style="list-style-type: none"> • changing site conditions • soil profile and the planting regime • whether rainwater, stormwater or recycled grey water is used 	Noted
Objective 4P-3	
Planting on structures contributes to the quality and amenity of communal and public open spaces	Consistent
Design guidance	
Building design incorporates opportunities for planting on structures. Design solutions may include: <ul style="list-style-type: none"> • green walls with specialised lighting for indoor green walls • wall design that incorporates planting • green roofs, particularly where roofs are visible from the public domain • planter boxes <p>Note: structures designed to accommodate green walls should be integrated into the building facade and consider the ability of the facade to change over time</p>	The proposed development incorporates landscaping on the first floor terraces and utilises planter boxes.
4Q Universal design	
Objective 4Q-1	
Universal design features are included in apartment design to promote flexible housing for all community members	Consistent
Design guidance	
Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features	Four (4) apartments (1, 7, 9 & 12) comply with the silver level universal design features. This equates to 30% of the apartments.
Objective 4Q-2	
A variety of apartments with adaptable designs are provided	The apartment layouts are reasonably flexible.

APPENDICES

C-29

Provision	Comment
Design guidance	
Adaptable housing should be provided in accordance with the relevant council policy	Two adaptable apartments are provided in accordance with Council requirements.
Design solutions for adaptable apartments include: <ul style="list-style-type: none"> • convenient access to communal and public areas • high level of solar access • minimal structural change and residential amenity loss when adapted • larger car parking spaces for accessibility • parking titled separately from apartments or shared car parking arrangements 	Consistent
Objective 4Q-3	
Apartment layouts are flexible and accommodate a range of lifestyle needs	The apartment layouts are reasonably flexible.
Design guidance	
Apartment design incorporates flexible design solutions which may include: <ul style="list-style-type: none"> • rooms with multiple functions • dual master bedroom apartments with separate bathrooms • larger apartments with various living space options • open plan 'loft' style apartments with only a fixed kitchen, laundry and bathroom 	Consistent
4R Adaptive reuse	
Objective 4R-1	
New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place	Not applicable
Design guidance	
Design solutions may include: <ul style="list-style-type: none"> • new elements to align with the existing building • additions that complement the existing character, siting, scale, proportion, pattern, form and detailing • use of contemporary and complementary materials, finishes, textures and colours 	Not applicable
Additions to heritage items should be clearly identifiable from the original building	
New additions allow for the interpretation and future evolution of the building	
Objective 4R-2	
Adapted buildings provide residential amenity while not precluding future adaptive reuse	Not applicable
Design guidance	
Design features should be incorporated sensitively into adapted buildings to make up for any physical limitations, to ensure residential amenity is achieved. Design solutions may include: <ul style="list-style-type: none"> • generously sized voids in deeper buildings • alternative apartment types when orientation is poor • using additions to expand the existing building envelope 	

APPENDICES

C-30

Provision	Comment
<p>Some proposals that adapt existing buildings may not be able to achieve all of the design criteria in this Apartment Design Guide. Where developments are unable to achieve the design criteria, alternatives could be considered in the following areas:</p> <ul style="list-style-type: none"> • where there are existing higher ceilings, depths of habitable rooms could increase subject to demonstrating access to natural ventilation, cross ventilation (when applicable) and solar and daylight access (see also sections 4A Solar and daylight access and 4B Natural ventilation) • alternatives to providing deep soil where less than the minimum requirement is currently available on the site • building and visual separation – subject to demonstrating alternative design approaches to achieving privacy • common circulation • car parking • alternative approaches to private open space and balconies 	
4S Mixed use	
Objective 4S-1	
Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	The proposed mixed use development is provided in an appropriate location and active street frontages are provided along both Fingal Street and Balun Lane in addition to this a through site pedestrian link is proposed.
Design guidance	
Mixed use development should be concentrated around public transport and centres	The proposed mixed use development is provided within Brunswick Heads town centre.
Mixed use developments positively contribute to the public domain. Design solutions may include: <ul style="list-style-type: none"> • development addresses the street • active frontages are provided • diverse activities and uses • avoiding blank walls at the ground level • live/work apartments on the ground floor level, rather than commercial 	The proposed mixed use development will positively contribute to the public domain and addresses both Fingal Street and Balun Lane. Active street frontages are provided the design of the building avoids blank walls at the ground level.
Objective 4S-2	
Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	Consistent
Design guidance	
Residential circulation areas should be clearly defined. Design solutions may include: <ul style="list-style-type: none"> • residential entries are separated from commercial entries and directly accessible from the street • commercial service areas are separated from residential components 	The entry to the apartments is clearly separated from commercial entries and concealment opportunities have been minimised. Commercial service areas are separated from the residential components. In relation

APPENDICES

C-31

	Provision	Comment
	<ul style="list-style-type: none"> • residential car parking and communal facilities are separated or secured • security at entries and safe pedestrian routes are provided • concealment opportunities are avoided 	to the car parking and pedestrian access will be provided outside day light hours.
	Landscaped communal open space should be provided at podium or roof levels	Landscaped communal open space is not incorporated in the building design.
4T Awnings and signage		
	Objective 4T-1	
	Awnings are well located and complement and integrate with the building design	Consistent
	Design guidance	
	Awnings should be located along streets with high pedestrian activity and active frontages	Awnings will be located along the Fingal Street frontage.
	A number of the following design solutions are used: <ul style="list-style-type: none"> • continuous awnings are maintained and provided in areas with an existing pattern • height, depth, material and form complements the existing street character • protection from the sun and rain is provided • awnings are wrapped around the secondary frontages of corner sites • awnings are retractable in areas without an established pattern 	Proposed appropriately designed awning with materials and form which compliments the existing street character is proposed. This will provide protection from the sun and rain.
	Awnings should be located over building entries for building address and public domain amenity	The awning extends over the building entries.
	Awnings relate to residential windows, balconies, street tree planting, power poles and street infrastructure	Consistent
	Gutters and down pipes should be integrated and concealed	Consistent
	Lighting under awnings should be provided for pedestrian safety	Consistent
	Objective 4T-2	
	Signage responds to the context and desired streetscape character	Consistent
	Design guidance	
	Signage should be integrated into the building design and respond to the scale, proportion and detailing of the development	Consistent
	Legible and discrete way finding should be provided for larger developments	Consistent
	Signage is limited to being on and below awnings and a single facade sign on the primary street frontage	Consistent
4U Energy efficiency		
	Objective 4U-1	
	Development incorporates passive environmental design	Consistent
	Design guidance	
	Adequate natural light is provided to habitable rooms (see 4A Solar and daylight access)	Consistent

APPENDICES

C-32

Provision	Comment
Well located, screened outdoor areas should be provided for clothes drying	Consistent
Objective 4U-2	
Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	Consistent
Design guidance	
A number of the following design solutions are used: <ul style="list-style-type: none"> the use of smart glass or other technologies on north and west elevations thermal mass in the floors and walls of north facing rooms is maximised polished concrete floors, tiles or timber rather than carpet insulated roofs, walls and floors and seals on window and door openings overhangs and shading devices such as awnings, blinds and screens 	Thermal mass in the floors of north facing rooms has been maximised. Insulated roofs, walls and floors are proposed and overhangs and shading devices are incorporated in the building design.
Provision of consolidated heating and cooling infrastructure should be located in a centralised location (e.g. the basement)	
Objective 4U-3	
Adequate natural ventilation minimises the need for mechanical ventilation	Consistent
Design guidance	
A number of the following design solutions are used: <ul style="list-style-type: none"> rooms with similar usage are grouped together natural cross ventilation for apartments is optimised natural ventilation is provided to all habitable rooms and as many non-habitable rooms, common areas and circulation spaces as possible. 	Natural cross ventilation has been optimised. Natural ventilation is provided to all habitable rooms.
4V Water management and conservation	
Objective 4V-1	
Potable water use is minimised	Noted.
Design guidance	
Water efficient fittings, appliances and wastewater reuse should be incorporated	Consistent
Apartments should be individually metered	Noted
Rainwater should be collected, stored and reused on site	Consistent
Drought tolerant, low water use plants should be used within landscaped areas	Consistent
Objective 4V-2	
Urban stormwater is treated on site before being discharged to receiving waters	Consistent
Design guidance	
Water sensitive urban design systems are designed by a suitably qualified professional	Consistent
A number of the following design solutions are used: <ul style="list-style-type: none"> runoff is collected from roofs and balconies in water tanks and plumbed into toilets, laundry and irrigation porous and open paving materials is maximised 	Consistent

APPENDICES

C-33

	Provision	Comment
	<ul style="list-style-type: none"> on site stormwater and infiltration, including bio-retention systems such as rain gardens or street tree pits 	
	Objective 4V-3	
	Flood management systems are integrated into site design	Not applicable
	Design guidance	
	Detention tanks should be located under paved areas, driveways or in basement car parks	Consistent
	On large sites parks or open spaces are designed to provide temporary on site detention basins	Not applicable
4W Waste management		
	Objective 4W-1	
	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Consistent – A waste management plan for both demolition, construction and operation has been prepared and accompanies the subject application.
	Design guidance	
	Adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park	Waste management has been adequately addressed and is detailed in the report accompanying the application prepared by Modus Engineering.
	Waste and recycling storage areas should be well ventilated	Consistent
	Circulation design allows bins to be easily manoeuvred between storage and collection points	Consistent
	Temporary storage should be provided for large bulk items such as mattresses	Consistent
	A waste management plan should be prepared	Consistent
	Objective 4W-2	
	Domestic waste is minimised by providing safe and convenient source separation and recycling	Consistent
	Design guidance	
	All dwellings should have a waste and recycling cupboard or temporary storage area of sufficient size to hold two days worth of waste and recycling	
	Communal waste and recycling rooms are in convenient and accessible locations related to each vertical core	Consistent
	For mixed use developments, residential waste and recycling storage areas and access should be separate and secure from other uses	Consistent
	Alternative waste disposal methods such as composting should be provided	Consistent
4X Building maintenance		
	Objective 4X-1	
	Building design detail provides protection from weathering	Consistent
	Design guidance	
	A number of the following design solutions are used: <ul style="list-style-type: none"> roof overhangs to protect walls hoods over windows and doors to protect openings 	Large appropriate roof overhangs are utilised throughout. The proposed development has

APPENDICES

C-34

Provision	Comment
<ul style="list-style-type: none"> • detailing horizontal edges with drip lines to avoid staining of surfaces • methods to eliminate or reduce planter box leaching • appropriate design and material selection for hostile locations 	implemented appropriate design solutions.
Objective 4X-2	
Systems and access enable ease of maintenance	The following design responses will be considered in a detailed design development.
Design guidance	
Window design enables cleaning from the inside of the building	
Building maintenance systems should be incorporated and integrated into the design of the building form, roof and facade	
Design solutions do not require external scaffolding for maintenance access	
Manually operated systems such as blinds, sunshades and curtains are used in preference to mechanical systems	
Centralised maintenance, services and storage should be provided for communal open space areas within the building	
Objective 4X-3	
Material selection reduces ongoing maintenance costs	
Design guidance	
<p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> • sensors to control artificial lighting in common circulation and spaces • natural materials that weather well and improve with time such as face brickwork • easily cleaned surfaces that are graffiti resistant • robust and durable materials and finishes are used in locations which receive heavy wear and tear, such as common circulation areas and lift interiors 	Robust and durable finishes will be used as appropriate.