



DEVELOPMENT APPLICATION

Staged Community Title Subdivision including
Multi-Dwelling Housing, Residential Flat Building
and Neighbourhood Shops and Take Away Food
& Drink Premises

Statement of Environmental Effects

SITE Lot 2 DP 1091323, Phillip Drive, South West Rocks

BY Rise Projects Pty Ltd

DATE April 2022

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Revision Schedule

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A	31.03.2022	Draft, Issued to client	TS/SP
B	1.04.2022	Final Draft, Issued to client	TS/SP
C	4.01.2022	Final, Issued to client	TS

Disclaimer

This report was prepared in accordance with the scope of works set out in the contract between King & Campbell Pty Ltd and the Client. To the best of King & Campbell Pty Ltd's knowledge, the proposal presented herein accurately reflects the Client's intentions when the report was printed. However, it is recognised that conditions of approval at time of consent, post development application modification of the proposals design, and the influence of unanticipated future events may modify the outcomes described in this report.

King & Campbell Pty Ltd used information and documentation provided by external persons, companies and authorities. Whilst checks were completed by King & Campbell Pty Ltd to ensure that this information and/or documentation was accurate, it has been taken on good faith and has not been independently verified. It is therefore advised that all information and conclusions presented in this report apply to the subject land at the time of assessment, and the subject proposal only.

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Section 1

Introduction

1.1 Introduction

This Statement of Environmental Effects has been prepared on behalf of Rise Projects Pty Ltd for the purposes of seeking consent for a Staged Community Title Subdivision within Lot 2 DP 1091323, located at Phillip Drive, South West Rocks (the subject site), and the construction of Multi-Dwelling housing, five storey Residential Flat Building and Commercial Premises consisting of Neighbourhood Shops and Take Away Food & Drink Premises.

The works associated with this application relate to the southern portion of the site adjacent to Phillip Drive and are considered Stage 1 of a multi-staged development. Stage 1 is proposed to consist of the following sub-stages:

- Stage 1A – Intersection and internal private road works,
- Stage 1B – Multi-dwelling housing (18 x 2 storey units),
- Stage 1C – Commercial building to be used for Neighbourhood Shops and Take Away Food and Drink Premises, including 6 tenancies and multi-dwelling housing (12 x 2 storey units),
- Stage 1D – 5 storey Residential Flat Building including 1 x 1 bedroom, 7 x 2 bedroom, 16 x 3 bedroom and 2 x 4 bedroom units and basement car parking (42 spaces), and
- Stage 1E – Servicing of the Lots to allow for future development.

These works are intended to be located within a Community Title Subdivision which will be subject to a Community Management Plan. It should be noted that Stages 1E and 2 will be subject to separate future applications.

This application also seeks consent for additional works associated with the staged development including the following works over the southern portion of the site:

- Clearing of 3.23ha of native vegetation from the southern portion of the site (excludes the area of vegetation mapped as Biodiversity Values in the sites west and generally within 40m of the mapped Coastal Wetland),
- Bulk filling within the development footprint (approximately 3.23ha) to satisfy the required flood levels,
- Realignment of the existing Council sewer, and
- Stormwater management facilities.

The site is zoned R3 Medium Density Residential and is listed within Schedule 1 – Additional Permitted Uses of the Kempsey Local Environmental Plan (KLEP) 2013. Schedule 1 states that 'development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation' is permitted with development consent on the subject site. This application and the proposed land uses are considered consistent with the Schedule 1 identified use of the land.

The site has previously been granted consent for 180 residential units together with a commercial and administration complex comprising shops, bar areas, conference auditoriums, restaurant/dining areas and administrative areas together with car parking, recreation facilities and associated landscaping under Development Consent T4-91-195.

The site is however, currently vacant with no built structures, occupying an area of 4.82 hectares, with various types of vegetation communities of varying conditions within. All existing trees and vegetation within the 3.23ha development footprint is proposed to be removed, with the exception of a portion of mapped Biodiversity Values (Coastal Wetlands) land in the west and land generally within 40 metres of the mapped Coastal Wetlands.

The proposed vegetation removal has been considered and assessed by consulting ecologists Biodiversity Australia and a Biodiversity Development Assessment Report (BDAR) has been prepared in accordance with the relevant provisions of the Biodiversity Conservation Act 2016. The BDAR notes that the proposal will not result in any serious or irreversible impacts despite 3.23ha of native vegetation requiring removal. This vegetation is intended to be offset through the purchase and retirement of appropriate ecosystem credits.

The BDAR also assessed the proposed development against the provisions of the Kempsey Shire Council's Comprehensive Koala Plan of Management 2011. The Development Footprint was found to contain areas mapped as "Secondary A" and "Unknown" habitat for the Koala. Vegetation Community and Koala Habitat Assessment was carried out over the entire Development Footprint which determined that floristic composition, in many areas, did not meet the adopted definition of Preferred Koala Habitat – Secondary A as provided within the Kempsey CKPoM.

The adjoining Crown Land and Arakoon National Park as well as a small portion of the site include land mapped as Coastal Wetlands pursuant to the provisions of State Environmental Planning Policy (Coastal Management) 2018. Despite the development footprint falling outside of the mapped wetland areas, careful consideration of the potential impacts of the proposal on the wetlands has been undertaken. This included stormwater and MUSIC modelling, ecological assessment and technical review by Australian Wetlands Consulting Pty Ltd.

The site is also mapped as bushfire prone land due to the presence of unmanaged bushland to the north within Crown Land and the Arakoon National Park consisting of a mixture of Northern Hinterland Wet Sclerophyll Forest, Coastal Swamp Forest and Coastal Dune Dry Sclerophyll Forest Vegetation.

Due to the Community Title residential subdivision component of the proposal the application is categorised as integrated development under Section 4.46 of the Environmental Planning & Assessment Act 1979. Black Ash Bushfire Consulting therefore reviewed the proposal against the provisions of Section 100B of the Rural Fires Act 1997 as well as the NSW Rural Fire Services publication Planning for Bushfire Protection 2019. The assessment confirmed that with the implementation of mitigation measures including the provision of perimeter roads and asset protection zones, that the residential components of the proposed development can achieve a Bushfire Attack Level (BAL) of 29.

The site is located within the Saltwater Creek catchment, with part of the site within the 1% AEP (Annual Exceedance Probability) extent as defined by the Saltwater Creek Flood Study (BMT WBM, 2006). A flood assessment has therefore been prepared to demonstrate that the development complies with the requirements of the Kempsey Local Environmental Plan (LEP) 2013 and Development Control Plan (DCP) 2013.

Due to the vacant nature of the site an Aboriginal Cultural Heritage Assessment Report has been prepared. The report notes that the Kempsey Local Aboriginal Land Council raises no objection to the proposal, and is not aware of any midden sites within the area and. Further, no Aboriginal sites were identified during the archaeological site inspection.

In addition to the above, acoustic and traffic impact assessments have been prepared in consideration of the

built form component of the proposal. Both assessments confirm that the proposal can be completed with the implementation of appropriate measures, all of which have been captured within the submitted design.

The proposed design is considered to respond to the constraints of the site. This application is considered to demonstrate the sites suitability for the proposed development and confirm that there are no matters which would affect the development of the site from occurring in the manner proposed.

1.2 The Site, Zoning & Permissibility

The site is identified as Lot 2 DP 1091323, Phillip Drive, South West Rocks. The site and surrounding lands are detailed in Figure 1 and a copy of the deposited plan is included in Appendix A. A copy of the detailed site survey is included within Appendix B.

The site is irregular in shape, with an area of 4.82 hectares, and is bound by Phillip Drive and several single and two storey residential dwellings to the south, with Saltwater Creek to the north-west, north and north-east of the site.

To the north, the site is adjoined by Lot 7045 DP 1120753, which is owned by the State of New South Wales. This vegetated allotment separates the site from Saltwater Creek and Trial Bay Front Beach beyond.

The site is currently vacant, with different vegetation communities of varying conditions within (see Figures 2-5). These include highly managed and exotic grasslands, Banksia Dry Shrubland, Blackbutt-Needlebark Stringybark shrubby open forest and Swamp Mahogany-Broad Leaved Paperbark – Swamp Water Fern – Plume Rush swamp forest.



Figure 1: The subject site (yellow) and its proximity to Saltwater Creek, directly north of the site, and the surrounding land use pattern (Six Maps, www.maps.six.nsw.gov.au, date accessed 17 March 2022).



Figure 2: View of the subject site (taken from the centre of the site), looking north.



Figure 3: View of the subject site (taken from the centre of the site), looking east.



Figure 4: View of the subject site (taken from rear of site), looking south towards Phillip Drive.



Figure 5: View of the subject site (taken from the rear of the site), looking West.

The subject site is currently zoned R3 Medium Density Residential under the provisions of the Kempsey Local Environmental Plan (KLEP) 2013 (see Figure 6). The objectives of the R3 zone read as follows:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage urban infill and redevelopment in areas that surround existing or proposed facilities and services.

Pursuant to the provisions of Schedule 1 – Additional Permitted Uses of the KLEP 2013, development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation is permitted with development consent. Therefore, the proposed Staged Community Title Subdivision and construction of Multi-Dwelling Housing, a Residential Flat Building and Commercial development is permissible with consent in the R3 Medium Density Residential zoning.



Figure 6: Excerpt of zoning map, showing the subject site (bounded yellow) (ePlanning Spatial Viewer, www.planningportal.nsw.gov.au, date accessed 17 March 2022).

1.3 The Site's History

The site was formerly known as Lot 504 DP 774359. The site was subject to a subdivision for road widening purposes in June 2005 and was re-identified as Lot 2 DP 1091323 (refer Appendix A).

In 1991 the then landowner, lodged an application with Council for a Resort Complex comprising 180 residential units, commercial and administration complex comprising shops, bar areas, conference auditoriums, restaurant/dining areas and administrative areas together with support car parking, recreation facilities and landscaping. This application (T4-91-195) was granted by Council on 24 February 1993.

In 2012, Keiley Hunter Urban Planner provided a submission to Council with respect to the site and the Council's preparation of the standard template Kempsey Local Environmental Plan (KLEP) 2013. The submission noted that the site was listed within the additional permitted uses of the proceeding LEP and that the proposed wording did not reflect the development granted under application T4-91-195.

The submission stated application T4-91-195 'had not lapsed pursuant to Section 95 of the Environmental Planning & Assessment Act 1979 as engineering work relating to the development has physically commenced on site'. Council confirmed in writing (letter dated 29 January 2008) that the consent had not lapsed.

This submission resulted in the inclusion of the site within the list of Schedule 1 Additional Permitted Uses, which is extracted below.

- 10 Use of certain land at Phillip Drive, South West Rocks
 - (1) This clause applies to land at Phillip Drive, South West Rocks, being Lot 2, DP 1091323, and identified as "Item 10" on the Additional Permitted Uses Map.
 - (2) Development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation is permitted with development consent.

The current landowner lodged a Construction Certificate (CC) application with Council in 2021 which was the subject of a Class 1 proceeding within the Land & Environment Court (LEC). The CC was determined by refusal

on 1 March 2022 noting that the works completed did not substitute commencement. An appeal to this decision has been lodged with the Land & Environment Court by the original applicant.

1.4 Strategic Planning

There are a number of Strategic Planning documents applicable to the site and South West Rocks area. Each of these strategies are reviewed below to provide a general overview of the applications consistency with the intended growth of South West Rocks and the wider Kempsey Shire. The Strategies recognise that a significant proportion of residential development within the Kempsey Shire will occur within South West Rocks (estimated up to 50%) and with this growth an increased demand will occur for employment and services.

The proposal is considered to not only be consistent with the applicable growth strategies, but reflective of the growing demand for a coastal lifestyle in an attractive seaside location on the Mid North Coast.

1.4.1 Mid North Coast Regional Strategy (2006-2031)

The site is zoned R3 Medium Density Residential and is therefore identified within the Regional Strategy as being within the existing Kempsey growth area. The Regional Strategy provides limited direction with respect to South West Rocks specifically, noting that the extent of development potential is already included within an adopted growth management strategy, being the Kempsey Local Growth Management Strategy, refer below.

1.4.2 Kempsey Local Growth Management Strategy

The Residential component of this strategy was prepared by Council in October 2010 and is based on the population profile of 2008 and land capacity report of 2007. Whilst somewhat outdated, the Strategy identifies the settlement hierarchy, infrastructure and servicing requirements for the Kempsey Shire, including South West Rocks.

The Strategy notes that outside of Kempsey, South West Rocks will cater for 50% of the total number of new dwellings in the Shire between 2006 and 2031. 40% of these are estimated as being attached or medium to medium to high density to suit the small household size that is typical of the older demographic present within the area.

The Strategy recognises that the majority of this work will occur within the area immediately surrounding the subject site, including The Saltwater estate, the former Caltex site and Seascape Grove.

The Strategy also identifies the fact that zoned unsubdivided land (ZUL), such as the subject site, will account for 108 medium density allotments and 188 detached housing opportunities within the period 2009-2031.

1.4.3 South West Rocks Structure Plan

Council is currently preparing a Structure Plan for South West Rocks.

According to Council's recently exhibited Background Paper: Structure Plan for South West Rocks (prepared by GHD on behalf of Kempsey Shire Council, 2022);

'...South West Rocks is known for its coastal lifestyle and natural environment, and consequently it is growing in popularity as a place to live, work and visit. Kempsey Shire Council (Council) has recognised the importance to meaningfully plan for future growth within the area and is preparing a Structure Plan

to address development and planning needs’.

The exhibited Background Paper acknowledges the fact that South West Rocks is the second largest urban centre in Kempsey Shire and has been the major focal point for growth. It also identifies that the area is expected to continue to draw significant migration to the area, accounting for a high proportion of the local housing demand.

The demand for tourism experiences within South West Rocks is also identified as a key driver for the local tourism industry and the areas desire to become economically sustainable. On the back of this growth, the background paper notes that the growing population will require additional commercial land use to sustain employment growth and the associated demand for facilities and services.

This application is considered to be consistent with the basis for which Council is currently preparing the Structure Plan for the following reasons:

- The proposed development will provide a variety of housing opportunities for the growing population within zoned land, and
- The proposed development will provide commercial and employment opportunities through the construction of the development and continued operation of the commercial component and management of the site and facilities.

1.5 Consultation with Council

During the preparation of this application the applicant provided information to Council regarding the intention of the project including concept designs and various development details via email. Formal discussions with Council were also held on the following dates:

- 26 August 2021 – electronic Teams meeting with Kempsey Shire Council staff (Mr Graham Snow and Mr Shane Reinhold), to discuss project generally, including layout, staging and design intent, overshadowing, vegetation removal, intended commercial uses, road and civil design intent.
- 23 December 2021 – pre-lodgement meeting electronically via Teams with Kempsey Shire Council staff (Mr Graham Snow and Mr Shane Reinhold), Rob de Groot (de Groot Civil Engineers) and Rise Projects staff.
- 13 January 2022 – email from Rise Projects to Council staff including a draft set of plans incorporating comments from the previous Council meetings and a copy of Rise Projects pre-lodgement meeting minutes. Discussion included layout and staging generally, provision of parking including stacked spaces and number, setbacks to fencing and residential flat building, sewer realignment and location through the rear of multi-dwelling housing allotments.

On several occasions the applicant requested minutes and/or written comments in response to the above in accordance with the typical ‘pre-lodgement’ documentation process. However, no written responses were received from Council.

In addition to the above a formal pre-lodgement package was issued to Council on 4 March 2022 via email requesting a meeting to discuss the proposal. The package included a description of the proposal, a brief assessment of the proposal against the relevant legislation, identification of and intended measures to satisfy the key issues as well as a copy of the proposed architectural and civil engineering plans.

King & Campbell Pty Ltd

Statement of Environmental Effects
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Lot 2 DP 1091323, Phillip Drive, South West Rocks

No response was received from Council at the time of writing.

Section 2

The Proposal

2.1 The Proposal

This application relates to the development of the southern portion of Lot 2 DP 1091323 as highlighted in blue in Figure 7 and seeks consent for the following staged works:

- Stage 1A – Intersection and internal private road works including a total of 48 'on-street' parking spaces,
- Stage 1B – Multi-dwelling housing (18 x two (2) storey units), including 6 x 3 bedroom units, 12 x 4 bedroom units, and visitor car parking (5 spaces),
- Stage 1C – Commercial building including 6 tenancies and multi-dwelling housing (12 x 2 storey units),
- Stage 1D – 5 storey Residential Flat Building including 1 x 1 bedroom, 7 x 2 bedroom, 16 x 3 bedroom and 2 x 4 bedroom units and basement car parking (42 spaces), and
- Stage 1E – Servicing of the Lots to allow for future development.

Architectural plans detailing the multi-dwelling housing, residential flat building, and commercial premises are included within Appendix C, which also includes tables detailing the areas of each of the proposed buildings. Images of the proposed development are included as Figures 8 and 9.

These works are proposed to be located within a Community Title Subdivision which will be subject to a Community Management Plan. Further details of the proposed plan are detailed within Section 2.1.2.

The 5 Storey Residential Flat Building will also be the subject of a Strata Title Subdivision. This subdivision is detailed within the plans included within Appendix E.

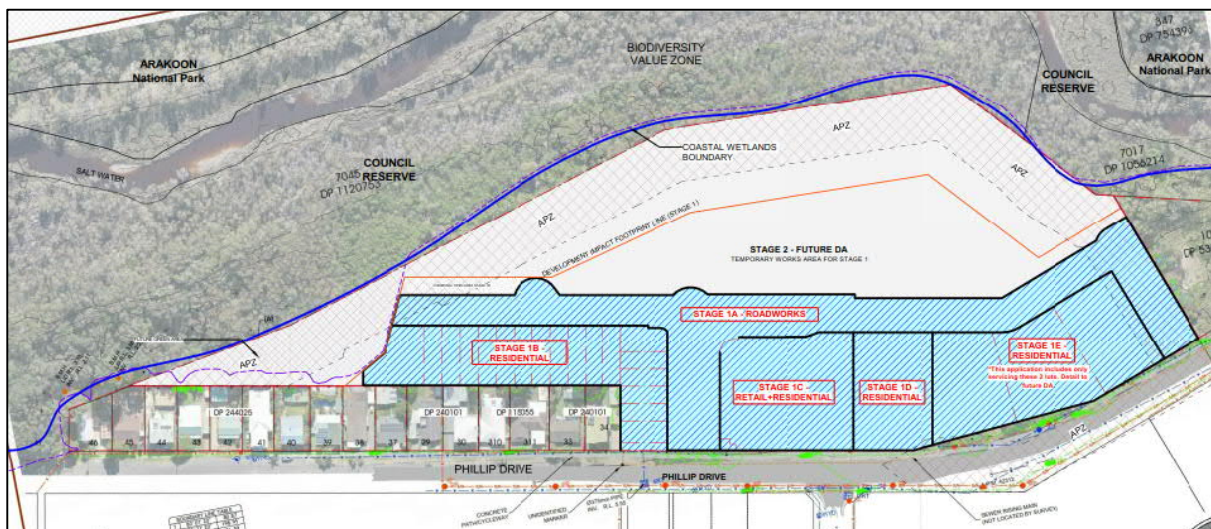


Figure 7: The proposed staging sequence.



Figure 8: Artistic impression of the proposed western entry road and multi-dwelling housing (Stage 1B).



Figure 9: Artistic impression of the commercial building and on-street parking (Stages 1A and 1C).

Works associated with the staged development are also intended to include the following works over the southern portion of the site (the 3.23ha development footprint):

- Clearing of 3.23ha of native vegetation from the southern portion of the site (excludes the area of vegetation mapped as Biodiversity Values in the sites west (Figure 10) and generally within 40m of the mapped Coastal Wetland). This vegetation removal has been considered and assessed by consulting ecologists Biodiversity Australia and a Biodiversity Development Assessment Report (BDAR) has been prepared in accordance with the relevant provisions of the Biodiversity Conservation Act 2016 (refer to Section 3.3 and Appendix P),
- Bulk filling within the development footprint (approximately 3.23ha) to satisfy the required flood levels,
- Realignment of the existing Council sewer, and
- Stormwater management facilities.



Figure 10: Excerpt of the mapped Biodiversity Values land shown purple and the development footprint (including the extent of clearing and filling) shown dashed yellow.

2.1.1 Staging

The application is sought to be constructed in the following sub-stages:

1. Stage 1A – Intersection and internal private road works,
2. Stage 1B – Multi-dwelling housing (18 x two (2) storey units),
3. Stage 1C – Commercial building including 6 tenancies and multi-dwelling housing (12 x 2 storey units),
4. Stage 1D – 5 storey Residential Flat Building including 1 x 1 bedroom, 7 x 2 bedroom, 16 x 3 bedroom

and 2 x 4 bedroom units and basement car parking (42 spaces), and

5. Stage 1E – Servicing of the Lots to allow for future development.

Construction of these stages may occur individually or in tandem. The timing of which will be determined by market demand.

Stages 1E and 2 will be the subject to separate future applications.

2.1.2 Community Title Subdivision

The following is a broad outline of the intended Community Management Scheme:

Structure

1. The residue portions of the development will be maintained in common ownership (with the exception of Stage 1E and Stage 2).
2. Separate company "The Rocks Management Co." will be formed outside of "Lot 2 Phillip Rise" setup for the sole purpose of managing the community title scheme.
3. Main goal for maintaining management is to ensure:
 - a. High quality maintenance and presentation across the 'public' areas and also the strata scheme(s),
 - b. Controlling the strata schemes for construction coordination, approvals, access rights and the like,
 - c. Maintenance and coordination of budgets for site management, maintenance, and
 - d. The coordination and administration of strata corporation.

Maintenance

4. All common property, including roads, infrastructure, lighting, fences, footpaths, external facades and other general landscaping and common facilities (BBQ's, children's play grounds and the like) will be maintained by "The Rocks Management Co." (excludes rear yards of multi-dwelling housing (Stage 1B)).
5. Maintenance costs will be distributed evenly for each residential occupancy.
6. The Rocks Management Co. will be responsible for electrical and telecommunications connections, supply, maintenance and coordination including any solar energy schemes.
7. The Rocks Management Co. manages, funds and coordinates seasonal decorations and events.
8. The Rocks Management Co. manages and funds marketing and branding of 'The Rocks'.
9. The Rocks Management Co. manages all waste collection, including strata, via private contractor.

Restrictions

10. 'The Rocks' residents prohibited from objecting to internal planning applications carried out by The Rocks Management Co (i.e., future Stages 1E and 2).

11. Community management schemes to control restrictions on holiday or Airbnb letting in the strata schemes

2.1.3 Strata Title Subdivision

The Residential Flat Building (Stage 1D) is proposed to be the subject of a Strata Subdivision as detailed in the draft Strata Plan included within Appendix E.

Section 3

Key Issues and Legislation

Kempsey Shire Council is the relevant consent authority for the determination of this development application. In determining the development proposal, the consent authority must take into consideration the following statutory provisions as prescribed under Section 4.15 of the Environmental Planning & Assessment Act 1979:

3.1 Environmental Planning & Assessment Act, 1979

This application is made under Part 4 'Development Assessment' of the Environmental Planning & Assessment Act 1979 (the Act).

The proposal requires development consent under Part 4 of the Act and is required to address those matters outlined under Section 4.15. These matters are addressed in Table 3.1 and within the body of this report.

TABLE 3.1 MATTERS FOR CONSIDERATION	
Section 4.15	Comments
(a)(i) Any environmental planning instrument	The environmental planning instruments applicable to the site and proposed works are addressed within Section 3 of this statement.
(a)(ii) Any proposed planning instrument that is or has been the subject of public consultation under this ACT and that has been notified to the consent authority.	There are no draft or proposed environmental planning instruments known to apply to the site or the proposed development.
(a)(iii) Any Development Control Plan	The relevant provisions of the Kempsey Development Control Plan 2013 have been addressed within Section 3.8 and Appendix G of this report.
(a)(iiia) Any planning agreement or draft planning agreement under Section 7.4.	The application does not seek or offer to enter into any planning agreement.
(a)(iv) Any matters prescribed by the regulations (to the extent that they prescribe matters for the purposes of this paragraph)	There are no matters prescribed by the regulations relevant to the site or proposed works.
(a)(v) Any coastal zone management plan (within the meaning of the Coastal Protection Act, 1979).	No coastal zone management plan applies to the site.
(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality.	<p>The likely impacts of the proposed development have been considered as part of the preparation of this application. It is considered that the development will not result in any significant adverse impacts for the following reasons:</p> <ul style="list-style-type: none"> • The proposed structures are compliant with the setbacks provided within the KDCP 2013, • On-site car parking will be provided, commensurate with the provisions of the KDCP 2013, • The proposed development will not impact any adjoining or surrounding properties by overshadowing or view sharing (refer Section 3.10.9 and the Architectural plans within Appendix C), • The construction of the proposed buildings will provide direct employment opportunities and a positive economic and social benefit to the community, and • The proposed residential structures will provide housing opportunities consistent with the objectives of the R3 medium Density Residential zone. <p>The proposal is considered to generate positive economic and social impacts during the construction and occupation phases. The Multi-Dwelling Housing and Residential Flat Building shall provide a variety of housing choice in a developed urban area, with the proposed commercial premises available to service residents.</p>

(c) The suitability of the site for the development.	<p>The site is located in close proximity to the South West Rocks Country Club, the Cricket Ground, several holiday and tourist parks, Trial Bay Front Beach, and several restaurants located in the town centre. The sites' residential location is supported by its R3 Medium Density Residential zoning.</p> <p>In addition, the physical constraints applying to site have been assessed in the preparation of this application and it is considered that the development will not result in any adverse environmental or social impacts.</p> <p>For these reasons, the subject site is considered suitable for the proposed development.</p>
(d) Any submissions made in accordance with this Act or the regulations.	Submissions, if received, will be addressed during the assessment of the lodged application.
(e) The public interest	Based on the above, it is considered that the proposed development is in the best interest of the public.

3.2 Environmental Planning & Assessment Regulations, 2000

The subject application is made in accordance with the provisions of Clause 50 of the Regulations and includes the documents and forms required under Part 1 of Schedule 1.

The subject site and development proposal is not a type listed within Schedule 3 – Designated Development of the Regulations.

3.3 Biodiversity Conservation Act, 2016

The subject site contains a small area of mapped Biodiversity Values in the far western corner of the site (Figure 10). The Development Footprint has been intentionally designed to avoid this area.

The property is zoned as R3 and hence a 550m² minimum lot size applies. In accordance with the Biodiversity Assessment Method 2020 (BAM) this allows for a clearing area of 0.25ha before triggering the Biodiversity Development Assessment Reporting (BDAR) framework. As this proposed development seeks to remove in excess of the threshold (approximately 3.23ha of total vegetation), a BDAR has been prepared by consulting ecologists, Biodiversity Australia (BA), and is included in full at Appendix P.

BA's assessment noted that the site did not contain any endangered ecological communities (EEC's) and no threatened flora species were detected within the development footprint despite targeted surveys being undertaken.

BA's assessment identified native vegetation occurring over the majority of the Development Site, with only an area in the far west of the Development Site being present as exotic grasslands. The Development Site was assessed to consist of various different vegetation communities resulting in a total of five (5) different vegetation zones including three (3) different vegetation communities of differing qualities ranging from degraded to moderate condition.

The areas of native vegetation within the development footprint were identified to include (refer Figure 11):

- Plant Community Type (PCT) 663 Banksia dry shrubland on coastal sands of the NSW North Coast Bioregion,

BA's assessment noted that this community is present in a moderately disturbed state of advanced regeneration with low weed coverage and moderate species diversity.

- PCT 685 Blackbutt – Needlebark Stringybark shrubby open forest on coastal sands of the NSW North Coast Bioregion.

BA's assessment noted that this community is present in a slightly modified state with evidence of selected under-scrubbing occurring in some areas. Overall, the condition of the area is considered moderate to good with a low cover of weeds and good species diversity.

- PCT 1725 Swamp Mahogany – Broad-leaved Paperbark – Swamp Water Fern – Plume Rush swamp forest on coastal lowlands of the Coastal Coast and Lower North Coast.

BA's assessment noted that this community consisted of three vegetation zones, ranging in condition from exotic (very low species diversity, extremely modified state), degraded (very limited vegetation cover and highly modified) to moderate (small, isolated patches with moderate to high levels of weed invasion).



Figure 11: Excerpt of Biodiversity Australia's mapping of the present vegetation types.

The proposal has applied a pragmatic approach to avoiding areas of high biodiversity value. The key areas which have been identified as containing biodiversity values are:

- The area in the far west of the development site which contains Biodiversity Values associated with important habitat for the Swift Parrot, and
- Area's mapped as Coastal Wetland under State Environmental Planning Policy (Coastal Management) 2018 and the application of suitable buffers.

The proposed development layout for Stage 1 has intentionally retained the western portion of the Development

Site to ensure that the Biodiversity Values mapped areas (Figure 10) are left in-situ. This area is also proposed to be utilised for offsetting of Koala Food Trees under the Kempsey Shire CKPoM and therefore be subject to a vegetation management plan and improved ecological function post development.

Areas of mapped Coastal Wetland have been afforded a buffer with an average width of 40m in order to provide adequate protection (See Section 3.6.3 for further details).

BA's assessment confirmed that the direct impacts of the proposal will be limited to vegetation and habitat removal. BA therefore recommended a number of mitigation measures be implemented to reduce the potential offsite impacts during the construction phase. In consideration of the potential indirect impacts that may be associated with the proposal, BA states that these are considered to be minor and can be mitigated through the measures described below:

Prior to clearing works

- Define clearing limits on site with bunting or temporary fencing
- Site inductions to clearing contractors re. ecology measures
- Preparation of VMP
- Installation of replacement nest boxes and report
- Sediment and erosion control measures
- Ensuring all plant is weed free
- Pre-clearing survey and habitat tree mark-up

During clearing works

- Pre-clearance inspection (each morning prior to clearing)
- Clearing supervision
- Hollow-bearing tree removal protocol
- Maintain sediment and erosion control measures
- Removal of weeds and disposal at a licenced landfill facility
- Monitoring of extent of clearing works i.e. no clearing beyond marked footprint (continual)

Post clearing works

- Implement VMP
- Removal of any new weed infestations and ongoing weed control in E2
- Restriction of access to E2 and educational signage

- Strategic placement of artificial lighting
- Restriction of domestic animals
- Restriction of exotic species in landscaping

In conclusion, the BDAR notes that the proposal will not result in any serious or irreversible impacts despite 3.23ha of native vegetation requiring removal. This vegetation is intended to be offset through the purchase and retirement of appropriate ecosystem and species credits. These credits are described below:

Ecosystem Credits

- PCT 663 Banksia dry shrubland on coastal sands of the NSW North Coast Bioregion, 27 Ecosystem Credits,
- PCT 685 Blackbutt – Needlebark Stringybark shrubby open forest on coastal sands of the NSW North Coast Bioregion, 20 Ecosystem Credits, and
- PCT 1725 Swamp Mahogany – Broad-leaved Paperbark – Swamp Water Fern – Plume Rush swamp forest on coastal lowlands of the Coastal Coast and Lower North Coast, 28 Ecosystem Credits consisting of 10 medium and 18 degraded.

Species Credits

- *Crinia tinnula* / Wallum Froglet (Fauna), 25 species credits consisting of 7 medium and 18 degraded, and
- *Myotis macropus* / Southern Myotis (Fauna), 88 species credits consisting of 14 medium (1725), 25 degraded (1725), 22 medium (663), 26 medium (685) and 1 exotic (1725).

3.4 Rural Fires Act, 1997

The site is mapped as bushfire prone land (Figure 12) and subdivision of land for residential purposes is required to receive a Bushfire Safety Authority from the NSW Rural Fire Service pursuant to Section 100B of this Act and is categorised as Integrated Development, under s.4.46 of the Environmental Planning & Assessment Act 1979.

Blackash Bushfire Consulting (Mr. Scott Palin (Bushfire Specialist) and Mr. Lew Short, Principal Blackash Bushfire Consulting (FPAA BPAD-A Certified Practitioner No. BPD-PA-16373)) reviewed the site, surrounding lands and vegetation and prepared a Bushfire Hazard Assessment which is included in full at Appendix O.

The assessment noted that the Vegetation on the site has been largely cleared and would be considered managed land. The vegetation surrounding the site consists of a mixture of Northern Hinterland Wet Sclerophyll Forest, Coastal Swamp Forest and Coastal Dune Dry Sclerophyll Forest Vegetation.

The site is bordered to the north by the unmanaged bushland associated with Crown land and Arakoon National Park, to the east by a partially managed parcel of private land; to the west by existing residential development and bushland and to the south by a mixture of developed and undeveloped general residential lots and a managed infrastructure site. Saltwater Creek is located approximately 80 meters to the north of the site, which supports the Coastal Swamp Forest riparian corridor that runs adjacent to the water course.

The site slopes down to the north, northwest, east and south at between 0.69 – 2.29 degrees, with an upslope of 2.27 degrees to the southwest.

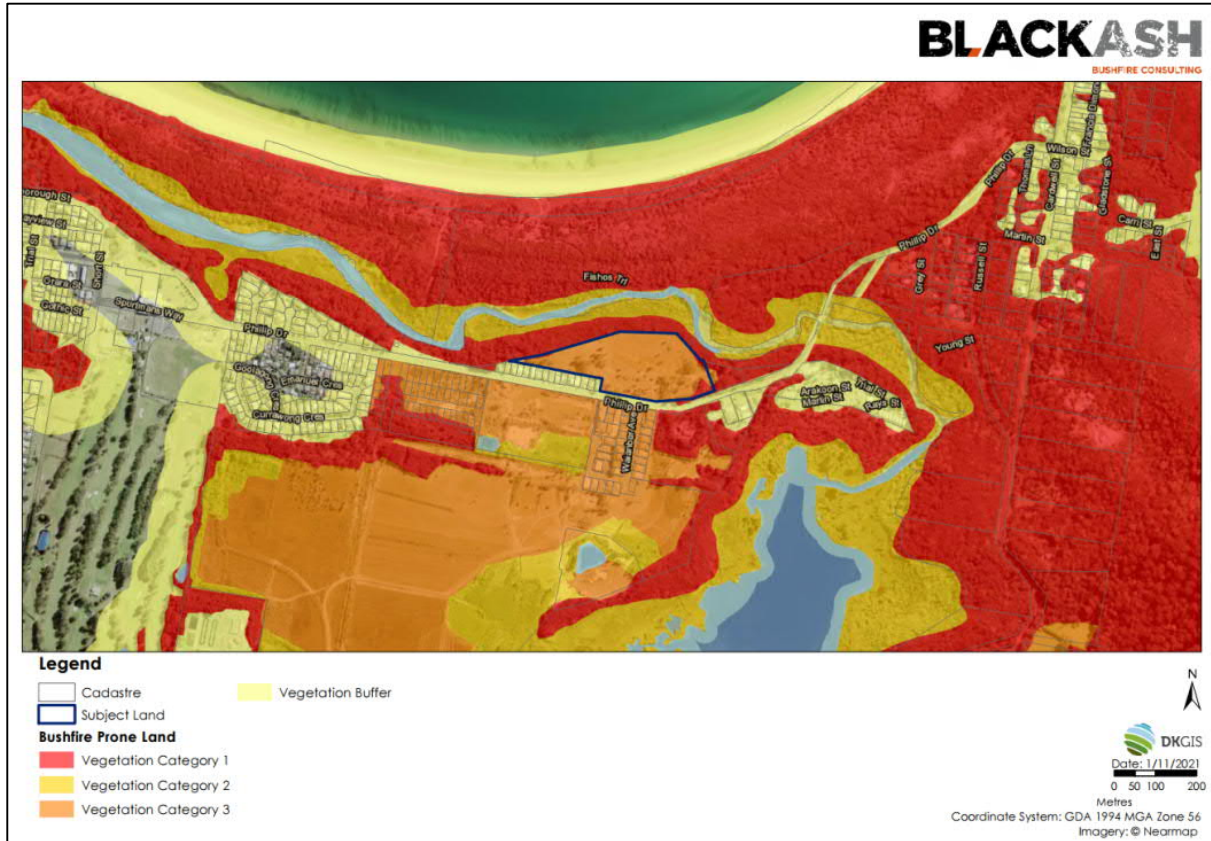


Figure 12: Excerpt of Bushfire Prone Land Mapping (Blackash, 2022), the site is edged blue.

With these constraints in mind, and the aim of achieving a worst-case Bushfire Attack Level (BAL) of a maximum of BAL-29 the proposal includes a 25 meter wide asset protection zone (APZ) extending along the entire northern boundary, with the exception of a small section of a 22 meter wide APZ to the frontage of the western most residential lot. The APZ was required to step out 3 meters in this section to allow the APZ to remain solely on the Community Title land for the purpose of ongoing maintenance. Refer Figure 13.

Blackash note that the site and proposed development will be adequately serviced by reticulated water, with hydrants located at regular intervals in accordance with AS2419 and Planning for Bushfire Protection 2019. No reticulated gas is available in the locality. The assessment notes that gas will be supplied and installed in accordance with AS1596

Blackash confirmed that the proposed internal private road layout has been designed to accommodate NSW Rural Fire Service's 7.8m long fire trucks in case of emergencies. The proposed internal private roads have been designed to comply with the requirements specified in both the Kempsey Development Control Plan 2013 (which refers to Kempsey's Technical Guide to Subdivisions and Development) and the NSW Rural Fire Service's Planning for Bushfire Protection 2019 (Appendix 3) in regard to road reservation width and carriageway width.

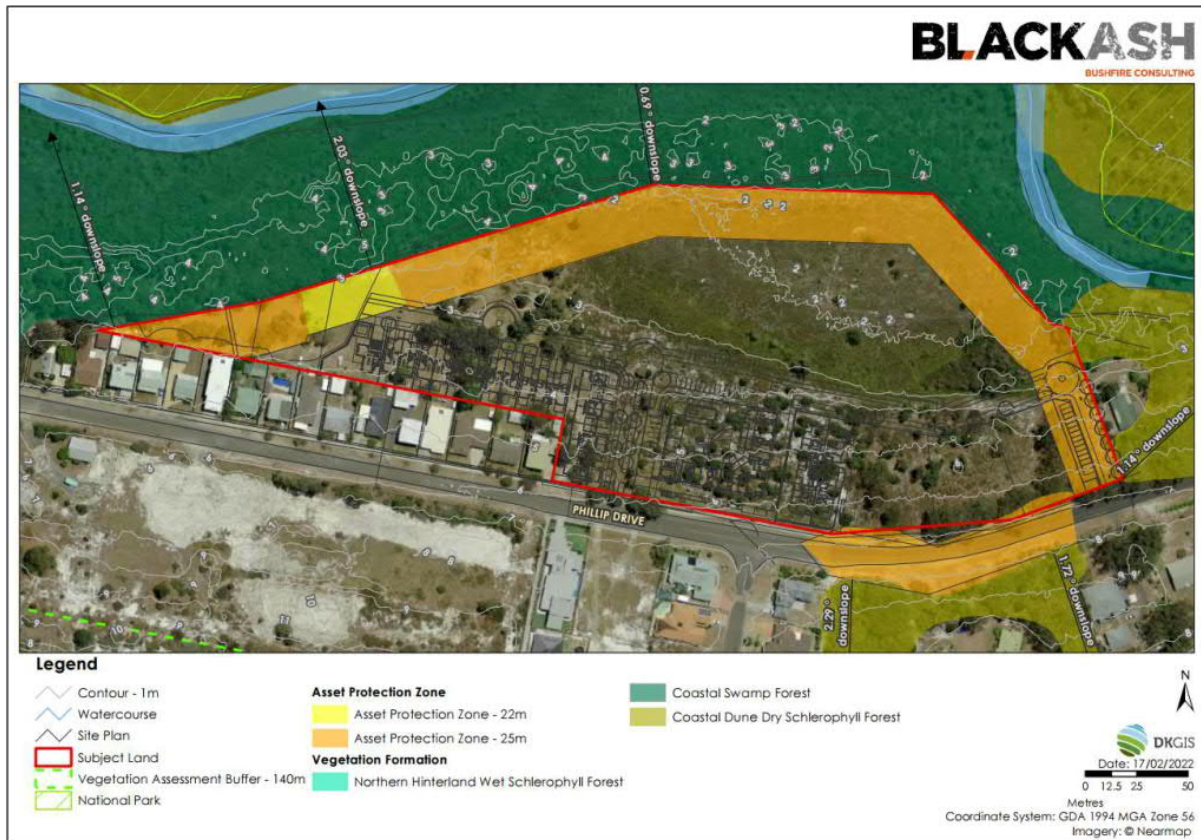


Figure 13: The proposed Asset Protection Zones for the site, edged red (Blackash, 2022).

Blackash also completed an assessment of the commercial component of the proposal in accordance with Section 3.8.1 of Planning for Bushfire Protection 2019. The assessment confirms that the proposed access arrangements are compliant and that hazardous materials are capable of being stored away from the bushfire hazard.

In concluding, Blackash provided 10 recommendations which are outlined below:

- Recommendation 1: Fencing to be constructed in accordance with section 5.3.1 of PBP.
- Recommendation 2: Access roads within the proposed development must comply with section 5.3.2 of PBP.
- Recommendation 3: Water, electricity and gas supplies through the proposed development must comply with section 5.3.3 of PBP.
- Recommendation 4: Asset Protection Zones and landscaping are to be established and maintained in accordance with section 5.3.1 of PBP, and Table 1 & Figure 6 of this report.
- Recommendation 5: All other areas inside of the Asset Protection Zones are to be established and maintained to Inner Protection Area (IPA) standards in accordance with Appendix 4 of PBP 2019 and the NSW RFS "Asset protection zone standards". The entire site is to managed to Inner Protection Area standards.

- Recommendation 6: All individual lots are to be maintained to Inner Protection Area (IPA) standards in accordance with Appendix 4 of PBP 2019 and the NSW RFS "Asset protection zone standards".
- Recommendation 7: Prior to completion of any part of the Stage 1 development, a suitably worded instrument created pursuant to section 88B of the Conveyancing Act 1919 to be placed on the Stage 2 land, for it to be established and maintained as an Inner Protection Area (IPA) in accordance with Appendix 4 of PBP 2019 and the NSW RFS "Asset protection zone standards".
- Recommendation 8: A Bushfire Management Plan is to be produced as part of the Community Management Statement to ensure the suite of bushfire measures are managed on an ongoing basis. This shall include at a minimum the APZ maintenance, landscape maintenance, pre-incident planning and Hazard Reduction burn planning.
- Recommendation 9: A Bushfire Emergency Management and Evacuation Plan is to be produced as part of the Community Management Statement to ensure suitable emergency and evacuation arrangements for occupants of the development.
- Recommendation 10: All individual retail lots are to provide for the storage of hazardous materials away from the hazard wherever possible.

3.5 Water Management Act, 2000

The development is considered likely to include works within 40 metres of the mapped water courses, including stormwater discharge points (refer Figure 1). It is therefore recognised that the concurrence of the Natural Resource Access Regulator (NRAR, Office of Water) will be required pursuant to Section 4.46 of the Environmental Planning & Assessment Act 1979. It is also noted that a Controlled Activity Approval will be required prior to issue of a Construction Certificate for the proposed development.

3.6 State Environmental Planning Policies

The following SEPP's apply to the subject site and proposed development:

3.6.1 SEPP (Biodiversity & Conservation) 2021

Chapter 4 - SEPP (Koala Habitat Protection) 2021

This Policy applies to land zoned R3 Medium Density Residential within the Kempsey Local Government Area. Kempsey Shire Council have adopted the Coastal Koala Plan of Management (CKPoM), which applies to the subject site as it is located in the eastern portion of the Kempsey LGA. As such, Section 4.8 of this Policy requires the application to demonstrate that it is consistent with the CKPoM.

Assessment of the proposal has been undertaken against the Kempsey Shire Council, CKPoM (2011) by consulting ecologists Biodiversity Australia.

This included four (4) dedicated Koala surveys using the Spot Assessment Technique (SAT). Each of which consisted of identifying a centre tree which is known to be frequented by the Koala, known to contain faecal pellets of the Koala or is likely to be considered as a potentially important tree for the Koala.

Physical habitat searches were also undertaken, including the inspection of trees for Koalas and claw markings. In addition, binocular inspection of trees and targeted spotlighting for one hour a night for four consecutive nights

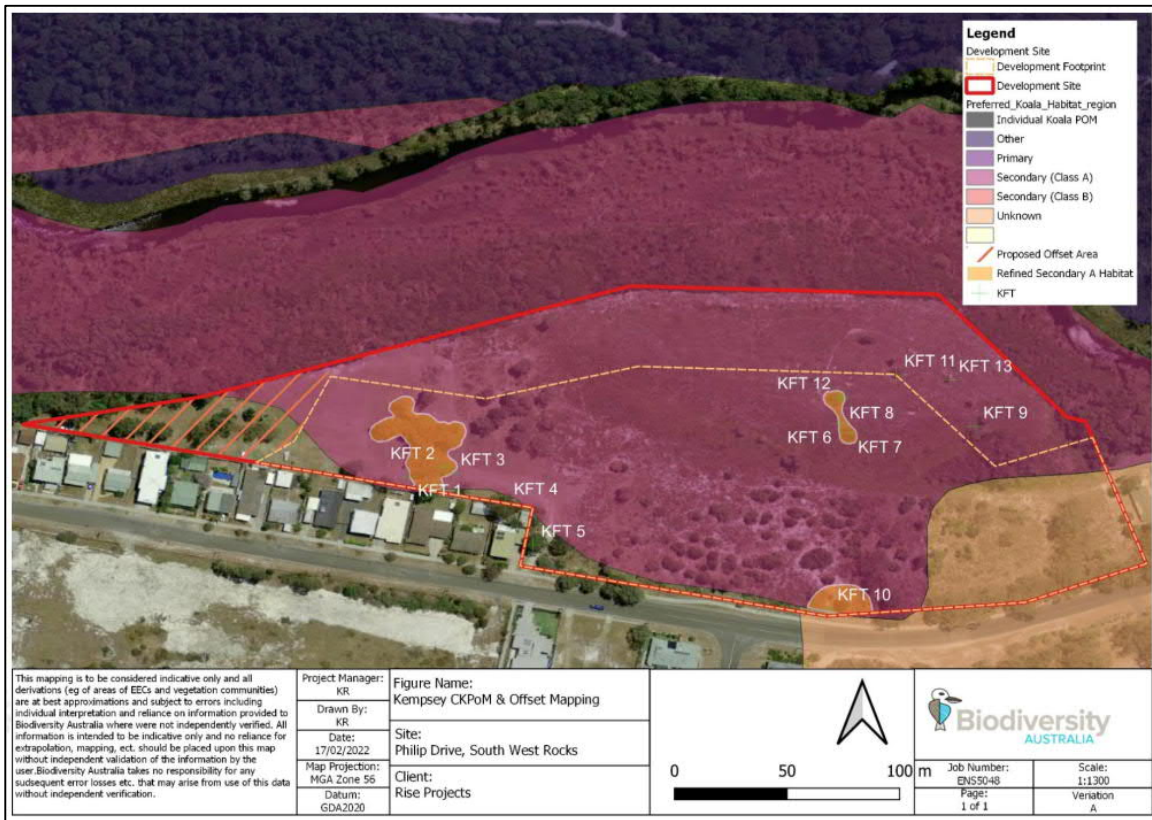


Figure 14: Excerpt of Kempsey Shire CKPoM Preferred Koala Habitat and Koala Food Trees (BA, 2022).

was also undertaken.

The Development Footprint was found to contain areas mapped as “Secondary A” and “Unknown” habitat for the Koala (refer Figure 14). Vegetation Community and Koala Habitat Assessment was carried out over the Development Footprint which determined that floristic composition, in many areas, did not meet the definition of Preferred Koala Habitat – Secondary A as provided within the Kempsey CKPoM. Accordingly, ground truthed updated boundaries have been prepared and will be provided with the proposed application.

Biodiversity Australia’s report confirms that the proposal will comply with the Habitat Compensation Measures, the Onsite Preferred Koala Food Tree Replacement Measures and the Performance Criteria for Areas Mapped as ‘Preferred Koala Habitat’ (PKH) and those areas determined to be PKH. Despite these searches and the above mapping, no evidence of the Koala was detected on the development site.

Regardless of the findings, the development intends to avoid the area of mapped Biodiversity Values in the sites west.

Regarding the removal of Koala food trees, it is proposed to remove 10 KFTs (or approximately 2.54ha of Secondary A habitat) which have been identified in Figure 14 by Biodiversity Australia. A total of 40 KFT’s, consisting primarily of Tallowwoods, are proposed as offset plantings as per the Kempsey Shire CKPoM. These offset trees are proposed to be planted within the area of mapped Biodiversity Values in the sites west. This location within the subject site, which is currently comprised of exotic grassland, will therefore be subject to a vegetation management plan (VMP) and improved ecological function post development.

Biodiversity Australia also confirmed that the proposal is consistent with Section 4.10 of the CKPoM and it is therefore considered that Council can grant consent to the proposed development, with respect to the provisions of this Policy and the adopted CKPoM.

3.6.2 SEPP (Transport & Infrastructure) 2021

Section 2.48 of this Policy applies to development applications which involve the penetration of ground within 2m of an underground electricity power line or electricity distribution pole, within an electricity easement, adjacent to an electricity sub-station, or within 5m of an exposed overhead electricity power line.

Overhead powerlines are located on the opposite (southern) side of Phillips Drive, with service lines running along the eastern half of the subject site's frontage to Phillip Drive. Given the proposed 6m setback to the southern boundary, the proposal is therefore located greater than 5 metres from an overhead power line and referral to Essential Energy is not considered necessary in this instance.

Section 2.118 of this Policy sets out the objectives for development with frontage to a classified road with the aim of ensuring that new development does not compromise the effective and ongoing operation of the classified road. In this instance, Phillips Drive is not identified as a classified road. Further, the Traffic Engineering Report prepared by Varga (refer Section 3.10.1 and Appendix K) demonstrates that the proposed development does not compromise the operation or functionality of Phillip Drive.

Section 104 of this Policy relates to traffic generating development, This Section applies to development listed in column 1 of the table within Schedule 3 that involves:

- (a) new premises of the relevant size or capacity, or
- (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

The proposal seeks consent for 30 multi-dwelling houses, six (6) commercial tenancies (neighbourhood shops and take away food and drink premises), and a total of 26 units and 42 basement parking spaces. The site is not connected to or located within 90 metres of a classified road. The proposal is therefore well below the car park threshold of 300 dwellings as identified in the table within Schedule 3.

The proposal is therefore not considered to require referral to the Roads & Maritime Service (Transport for NSW) under this Policy. Hence, no further consideration of this Policy is considered necessary.

3.6.3 SEPP (Resilience and Hazards) 2021

The site adjoins land mapped as Coastal Wetlands and includes a small area of mapped coastal wetland within the future Stage 2 area (see Figure 15). No works are intended within the mapped area of Coastal Wetland. The site is also mapped as being entirely within the Coastal Use and Coastal Environment areas. The provisions of Chapter 2 Coastal Management of this Policy therefore apply to the site and proposed development.

The proposal has applied a pragmatic approach to avoiding areas of high biodiversity value. The key areas which have been identified as containing biodiversity values are:

- The area in the far west of the development site which contains Biodiversity Values associated with important habitat for the Swift Parrot, and
- Area's mapped as Coastal Wetland under the Coastal Management SEPP.

Australian Wetlands Consulting (AWC) have undertaken an assessment of the proposal and provided guidance for the development of the site, considering the potential impacts on groundwater, stormwater and the mapped Coastal Wetlands and its inhabitants. This assessment has also taken into consideration the provisions of Chapter B5 of the Kempsey Development Control Plan 2013 (refer to Section 3.8 and Appendix G). Further, the proposal accommodates an average 40 metre buffer to the mapped Coastal Wetlands.

On the basis of the above, the provisions of Sections 2.8, 2.10 and 2.11 of this Policy apply and have been considered within the table in Appendix H.

The site is not identified as containing a potentially hazardous or potentially offensive development. Further, the development proposal is not listed as a potentially hazardous or potentially offensive development. No further provisions of this Policy apply.

With respect to Chapter 4 Remediation of Land, following an inspection of the site and a search of Council records, the subject land is not identified as being potentially contaminated and is considered suitable for the intended residential use. Further, the geotechnical investigation undertaken by Regional Geotechnical Solutions (RGS, Appendix R) did not identify any subsurface matters which would preclude the development from occurring in the manner proposed.



Figure 15: Excerpt of Coastal Wetlands and Proximity Area Mapping of the subject site (bordered yellow) (ePlanning Spatial Viewer, www.planningportal.nsw.gov.au, date accessed 17 March 2022).

3.6.4 SEPP (Primary Production) 2021

Part 2.5 of this Policy requires the consent authority to consider whether a development, because of its nature and location, may have an adverse effect on the oyster aquaculture development or a priority oyster aquaculture area. The proposed development is not located within close proximity to marine aquaculture development, and therefore will not have any adverse impacts on oyster aquaculture development or priority oyster aquaculture areas. No further consideration of this Policy is considered necessary.

3.6.5 SEPP (Planning Systems) 2021

This Policy defines those developments which are regionally or state significant and require consideration by the relevant Joint Regional Planning Panels. This includes certain types of infrastructure projects and projects with values over a certain amount.

Community Title Subdivisions, Multi-Dwelling Housing, Residential Flat Buildings and Commercial Premises are not types of development listed within Schedule 1 State Significant Development (General) and the site is not listed within Schedule 2 State Significant Development (Identified Sites).

Schedule 7 sets out the provisions for development which is to be declared regionally significant. Clause 2 states that regionally significant development includes development that has a capital investment value of more than \$30 million. The intended development has been reviewed by a Quantity Surveyor and is considered to have an estimated capital investment value of \$27.4 million. The intended development therefore does not trigger the regionally significant provisions.

3.6.6 SEPP (Industry and Employment) 2021

The intended development seeks to include a business identification sign adjacent to the main vehicular entry. The proposed business identification sign is detailed in Figure 8. Other business identification signage is intended to be provided upon the western and northern elevations of the commercial tenancies fronting the internal private roads. This signage will be the subject of a separate future planning application.

In accordance with the provisions of Chapter 3 of this Policy the proposed business identification sign has been designed to be compatible with the desired amenity of the area, will provide effective communication and is considered to be of high-quality design and finish.

In accordance with the provisions of Clause 3.7, this Policy doesn't apply to building identification signage. However, assessment of the proposed signage has been undertaken against the provisions outlined within Schedule 5 within the following table.

Table 3.6.8: Schedule 5 Assessment Criteria

1 Character of the area	
<ul style="list-style-type: none"> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<ul style="list-style-type: none"> The proposed signage is proposed to form part of the fencing treatment for the proposed residential units and is located within the frontage to Phillip Drive. It is therefore considered to be consistent with the desired future character of the site and development. There is currently no outdoor advertising in the area. However, given the signs integration in the fencing and complimentary landscaping the proposed signage is considered suitable for the locality.
2 Special areas	
<ul style="list-style-type: none"> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? 	<ul style="list-style-type: none"> The proposed sign is not located within an environmentally sensitive or heritage significant area. It is located in a residential area and as outlined above, has been designed to be integrated within the fencing so as to compliment the proposed buildings without detrimentally affecting the surrounding area.
3 Views and vistas	
<ul style="list-style-type: none"> Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers? 	<ul style="list-style-type: none"> The signage is proposed to be located adjacent to the main (southern) vehicular entrance and will have a maximum height of 1.2m. It is therefore considered unlikely to obscure or compromise any important views. Due to the low height of the proposed sign (1.2m) it is considered unlikely to dominate the skyline or reduce the quality of any vistas. The proposed signage is not considered likely to cause any issues for other advertisers.
4 Streetscape, setting or landscape	
<ul style="list-style-type: none"> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? Does the proposal require ongoing vegetation management? 	<ul style="list-style-type: none"> The scale of the proposed sign is considered appropriate for the site as it will be integrated into the fence separating proposed Unit 1 from Phillip Drive. The proposed sign will identify the proposed residential estate which will be a private, Community Title estate. The sign will also assist with setting the standard for development within the estate. The proposed sign is considered simple and unlikely generate any clutter. The screen will be integrated into the front fence and will screen the private open space of the proposed unit. The proposed sign will have a maximum height of 1.2m and will therefore not protrude above buildings, structures or canopies. Low level ground plane landscaping is proposed in front of the proposed sign. This landscaping will be located within a common portion of the community title estate and will therefore be managed in perpetuity by 'The Rocks' community.
5 Site and building	
<ul style="list-style-type: none"> Is the proposal compatible with the scale, proportion 	<ul style="list-style-type: none"> This application relates only to the entry

<p>and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <ul style="list-style-type: none"> • Does the proposal respect important features of the site or building, or both? • Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>signage. No signage upon the buildings is proposed. All signage associated with the commercial component of the proposal will be the subject of a separate future application.</p>
<p>6 Associated devices and logos with advertisements and advertising structures</p>	
<ul style="list-style-type: none"> • Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? 	<ul style="list-style-type: none"> • The proposed sign will be low to the ground and no safety devices, platforms or the like are considered necessary.
<p>7 Illumination</p>	
<ul style="list-style-type: none"> • Would illumination result in unacceptable glare? • Would illumination affect safety for pedestrians, vehicles or aircraft? • Would illumination detract from the amenity of any residence or other form of accommodation? • Can the intensity of the illumination be adjusted, if necessary? • Is the illumination subject to a curfew? 	<ul style="list-style-type: none"> • The signage is proposed to be illuminated via low level up-lighting from a close position within the planted garden bed. This lighting is considered to have a low luminosity and will be directed at the entry wall/fencing. As such, the opportunities for light spill and or glare are considered minimal. • The proposed lighting is proposed at a low-level and in proximity to the wall/fence. It will therefore ensure the signage is visible and presentable to the public without detrimentally impacting passing pedestrians, traffic or residents within. • The illumination is considered unlikely to detract from the amenity of any residences as it will be positioned at a low level in close proximity to the wall/fence on which the sign is presented. As such, the opportunities for light spill and or glare are considered minimal. • The intensity or luminosity is considered capable of being adjusted if necessary. • The illumination can be time limited.
<p>8 Safety</p>	
<ul style="list-style-type: none"> • Would the proposal reduce the safety for any public road? • Would the proposal reduce the safety for pedestrians or bicyclists? • Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	<ul style="list-style-type: none"> • The proposed sign is setback from the road and will have a maximum height of 1.2m. The sign is also proposed to be integrated into the front fencing of the southernmost unit, with low-level illumination proposed. This lighting will not consist of flashing lights or resemble any street signage. As a result, the proposed sign is not considered likely to reduce the safety of Phillip Drive, or the safety of any pedestrians, cyclists or sightlines from any public areas.

3.6.7 SEPP (Building Sustainability Index: BASIX)

A Basix Certificate has been prepared in support of the proposed development, including each of the proposed residential dwellings and each of the proposed units within the Residential Flat Building, demonstrating that the proposal will comply with the requirements of this Policy. A copy of the certificates are included in full within Appendix V.

3.6.8 SEPP No.65 – Design Quality of Residential Apartment Development

This Policy applies to the development of residential developments with a height of greater than three (3) storeys, including Residential Flat Buildings as proposed within. The relevant provisions of this Policy and the accompanying Apartment Design Guideline: Tools for improving the design of residential apartment development (The Guide) have been considered and are addressed within Appendix E.

An assessment of the relevant provisions, including a statement by a qualified designer is included within Appendix F.

3.7 Kempsey Local Environmental Plan 2013

Under the provisions of the Kempsey Local Environmental Plan 2013, the subject site is zoned R3 Medium Density Residential. The objectives of the R3 zone read as follows:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage urban infill and redevelopment in areas that surround existing or proposed facilities and services.

Pursuant to the provisions of Schedule 1 – Additional Permitted Uses of the KLEP 2013, development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation is permitted with development consent on the subject site. Therefore, the proposed Staged Community Title Subdivision and construction of multi-dwelling housing, residential flat building and commercial development (consisting of neighbourhood shops and take away food and drink premises) is permissible with consent in the R3 Medium Density Residential zoning.

The following clauses within the KLEP 2013 are applicable to the proposal:

TABLE 3.7 – KEMPSEY LOCAL ENVIRONMENTAL PLAN 2013	
KLEP Section	Comment
2.1 Land use zones	The subject site is zoned R3 Medium Density Residential, and subject to Clause 2.5 (below), the proposed Staged Community Title Subdivision and construction of multi-dwelling housing, residential flat building and commercial development are permissible with consent in the R3 zone.
2.5 Additional permitted uses for particular land	The subject site is listed as Item 10 under Schedule 1 Additional permitted uses, which allows for development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation to be permitted with development consent.
2.6 Subdivision – consent requirements	The proposed Community Title Subdivision for the subject site is permissible with consent.
4.1 Minimum subdivision lot size	In accordance with the provisions of sub-clause 4(b) this clause does not apply to any kind of subdivision under the Community Land Development Act 2021.
4.1AA Minimum subdivision lot size for community title schemes	This clause does not apply to land zoned R3 Medium Density Residential.
4.3 Height of buildings	<p>The KLEP does not identify a maximum height limit for the subject site.</p> <p>The height of the proposed multi-dwelling town houses and commercial component varies between 7.4m to 8.5m which is considered consistent with the adjoining existing residential development fronting Phillip Drive (being 54-86 Phillip Drive).</p> <p>The proposed residential flat building (5 storeys) will have an approximate height of 17 metres. Given its setback (6m to Phillip Drive) and separation to adjoining development the proposed height is considered suitable for the locality.</p> <p>Further, the view analysis prepared for the proposal is considered to demonstrate that the proposed heights will not have a detrimental impact on any existing views or vistas from public places.</p>
4.4 Floor space ratio	The KLEP does not identify a FSR for the subject site. However, Stages 1B-1D include a total Gross Floor Area (GFA) of 7,894m ² which equates to an FSR of 0.16:1.
5.10 Heritage conservation	The subject site is not identified as being within a heritage conservation area or as being an archaeological site.
5.21 Flood Planning	The subject site is located within the Saltwater Creek catchment with part of the site mapped within the 1% annual exceedance probability (AEP) extent. A Flood impact assessment has therefore been prepared by Water Modelling Solutions and further comment on flooding is included within Section 3.10.5.
7.1 Acid sulfate soils	<p>The geotechnical assessment undertaken by Regional Geotechnical Solutions (RGS) revealed the site potentially contained acid sulfate soils (pH_F values between 3.92 and 6.47 in distilled water, pH_{FOX} values between 1.47 and 6.11 in hydrogen peroxide).</p> <p>Further comments relating to acid sulfate soils have been provided in Section 3.10.8.</p>
7.2 Earthworks	Excavation to a depth of approximately 3.5 metres is proposed (i.e., to RL 2.5m). This is to accommodate for building foundations and the proposed basement car park of the RFB.
7.4 Koala Habitat	The subject site mapped as containing areas mapped as "Secondary

	A" and "Unknown" habitat for the Koala (refer Figure 14). Accordingly, assessment of the proposal was undertaken by consulting ecologists, Biodiversity Australia. Refer to Section 3.6.1.
7.9 Essential services	The subject site will be connected to the necessary essential services of water, sewerage, stormwater, electricity and telecommunications as a part of this application. Detailed civil engineering plans have been prepared detailing the existing services and proposed service augmentation to accommodate the proposal. Refer to Appendix J and Section 3.10.10.

3.8 Development Control Plans

The relevant provisions of the Kempsey Development Control Plan (KDCP) 2013 have been addressed in the Table included within Appendix G.

3.9 Draft Environmental Planning Instruments

There are no draft environmental planning instruments relevant to the subject site or development proposal.

3.10 Other relevant matters

The following additional matters apply to the subject site and development proposal:

3.10.1 Traffic & Parking

Varga Traffic Planning Pty Ltd (Varga) have reviewed the intended development and undertaken a Traffic Impact Assessment (TIA), which has been included in full within Appendix K. Varga assessed the traffic implications of the development with regards to:

- The road network in the vicinity of the site including the existing traffic conditions,
- Estimates the traffic generation potential of the intended development,
- Assesses the traffic implications of the intended development in terms of road network capacity,
- Reviews the geometric design features of the intended car parking facilities for compliance with the relevant codes and standards, and
- Assesses the adequacy and suitability of the quantum of off-street parking provided within the site.

Vehicular access to the proposed development is to be provided via new internal private roadways throughout the site, with two separate entry/exit driveways off Phillip Drive to connect with the proposed internal roadways.

To accommodate for the bush fire risk of the area, the proposed internal local roads have been designed to comply with the requirements specified in both the KDCP 2013 and the NSW Rural Fire Service's Planning for Bushfire Protection 2019, with particular regard to road reservation width and carriageway width.

Varga comments that the proposed development yields a traffic generation potential of approximately 35 vehicle trips per hour (vph) during the AM and PM peak periods. This projected increase in traffic activity is considered minimal and consistent with the land zoning objectives of the site. Hence, no road upgrades or intersection

improvements are required in the vicinity of the site as a result of the additional trip generation expected to be generated by the development proposal.

As per the KDCP 2013, the proposal yields an off-street parking requirement of 126 spaces. This is satisfied through the provision of a total of 135 car parking spaces comprising of 80 internal parking spaces plus a further 55 external parking spaces located in indented parking bays on the internal road network within the site.

Further, the geometric design layout of the proposed car parking facilities has been designed to comply with the relevant requirements specified in Parking Facilities Part 1 - Off-Street Car Parking AS2890.1:2004 and Parking Facilities Part 6 - Off-Street Parking for People with Disabilities AS2890.6:2009 in respect of parking bay dimensions, ramp gradients and aisle widths.

The TIA includes the following conclusions:

- The proposed car parking facilities comply with Council's DCP parking code requirements,
- The proposed subdivision is consistent with the zoning objectives of the site and will not have any unacceptable traffic implications in terms of road network capacity,
- The future local roads within the subdivision will have road reservation widths and carriageway widths consistent with the KDCP 2013, and
- 6.4m long garbage/servicing trucks as well as 7.8m long fire trucks will be able to satisfactorily circulate the internal private local roads once the local road network is complete.

3.10.2 Ecological

As described in Section 3.3, a Biodiversity Development Assessment Report (BDAR) has been undertaken by Biodiversity Australia (BA) and is included in full at Appendix P.

In accordance with the Biodiversity Assessment Method (BAM) the site has a minimum clearing area of 0.25ha, due to the required minimum lot size of the Kempsey LEP 2013 of 550m². The proposed development will require the removal of 3.23ha, and therefore a BDAR is required. This vegetation removal will be offset through purchase and retirement of appropriate biodiversity credits as defined in Section 3.3.

It should be noted however, that the development footprint has been intentionally designed to avoid the small area of mapped Biodiversity Values in the sites far western corner (refer Figure 10). This area is intended to be used for offsetting of Koala food trees (KFTs) under the Kempsey Shire CKPoM and will therefore be subject to a vegetation management plan. The mapped Coastal Wetlands in the site's east has also been avoided and provided with a buffer with an average width of 40m in order to provide adequate protection (refer Section 3.6.3 and Appendix P).

Seven (7) hollow bearing trees with diameters ranging from 29.5cm to 110cm have been identified within the development footprint and are proposed to be removed.

A total of six (6) threatened fauna species were detected during the surveys conducted by BA. These were the Wallum Froglet, Eastern False Pipistrelle, East Coast Freetail Bat, the Little Bent-wing Bat, The Large Bent-winged Bat and the Greater Broad-nosed Bat. No evidence of the Koala was detected on the development site. Two species of gliders were also identified on the site (Sugar Glider and an unconfirmed Feathertail Glider).

BA concluded that the following mitigation measures are required to reduce the overall impact of the

development on biodiversity and to ensure potential offsite impacts are minimised:

- Protection and rehabilitation of the Biodiversity Values area through intentionally avoiding development in the mapped area. Further, exotic grassland areas are to have groundcover and shrub layer ecological restoration works undertaken to regenerate the area,
- Implementation of a VMP in relation to the rehabilitation of the mapped Biodiversity Values area (refer Section 3.6.1 for additional comments),
- Management measures for clearing,
- Replacement nest boxes to offset the removal of hollow bearing trees,
- Offset tree planting of 40 KFTs within the mapped Biodiversity Values area,
- Implementation of soil and sedimentation control measures throughout the earthworks phase,
- Preparation of a pre-clearing survey and clearing supervision by an ecologist,
- Appropriate hollow-bearing tree removal protocols to minimise the risk of injury/mortality of fauna,
- Weed control measures,
- Minimise artificial lighting sources and luminosity,
- Koala friendly and permeable fencing, unless required to confine domestic pets to backyards,
- Restriction of domestic dogs to fenced yards and domestic cats are not allowed to roam adjoining vegetation, and
- Landscaping considerations to the establishment of native plants over exotic species and avoidance of isolated trees.

3.10.3 Vegetation Management and Offsetting

As a part of Biodiversity Australia's BDAR assessment and findings (refer Section 3.3) the development has been designed to avoid those areas of sensitivity, including the mapped area of Biodiversity Values (refer Figure 10).

In addition, to satisfy the provisions of the CKPoM (Section 3.6.1) compensatory replanting of Koala food trees is proposed. To ensure that this rehabilitation occurs in an appropriate manner, Biodiversity Australia recommend that a Vegetation Management Plan (VMP) is to be prepared. This VMP shall be prepared prior to commencement of any vegetation removal and shall set out the management of the rehabilitation of the Biodiversity Values area, Koala offsets and a vegetated buffer along the property boundary. This will detail the works required, timeframes, parties responsible for implementing the works and cost estimates to carry out the works. It will also detail future monitoring requirements for the site.

3.10.4 Landscaping

The proposal seeks to provide an extensive landscaping treatment throughout the development including the provision of a large village green, mature street tree plantings and extensive garden beds flanking the residential components consisting of ground plane plantings and native accent plantings.

A detailed landscaping plan and planting and materials palette is included within the architectural plan set within Appendix C.

3.10.5 Flood

The site is located within the Saltwater Creek catchment, with part of the site within the 1% AEP (Annual Exceedance Probability) extent as defined by the Saltwater Creek Flood Study (BMT WBM, 2006). A flood assessment has therefore been prepared to demonstrate that the development complies with the requirements of the KLEP 2013 and the KDCP 2013.

Water Modelling Solutions (WMS) prepared a Flood Impact Assessment (FIA) in support of the intended development (Appendix N) noting that the proposal seeks to construct a fill pad to ensure that the development is at or above the required flood planning level.

The Saltwater Creek Flood Study was completed by BMT WBM in 2006, and defined design flood behaviour in the Saltwater Creek catchment. However, due to the age of the study and unavailability of the adopted flood model, Kempsey Shire Council requested that a new model be established for the purposes of this assessment. WMS therefore developed a 2D TUFLOW model using Australian Rainfall and Runoff (ARR) 2019 methodologies and the latest available catchment information, including a detailed site survey and LiDAR data (2009).

WMS has also taken cognisance of the Lower Macleay Valley Flood Study (Jacobs, 2019), and where appropriate, adopted similar approaches/parameters for consistency, noting however that the two systems differ significantly in scale.

The modelling undertaken by WMS confirmed that the catchment under existing conditions demonstrates that the majority of the flow path travels from east to west through a well-defined drainage reserve north of the site. The northern portion of the site is flood affected during the 1% AEP flood event under existing conditions. This is detailed in Figure 16.

With respect to the developed conditions (1% AEP), WMS note that once the flooding reaches the proposed development site, the flood water is deflected by the intended outer ring road (2.84 m AHD) as this is situated above the water level of the creek. This means that the volume of water that would have previously passed through the site is instead constricted to the creek channel. This has been estimated to cause minor impacts to velocities and water levels within the Saltwater Creek channel.

With respect to evacuation, WMS note that the site has an area of approximately 2.1ha above the PMF level, in which occupants could safely shelter during a PMF. WMS also note that safe egress to South West Rocks is available via Phillip Drive. Evacuation capacity is therefore not expected to be a constraint for the safe occupation and egress from the site.

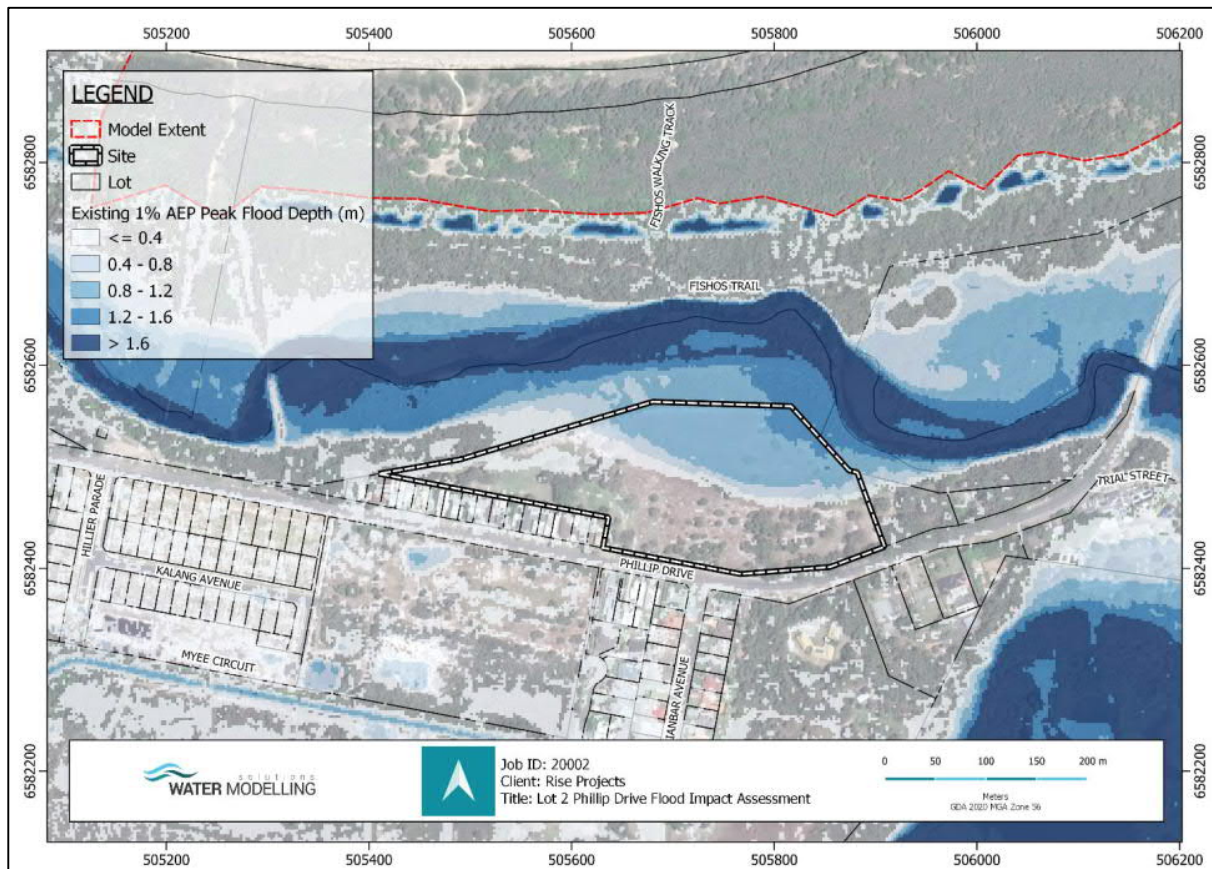


Figure 16: Existing flood depths, subject site bolded black and white dashed outline (WMS, 2022).

3.10.6 Heritage

An Aboriginal Cultural Heritage Assessment was undertaken by Everick Heritage Pty Ltd (Everick) (Appendix M). The assessment was prepared in accordance with the following documents:

- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (DECCW 2010) ('CoPAI'),
- Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECCW 2010) ('ACHRC'), and
- Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales (DECCW 2010).

Everick's assessment included consultation with the registered Aboriginal stakeholders, searches of applicable heritage registers, review of ethnographic and historic resources, review of previous archaeological work and the landscape context and conducting Aboriginal community consultation.

Based on the initial findings Everick have provided, the following statements regarding the nature and extent of Aboriginal objects/sites across the Project Area have been made:

- No Aboriginal sites were identified during the archaeological site inspection of the Project Area,
- The archaeological inspection was not significantly constrained by ground cover or vegetation. There were several areas which had visible disturbance of the subsoil and should Aboriginal shell middens have been present across the Project Area it is likely that shell material would have been located,
- The Project Area includes a significant alignment of public infrastructure, being the main sewerage pipeline, that has been excavated parallel to Phillip Drive to the north of the residential dwellings. This alignment is within the elevated dune and it is reasonable to conclude that if sub-surface shell middens were present that it would have been recorded during the construction of the pipeline,
- A number of residential dwellings have been constructed to the south of Phillip Drive and it is assumed that this subdivision was subject to an ACHA process. Kempsey LALC is not aware of any midden sites in this area, which comprises the most elevated portion of the sand dune,
- The Kempsey LALC has no specific objections to the proposals and have noted the requirement for site monitors for early works on the elevated dune along the southern portion of Lot 2,
- The South West Rocks Figtree Aboriginal Corporation have not supported the proposal on the grounds of impact to the cultural landscape and environmental impacts generally. No specific Aboriginal objects, sites or places were identified by South West Rocks Figtree Aboriginal Corporation within Lot 2, and
- No comments were received from the other RAPs.

Everick also completed an Aboriginal Heritage Information Management System (AHIMS) search. The assessment did not identify any known Aboriginal sites or places within the development site or immediately adjoining land.

3.10.7 Noise

An acoustic impact assessment has been undertaken by EMM Consulting in support of the intended development (Appendix L).

The potential noise sources identified to occur on the subject site as a result of the proposed development includes air conditioning units, ventilation or refrigeration units associated with the take away food and drink premises, road traffic, patron noise associated with the use of the take away food and drink premises, substations, and holding tank and pump station.

The noise from these sources is typical of a medium density residential development and is considered consistent with the noise amenity of such an area.

The assessment reviewed potential noise associated with the on-going operation of the proposal and suggested mitigation measures, including the following:

- The outdoor seating area of the proposed café is located with maximum separation to nearest dwellings,
- Windows are minimised on facades facing commercial spaces (e.g., western façade of Stage 1C residential nearest to the commercial premises on the eastern side of the entrance road), and
- Locations of the proposed holding tank, pump station and substations are at a substantial separation

distance from nearest dwellings with opportunities for barriers or enclosures to be incorporated, if required.

It was noted by Varga that with regards to the expected increase in traffic volumes and the associated noise on Phillip Drive, the proposed development has been designed to minimise acoustic impacts on the buildings directly adjacent to the road frontage. Based on the following design features, the development meets the road traffic intrusion requirements of the NSW Road Noise Policy (RNP) and the SEPP (Infrastructure 2007):

- Windows have not been designed to directly face Phillip Drive for dwellings nearest to the road,
- Unit 1 of Stage 1B is the only dwelling where the bedroom façade faces Phillip Drive, however, there are no openings on these facades,
- Acoustic shielding is provided to proposed dwellings in Stage 1B by existing dwellings on Phillip Drive (i.e., 70-86 Phillip Drive), and
- Less sensitive rooms (i.e., living and kitchen areas) are located nearest to the road in Stage 1D.

3.10.8 Geotechnical

Regional Geotechnical Solutions (RGS) have undertaken a Geotechnical Assessment of the site and intended development (Appendix R).

RGS note that the site is located in an area of gently undulating topography, the Coastal Quaternary Geology map of Kempsey indicates the site is underlain by Holocene age inter-barrier creek deposits (northern low lying area) and pleistocene dune deposits (southern elevated area). Reference to the South West Rocks Acid Sulfate Soils (ASS) Risk Map (DLWC, 2000) indicates the southern area of the site is located in an area of “no known occurrence of ASS” and the northern area of the site is located in an area of “high probability” at or within 1m of the ground surface.

RGS's assessment confirmed that the subsurface conditions can be separated into two areas being:

- The elevated sand dune areas, and
- The low-lying alluvial sand areas.

The elevated areas generally encountered the following subsurface conditions:

- Topsoil: Comprising Silty SAND, fine to medium grained, dark brown / grey to 0.2m, overlying,
- Aeolian Sand: fine to medium grained, pale grey / white, loose to medium dense root affected to 0.9m, overlying,
- Aeolian Sand: fine to medium grained, pale grey / white, medium dense to 2.4m, overlying, and
- Marine Sand: fine to medium grained, dark brown, very dense (indurated) to at least 10m.

Groundwater was encountered between 0.8m and 2.2m depth and appears to be perched above the dense (indurated) sand layer.

RGS also undertook acid sulfate soil (ASS) screening tests on 60 samples taken from across the site. The

findings from the screening tests are discussed below:

- The samples revealed pH_F values between 3.92 and 6.47 in distilled water. pH_F less than 4 is an indicator of Actual ASS,
- The samples revealed pH_{FOX} values between 1.47 and 6.11 in hydrogen peroxide. Values less than 3 can be an indicator of Potential ASS (PASS) but can also be the result of high organic content in the soil, and
- A pH change of more than 1 unit was recorded between pH_F and pH_{FOX} in 39 samples. A pH change of more than 1 unit is an indicator of PASS.

To provide a more comprehensive assessment, RGS also submitted fifteen (15) samples for Chromium Reducible Sulphur (CRS) analysis.

Based on the findings of RGS, the low lying areas are considered ASS', whilst the upper aeolian sand profiles are not considered ASS. RGS recommend that an ASS Management Plan be prepared for works including service installations and pile excavations that may disturb the alluvial and soils in the low-lying portion of the site.

As demonstrated in Figure 17, the low-lying areas are within the future Stage 2 area and the intended Stage 1 works will not impact ASS'.



Figure 17: The site's geotechnical setting (RGS, 2022).

3.10.9 View Sharing Analysis

A view sharing analysis has been undertaken by Rise Projects and is included as a part of the Architectural plan set within Appendix C. Given the low-lying, undeveloped and vacant nature of the site, it is noted that the sites visibility from the surrounding landscape is limited and it is difficult to accurately identify the site from the surrounding landscape.

On this basis, the view sharing analysis undertaken aims to recreate the available views from the highest point of the proposed development, being the top of the lift overrun on the residential flat building.

The 360-degree views, taken by drone (Figures 18 and 19), show that the top of the proposed residential flat building will only be visible from properties close by, within Phillip Drive and Waiabar Avenue, with only distant views being available from the elevated positions in the village centre.

Landscape & Visual Character

As described above, the site is an irregular shaped allotment on the northern side of Phillip Drive with vegetation flanking the western, northern and eastern edges of the site. A mixture of single and two-storey residential dwellings adjoin the sites south-eastern boundary with further residential development existing on the southern side of Phillip Drive.

Identification of Impact

To assess the views to be affected by the proposed development a site inspection was undertaken and a drone was utilised to assess the views from the highest point of the proposed development to the surrounding lands.

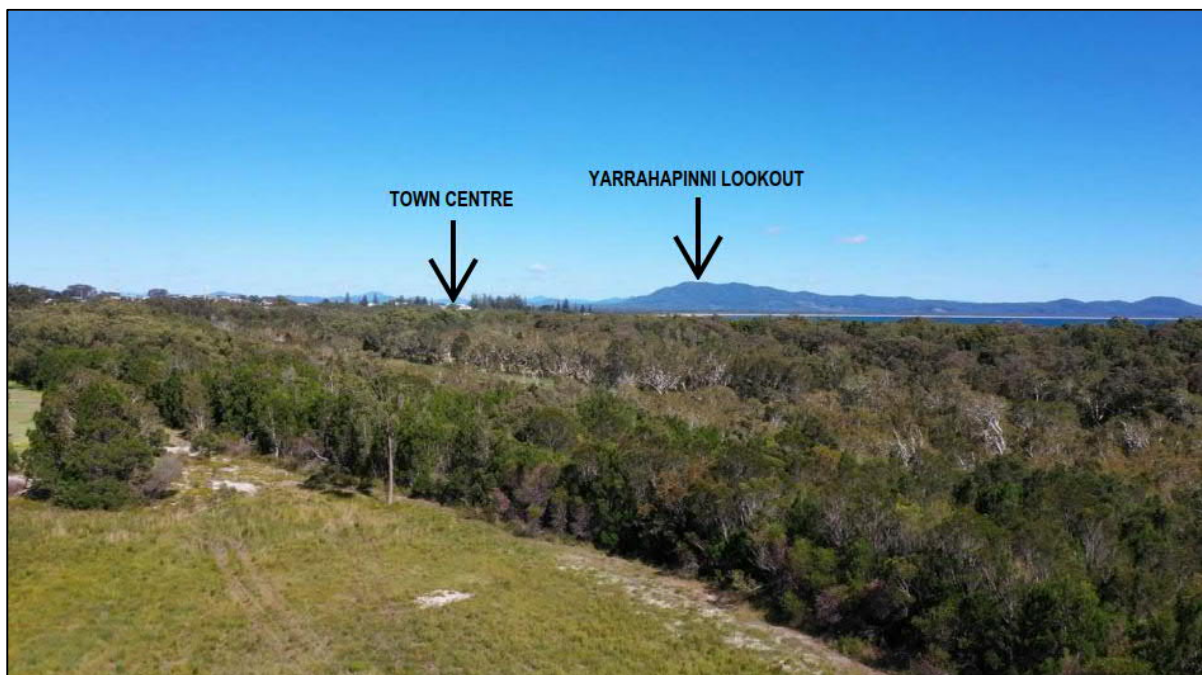


Figure 18: View west from the proposed top of the residential flat building, looking towards the South West Rocks village centre.



Figure 19: View east from the proposed top of the residential flat building, looking towards Monument Hill and Trial Bay.

Impact on Views

Senior Commissioner Roseth in his ruling in the case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140 stated that there are four key steps to assess view sharing. These are described below:

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

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

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

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one

that breaches them. Where an impact on views arises as a result of more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Applying these four steps to the current proposal, the most affected properties are considered those located within Phillip Drive (no's 56 to 86 and 93 to 97) and Waiabar Avenue.

a) Views to be Affected

The views to be affected by the proposed development are considered to be from the properties located within Phillip Drive (no's 56 to 86 and 93 to 111) and Waiabar Avenue.

Given the low-lying nature of the site, the existing vegetation flanking the sites eastern, northern and north-eastern boundaries and the low-lying nature of the coastline north of Saltwater Creek, no impact on views from the north is anticipated or has been assessed.

Further, the two-storey portions of the proposal (Stages 1B and 1C) are considered consistent with the existing adjoining development within Phillip Drive and Waiabar Avenue. These components of the proposal are therefore considered unlikely to have any detrimental impact on views.

This view assessment therefore focuses solely on the potential views to be affected by the proposed residential flat building as detailed in Figure 20.

b) From what part of the property are the views obtained

In considering those properties identified in a) above, views are obtained from the following parts of the properties (refer Figure 20):

- The northern and eastern (or rear and side) boundaries of no's 56 to 86 Phillip Drive,
- The northern (front) boundary of no's 93 to 111 Phillip Drive, and
- The northern (front and side) boundaries of properties within Waiabar Avenue.



Figure 20: Location of views available (blue markers) towards the proposed residential flat building. The site is edged in red with the approximate location of the residential flat building shown dashed orange.

c) Extent of Impact

The extent of impact for each of the above locations is undertaken within the following table.

Viewer Location	Description of Existing View	Description of Proposed View	Impact
86 Phillip Drive	<p>From the eastern elevation this two storey residence currently enjoys views across the vacant site to the proposed location of the residential flat building.</p> <p>The views across the site are filtered through the scattered vegetation within the site and do not include any iconic structures, headlands or ocean.</p>	<p>The views from the eastern elevation towards the location of the residential flat building will be obstructed by the proposed two (2) storey multi-dwelling housing.</p>	<p>The impact of the proposal on the views from the eastern elevation are considered low to moderate.</p> <p>In this regard, the existing views are across a vacant site and include filtered views through the on-site vegetation to the vegetation flanking the site.</p> <p>Overall, the impact on view sharing will change from a vegetated view to an urban view consistent with the R3 Medium Density Residential zone objectives.</p>
1 & 2 Waiambar Avenue	<p>From the northern elevation (or side elevation as both lots front Waiambar Avenue) these dwellings currently enjoy views across Phillip Drive and then</p>	<p>The views across Phillip Drive will remain unchanged. However, the development of the site will alter the views across the subject site from</p>	<p>Both dwellings front Waiambar Avenue and have located their private open space areas away from the development site.</p>

	<p>across the vacant site to the proposed location of the residential flat building.</p> <p>The views across the site are filtered through the scattered vegetation within the site and do not include any iconic structures, headlands or ocean.</p>	<p>filtered vegetated views to an urban view.</p>	<p>Given the dwellings orientation and position of private open space, the proposed development is not considered likely to detrimentally impact any existing view sharing opportunities.</p> <p>Overall, the impact on view sharing is considered minor.</p>
99-111 Phillip Drive	<p>This site is a large property with a large single storey dwelling setback from the northern property boundary and flanked by >15m band of vegetation.</p> <p>The existing on-site vegetation filters the views to Phillip Drive and the subject site.</p> <p>Due to the existing vegetation surrounding the dwelling no views to iconic structures, headlands or ocean are available.</p>	<p>The existing views are considered unlikely to experience any tangible change.</p>	<p>On the basis of the minimal change anticipated, the impacts on views are considered minor.</p>

d) Reasonableness of the Proposal

The site is located on the northern side of Phillip Drive on a low-lying portion of land which is flanked to the east, north and north-east by established vegetation which extends through to Saltwater Creek. This existing vegetation obscures views to the north towards the creek and coastline beyond.

Further, due to the low-lying nature of the site and limited urban development on the lands surrounding, the site, including the proposed residential flat building, is only visible from a small number of vantage points including the elevated portions of the South West Rocks village centre and those properties immediately adjoining.

However, given the low-lying nature of the site and surrounding area, views from existing properties in immediately adjacent properties is limited and restricted by the existing vegetation in the area.

The view sharing impacts of the proposal from the vantage points identified are therefore considered to be minor to moderate.

For these reasons the proposed development is considered reasonable and appropriate for the site.

3.10.10 Overshadowing

The architectural plans within Appendix C include an assessment of the overshadowing expected from the proposed residential flat building. Given the setback of the proposed residential flat building from Phillip Drive (7 meters) and the width of the Phillip Drive road reserve no overshadowing impacts on adjoining properties is anticipated.

An assessment of overshadowing has also been prepared with respect to the proposed multi-dwelling housing.

As demonstrated within the overshadowing assessment, the proposal is not considered likely to reduce solar access to below a minimum of two hours of direct sunlight to over 50% of the principle areas of private open space between 9.00am and 3.00pm on 21 June to the existing development identified as 54-86 Phillip Drive.

3.10.11 Services

The site is not currently connected to any existing services; however, all necessary services are available within the immediate area. The following comments are therefore made with respect to the existing and proposed servicing arrangements:

Water

Reticulated water is available within the northern and southern sides of Phillip Drive (150mm and 250mm diameter respectively). However, no connection is currently available to the site despite recent upgrade work being undertaken within the area.

Initial design investigations, including pressure and flow testing, supports the augmentation of the existing reticulated system and the provision of water to the site.

On the basis of initial discussions with Council during the preparation of this application it is understood that recycled water will be required as a part of the proposed developments overall servicing strategy. The provision of recycled water is also understood to offset the need for on-site water tanks throughout the proposed development.

An existing recycled water main is understood to be present within Phillip Drive, however, given its recent construction as a part of the Lomandra Shores residential estate, its status is currently unknown.

Sewer

De Groot and Benson Pty Ltd have carried out a review of the existing sewer networks capacity, including allowances for recent connections and development approvals.

De Groot and Benson confirm that the development will require the provision of a new sewer pump station with 400ET capacity and 2.1m wet well within the site and the construction of a new 200mm rising main (approximately 1,700m) to the existing Council treatment plant.

The proposal also seeks consent for the re-alignment of existing Council sewer running through the site, to the east and north of the existing Phillip Drive residences. This realignment is detailed on the civil engineering plans included within Appendix J and is understood to include the construction of a gravity line to the south of the Stage 1B multi-dwelling housing and the provision of a 2m wide easement, with the sewer to be positioned 1m from the southern boundary of those properties located between 56 and 86 Phillip Drive.

Electricity

Overhead powerlines are present within Phillip Drive and initial electrical design investigations suggest that the 11kv system is suitable for connection to the site with a combination of low and high voltage electrical reticulation required to service the proposed development. Pad mounted sub-stations are also considered necessary to provide the required service load and will be investigated further during the detailed design of the development.

As the development will primarily be managed under a Community Title management regime a main switchboard will be provided in a suitable location to service community power and lighting.

Telecommunications

Telecommunication services, including NBN, are available to the land and will be augmented to service the development in accordance with the relevant service provider.

3.10.12 Stormwater

Consulting Civil Engineers Xavier Knight have prepared a civil engineering design report and stormwater management plan. The management plan has been designed in accordance with the Kempsey Shire Council's DCP Chapter B5 and Development Design Chapter D5 as well as the BDAR prepared by Biodiversity Australia (refer Section 3.3 and Appendix P) which recorded the presence of the Wallum Froglet (*Crinia tinnula*) and Southern Myotis (*Myotis Macropus*). The BDAR therefore recommends mitigation measures which have influenced the stormwater management design including soil erosion and sediment controls, weed control and tannin-stained water flowing through the frog habitat via groundwater expression.

To satisfy these requirements the stormwater system has been designed to include:

- A conventional Pit and Pipe System to drain lots and roads. The pit and pipe system is considered an effective measure to ensure safety and convenience for pedestrians and traffic in frequent stormwater events.
- Two Bio-retention Basins to treat stormwater quality to Kempsey council requirements. The bio-retention basins are to have permeable bases to avoid standing water remaining in the basin for longer periods as this can provide a habitat for mosquitoes as indicated by the Mosquito Risk Assessment report for the adjacent saltwater development that was made available to Xavier Knight.
- The construction of an infiltration trench connecting the two bio-retention basins. The trenches will encourage water infiltration into the soil to recharge groundwater and provide suitable conditions for the Wallum froglets and maintain the existing stormwater regimes as far as practicable. Infiltrating the water into the ground provides a suitable stormwater discharge point away from the mapped coastal wetland and mapped crown land to the north. Stormwater events in excess of the capacity of the trench will sheet flow from the top of the trench towards Saltwater Creek in a manner similar to the pre-developed condition.

Xavier Knights civil engineering plans are included in full within Appendix I with a copy of the engineering report included within Appendix J.

The civil engineering plans detail the proposed connection to the existing public stormwater system (drainage pipe and pit to the south-east of 86 Phillip Drive) and the proposed internal stormwater (pit and pipe) system which includes earth bunds, drainage swales and bioretention (filterra) basins.

Xavier Knights assessment included detailed stormwater modelling of the catchment, including the existing stormwater generated from the development to the south of the site, as well as consideration of the 20% and 1% Annual Exceedance Probability (AEP) storms. Appropriate blockage factors have also been applied to the proposed design.

In consideration of stormwater quality, Xavier Knights assessment was prepared in accordance with the draft provisions of Chapter B6 (Water Sensitive Urban Design) and the adopted B5 provisions of the Kempsey DCP. In recognition of the poor water quality historically experienced in the Saltwater Creek estuary and in the absence of reduction targets within Chapter B5, Xavier Knight adopted the targets from Chapter D3 of the DCP.

Field sampling for key water parameters were also undertaken by Xavier Knight to establish a baseline for Total Nitrogen (TN) and Total Phosphorus (TP). The findings generally indicate elevated concentrations of nitrogen and phosphorus exceeding surface water concentrations in similar locations. In a conservative manner the Bioretention basins have therefore been designed to achieve better performance, including storage volume of up to 30% of calculated rainfall in accordance with the groundwater study prepared by AGE (refer Appendix Q) as well as the upstream catchment.

The design engineering report demonstrates that by adopting the proposed stormwater management strategy, consisting of minor and major drainage system, inclusive of bioretention basins and infiltration trenches, adequately deals with the additional flows generated by the proposed development and treats flows to allow the discharge of water into the receiving system without negatively affecting the pre-developed groundwater regime.

The existing drainage easement which extends through the western portion of site in accordance with DP 244025 is proposed to be maintained. Whilst it is recognised that this easement extends through the mapped Biodiversity Values land, no works are proposed or considered necessary to enable this easement to be maintained.

3.10.13 Mosquito Risk Assessment

The subject site is located adjacent to Saltwater Creek and is in proximity of mapped Coastal Wetlands. These areas are likely to provide habitat for a range of mosquito species which can provide a moderate nuisance-biting pest and provide public health risks including disease causing pathogens such as Ross River virus and Barmah Forest virus.

No specific assessment has been undertaken over the subject site or proposed development. However, in undertaking a literature review of Mosquito Risk Assessments prepared for nearby developments, including the residential subdivision known as the Saltwater Development, which lies to the south of Waiabar Avenue, the following general information has been obtained from the Mosquito Risk Assessment prepared by Dr Cameron E Webb (NSW Health Pathology, April 2018):

There is also likely to be a suite of "brackish-water" species found in the area on occasion. Studies from elsewhere in NSW indicate that the more serious nuisance-biting pest, *Aedes vigilax*, tends to prefer habitats directly influenced by regular tidal flows where either widespread saltmarsh or mangrove vegetation communities are present. As a consequence, *Aedes vigilax* is less likely to be directly associated with Saltwater Lagoon and Saltwater Creek (dominated by sedgeland of coastal swamp forest). However, this mosquito can disperse great distances from local wetlands and these mosquitoes may potentially be present onsite through dispersal from other estuarine wetland habitats in the local region (e.g., those associated with South West Rocks Creek and Macleay River). As a consequence, these mosquitoes pose no greater impact on the proposed development than other existing residential areas in the South West Rocks area.

As with all urban developments located close to natural wetlands, it should be expected that mosquitoes will be active during the warmer months and the appropriate precautions should be taken to minimize pest impacts. Considering the design and layout of future urban development, minimizing impact from mosquitoes can be achieved by providing areas free of dense vegetation that can either harbor mosquitoes or assist their dispersal from nearby woodland or wetland areas. While the requirements for Asset Protection Zones may be complementary for this purpose, it is also useful to incorporate roads, pathways and cycleways at the perimeter of the development to assist in reducing movement of mosquitoes into residential allotments.

The assessment demonstrated that the Saltwater Development was similar to the subject site in that it contained limited mosquito habitat on-site. The most significant potential mosquito habitat occurring on adjacent land consisting mainly of the coastal forest wetland and freshwater/brackish water within the lagoon.

The Saltwater Development's assessment noted that there are a number of mosquito species present that may pose an occasional pest impact. It concluded however, that there was no evidence to suggest that the risks to residents within the development are any greater than those in other areas of the Kempsey Shire.

As the proposed development seeks to construct a fill pad to ensure that the development is at or above the required flood planning level it is considered unlikely that any depressions would be available to retain rainfall and provide habitat for mosquitos. Surface water within the development is unlikely to persist for sufficient periods to enable mosquito production. Surface water is intended to be designed to be drained away from the development via the proposed stormwater management measures outlined in Section 3.10.11.

Further, the high degree of free draining sandy soils (refer Section 3.10.8) are considered to ensure that even substantial rainfall will have a high infiltration rate and ground pools would therefore be unlikely to persist for sufficient periods to facilitate mosquito breeding.

The proposed bioretention basins and infiltration trenches utilised to filter stormwater before entry to the nearby Coastal Wetlands have been design in consideration of the potential for mosquito production and incorporates design measures to minimise the potential for mosquito habitat and standing or ponding water (i.e., for periods greater than 7 days).

In a manner consistent with the Saltwater Development, the required bushfire asset protection zones (APZ's), which includes the majority of the Stage 2 area, is considered likely to assist in reducing movement of mosquitoes from the surrounding environment. The proposed APZ's are required to be maintained with sparse vegetation present which is considered to provide appropriate opportunities for the dispersal of mosquito populations immediately adjacent to the development.

Given the above, it is considered that the proposed development is not considered likely to increase the presence or population opportunities for mosquitos within the site. The measures proposed as a part of the development proposal, including filling and stormwater management are also considered unlikely to increase the potential for mosquito production.

On the basis of the above, the proposed development is not considered likely to be at any greater risk from mosquito than any other development within South West Rocks. The completion of the development in the manner proposed should however, be undertaken with the understanding that there is likely to be some low to moderate nuisance biting impacts during the period November to April each year associated with mosquito populations from nearby habitats, including Saltwater Creek and Saltwater Lagoon.

Section 4

Concluding Comments

Conclusion

This development proposal has been assessed having regard to the provisions of the Kempsey Local Environmental Plan 2013, and Section 4.15 of the Environmental Planning and Assessment Act 1979. It is submitted that the granting of consent to the proposal is consistent with the aims and objectives of these documents for the following reasons:

- The proposed development satisfies the development standards as set out by KLEP 2013,
- The proposed development is consistent with the development provisions contained in the KDCP 2013,
- The proposed development is consistent with the additional permitted uses listed in Schedule 1 of the KLEP 2013, being development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation,
- The proposal will provide a residential and commercial development consistent with the objectives of the R3 Medium Density Residential zone in a location close to the services and attractions desirable to the local population,
- The Biodiversity Development Assessment Report demonstrates that the site does not contain any endangered ecological communities or threatened flora species and will not result in any serious or irreversible impacts,
- The development will avoid the mapped areas of Biodiversity Values and proposes measures to enhance the ecological value of these areas, including measures to improve the habitat of the Swift Parrot and Koala,
- No evidence of the Koala was identified on-site and the proposal has been assessed to be consistent with the aims and objectives of the adopted Coastal Koala Plan of Management,
- The proposal has been designed with suitable buffers to minimise the potential for impacts on the mapped coastal wetlands,
- The assessments of the groundwater, ecology, flooding and bushfire have been undertaken to ensure that the proposal does not have a detrimental impact on the surrounding natural and built environment,
- The proposed development is not considered likely to have a detrimental impact on the surrounding traffic network, and suitable access is available from the site during emergency events, including flood and bushfire, and
- This application demonstrates that there are no matters affecting the site which would preclude the development from occurring in the manner proposed.

In summary, the proposed development fully complies with the provisions of Kempsey Local Environmental Plan 2013 and all related policies. In this regard, it is respectfully recommended that the development application be favourably determined by Council at its earliest opportunity.