

23/6/21

Margaret &amp; Terence John Mabo

YAMBA

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M 24 JUN 2021

CLARENCE VALLEY COUNCIL

Dear Sir,

We wish to state our strong objection to MOD 2021/0029 Orion Drive Yamba NSW to update Resort Layout and Design DA 2007/0884. What is proposed is not a minor alteration, it is not a minor error, misdescription or miscalculation. For a modification to be approved Council will need to make sure it is substantially the same as the Original Development. This does not seem to be achieved in the plans submitted to Council. The Club House is double story and situated right on the corner of the block and the main entrance into the Development it will be huge and spoil the ambience of the area. It's where people will enter & exit and meet up with people entering the Club House or serving the Club House. Twenty nine of the 78 houses will be double story a change of 3,90 from single story. This will not suit senior people it is really only to cram more in. The land is not that big and has wet lands as well its going to look very crowded. We do not want high retaining walls along Orion Drive the land is already high and very settled please OH! please we do not



Want a Jamba West debacle bringing in double bogie trucks full of sand. The residents in our area use Orion Drive (a public road) to go to work or go about their business of living. We do not need to be held up by this development and every consideration should be given to keeping the road clear as possible. People with scooters & wheelchairs who want to go between villages will need a pedestrian crossing and if they want to travel to the shops a path on the southern side which has never been made available to the existing people of Palm Lake. They have to travel on the Road. Unfortunately some have been knocked off and injured. What I am saying here is you cannot trust Palm Lake to put the necessary infrastructure in place because where is it now. Orion Drive is a public road and should not be modified except to put in a left and right hand turn. I would remind Council as a high paying tax payer (higher than the North Shore of Sydney) that you have a responsibility to ensure Council & Gov. regulations are abided to the letter and do not allow this developer to spoil something which is unique to Jamba. Progress yes and we do not deny their right to develop land they own; but not at all cost.

Thank you

Margaret Maho



**From:** "Clarence Valley Council" <noreply@clarence.nsw.gov.au>  
**Sent:** Sat, 19 Jun 2021 15:12:13 +1000  
**To:** [REDACTED]  
**Subject:** DA Submission - MOD2021/0029 Orion Drive Yamba NSW 2464 - Janet Cavanaugh

Hi,

Thank you for your submission on MOD2021/0029 Orion Drive Yamba NSW 2464 via our online Development Application Submission form. Please find below the details of your submission for future reference:

**Your Reference : S-2021-00092**

**Timestamp** : Saturday, June 19 2021 at 3:12:13 PM

**Submission Details:**

**Item on public exhibition :**

MOD2021/0029 Orion Drive Yamba NSW 2464

**Comments:**

I believe the landscaping plan (appendix K) needs to be more consistent with the aims of the development, its location and other supporting plans (such as the Pedestrian Access and Mobility Plan [PAMP] in appendix H). Specifically, the following changes are required:

1. A pedestrian access should be provided between lots 10 and 11, to provide a shortcut to Orion Drive, for those walking or using a mobility scooter to Yamba Road (including the retail facilities and bus stops located on Yamba Road). It is unreasonable to expect residents of, for example, lot 12 to walk an extra 300 metres by using the internal roads and pathways to access Orion Dr at the main entry next to the Club House if they are aiming to catch a bus on Yamba Road. This makes the journey distance closer to 1km rather than the 'acceptable' distance of 600m as stated in the PAMP.
2. The lot layout needs amendment to provide bin storage in an area that is accessible to the internal road via a paved pathway and doesn't require moving all bins on a weekly basis. Rolling wheelie bins across a grassed verge can be difficult, particularly during the wetter months of the year, and it is unreasonable to expect all residents in a development aimed at seniors and people with disabilities can carry out that manual task. It is noted that the layout only depicts 2 bins rather than the 3 bins that are typical in residential areas in the

Clarence Valley Council area. The current suggested positioning of the bins will require juggling of the red and yellow bins each week in the narrow pathway between fence and building so that residents put out red/green bins in one week and yellow/green bins in the following week.

3. Lot 25 should be redesigned as a battleaxe block or the documentation should clearly reveal the future function of the narrow short extension to Road No.2. It is currently unclear where lot 25 will need to place their bins so they are accessible to the garbage truck as the garbage truck will not be driving down or reversing back along that narrow extension of the road. It raises the question what future function this road will have and why lot 25 isn't a larger battleaxe block.
4. The landscaping or engineering plans (Appendix L) should provide detail of the proposed pathway along Orion Drive - which is identified as a high priority in the PAMP. While the pathway may indeed be located on the eastern side of Orion Drive, its dimensions and its accessibility to those using mobility scooters from this development should be indicated. An entry point to the pathway suitable for use by mobility scooters and wheelchairs is needed opposite the Club House and also the pathway I have suggested in point 1.
5. A preferred layout would have a perimeter road, consistent with Planning for Bushfire Protection 2019. In its current layout, there is no asset protection zone between the retained vegetation surrounding the development and the rear of the outermost properties. While it is acknowledged this is a modification to an existing development first submitted in 2007, it is 2021, and the development should comply with current requirements. At the very least, the type of fencing between the outermost lots and neighbouring vegetation should be colourbond or other non-combustible material, not timber as indicated on the plans.
6. The choice of planted trees in the landscaping plan should incorporate non-flammable species that are native to the surrounding area. It is disappointing to see the recommendation of Queensland kauri pines as part of the landscaping plan.

The volume of fill (>12,000 cubic metres) is a concern as the sourcing and transport of this fill will contribute to offsite environmental impacts of the development. Further information on this aspect of the development is required. It is not good enough to just state these details only need to be provided prior to commencement of works as this avoids a consideration of these impacts.

I note I have not made a gift nor a reportable political donation (as per the definitions under the Electoral Funding Act 2018) in the past 2 years and so

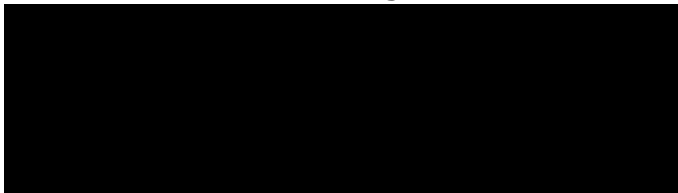
do not need to make a declaration under section 10.4 of the EP&A Act. Council's template for a Political Donations and Gifts Disclosure Statement needs to be updated to reflect legislative changes introduced in 2018.

While I have provided my contact details, I request that my name and contact details remain confidential to Council.

**You have indicated you have made a political donation or gift to a Clarence Valley Council employee or councillor in the last 2 years.**

**Contact details:**

**Name:** Janet Cavanaugh



**Additional supporting documents:**

**From:** "Clarence Valley Council" <noreply@clarence.nsw.gov.au>  
**Sent:** Fri, 18 Jun 2021 14:27:28 +1000  
**To:** [REDACTED]  
**Subject:** DA Submission - MOD2021/0029 Orion Drive Yamba NSW 2464 - Peter Maslen  
**Attachments:** 20210618 MOD20210029 Orion Drive Yamba PGMaslen Submission.pdf

Hi,

Thank you for your submission on MOD2021/0029 Orion Drive Yamba NSW 2464 via our online Development Application Submission form. Please find below the details of your submission for future reference:

**Your Reference : S-2021-00090**

**Timestamp** : Friday, June 18 2021 at 2:27:27 PM

**Submission Details:**

**Item on public exhibition :**

MOD2021/0029 Orion Drive Yamba NSW 2464

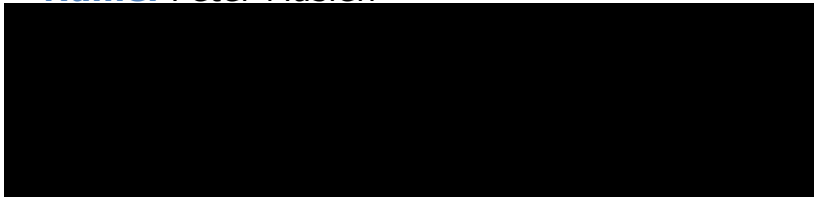
**Comments:**

See attached file

**You have indicated you have not made a political donation or gift to a Clarence Valley Council employee or councillor in the last 2 years.**

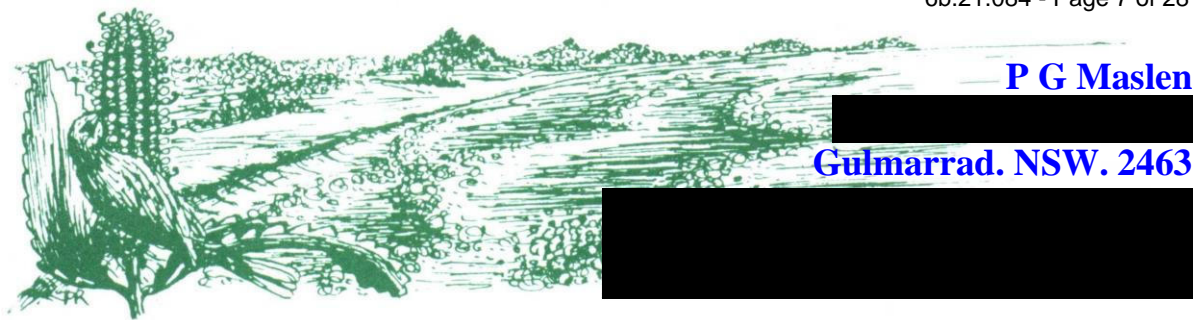
**Contact details:**

**Name:** Peter Maslen



**Additional supporting documents:**

**Additional supporting document-1** : 20210618 MOD20210029 Orion Drive Yamba PGMaslen Submission.pdf



18<sup>th</sup> January 2021

Clarence Valley Council  
Locked Bag 23  
GRAFTON NSW 2460

Attention: Environment, Development & Strategic Planning Director

**SUBJECT: MOD2021-0029 ORION DRIVE YAMBA NSW 2464**

Dear Sir,

This is a submission on application MOD2021\_0029 for Modification of DA2007/0884 alter internal lay out, clubhouse and dwelling design.

The council is to be complimented on ensuring the community can make further submissions on the application. As this is a modification application and council does not permit access to previous documents relative to the original application there are issues that appear to be still inadequate and lacking in the proposal. The community should be given the opportunity to have input to all information available to council complying with council's Community Engagement Policy and Community Participation Plan. The community should be given the opportunity to have input to all information available to council complying with council's Community Engagement Policy and Community Participation Plan. Any information resulting from a council request for additional information or clarification of an application as well as the details supplied in the original application that has not been superseded should be available to the community especially when the original application is fourteen years old. Most members of the community wishing to make a submission will not have the original documents. This results in less than optimum submissions as the full details are not made available to the community.

The following comments are made but lack detail as the council has not made available the full information available to the council's assessment team.

The Layout based on the landscape plan which is all that the council has made available does not show any facilities for housing or parking resident's recreation vehicles such as caravans and boats. This is a real impediment to optimum life style for the probable residents especially in a location like Yamba. It is common for the prosed seniors to possess recreational vehicles and hence in providing housing for such clientele provision must be included for these possessions. The removal of these facilities to provide for the original inadequate stormwater treatment is not an acceptable solution. The minutes of the pre-lodgement meeting does not mention these issues and if council has given such an indication that this is an acceptable outcome it is irresponsible at best and does not reflect competent planning.

While the landscape and civil plans show stormwater quality improvement devices the sizing is not easily determined from these plans. Council's assessment team must verify with the

use of its MUSIC model that the proposed system is adequate to meet expected stormwater quality prior to discharge to the receiving waterway.

On conditioning the approval council must include a condition that all vegetation removed must be mulched and not burned. Any environmental weeds must be sent to any appropriate composting facility and not used as landscaping mulch.

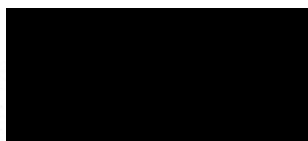
Offset by contribution is not acceptable as it invariably results in a net loss of native vegetation and rarely does the equivalent ecosystem type in a location local to the lost vegetation result. Council must ensure that any revegetation resulting from the use of the contribution is for an equivalent ecosystem in a location local to the proposed application.

The impact of any filling of the site must not negatively cause any issues as is occurring in other subdivisions in west Yamba. Council has an extremely poor record of not ensuring that such issues are addressed in a professional manner such that there are no negative outcomes to the existing community or the location at large.

The effects of filling on probable acids sulfate soils is well documented where negative outcomes can occur by soils being extruded into locations where oxidation can occur. Council must ensure this does not occur especially given the past problems with acidification in the Clarence valley.

As the limited time given for submissions does not permit a comprehensive evaluation of previous conditions and information this submission is limited and can be considered limited.

Yours faithfully,

A solid black rectangular box used to redact the signature of Peter G Maslen.

Peter G Maslen BE BSc



**From:** "Clarence Valley Council" <noreply@clarence.nsw.gov.au>  
**Sent:** Fri, 18 Jun 2021 12:13:50 +1000  
**To:** [REDACTED]  
**Subject:** DA Submission - MOD2021/0029 Orion Drive Yamba NSW 2464 - Patricia Bowes

Hi,

Thank you for your submission on MOD2021/0029 Orion Drive Yamba NSW 2464 via our online Development Application Submission form. Please find below the details of your submission for future reference:

**Your Reference : S-2021-00089**

**Timestamp** : Friday, June 18 2021 at 12:13:50 PM

**Submission Details:**

**Item on public exhibition :**

MOD2021/0029 Orion Drive Yamba NSW 2464

**Comments:**

RE: OBJECTION TO MOD2021/0029

I wish to lodge my strong objection to MOD2021/0029 which is supposedly to "modify" Development Consent under the State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 – by making Amendments to Update Resort Layout and Design (DA2007/0884). Instead, the present owners of Lots 2 and 3 Orion Drive, Palm Lake Resort Pty Ltd, are moving the goal posts while supposedly retaining their "commitment" to providing reasonable housing for Seniors and/or People with a Disability. Indeed, in Appendix A (Development Application Form) they have ticked the box which states that it is only "Modification minor" whereby "Section 4.55(1) is for modifications **involving minor error, misdescription or miscalculation.**"

Furthermore, it states on page 4 of Appendix E - Pre Lodgement Meeting Minutes - "The original approval was approved by a Council resolution and a modification to the consent will require a report to the elected Councillors for determination. For a modification to be approved Council would need to be satisfied that the development is 'substantially the same as the development the subject of the original development consent'. A modification application will also need to consider if the development would be radically transformed by the alterations in comparison to the original approval. This appears to be achieved in the plans submitted to Council."

This is totally removed from the reality. Firstly, their modifications to the Club House need to be examined. Unfortunately, I was unable to get a copy of DA2007/0884 as "DA Track it" only includes DAs from 2015. However, why is the Club House double storey and placed at the entrance of the new development? According to Appendix J – Clubhouse Plans, the Club House has 13 parking spaces, a Loading Bay, a cinema, gym, a dining room that supposedly sits 120 patrons, a large bar and kitchen, a stage, a large lounge area, meeting rooms and upstairs, another bar with billiards room, more lounge area, offices and a 2 bedroom managers's residence which suggests this Club house is going to be a large business proposition. I have to question the economic viability of this in COVID times; especially when Yamba established clubs are struggling. Also with two bars, where is the liquor licence? Another question is why this Clubhouse in a supposed Seniors or People with a Disability DA only has a 4m2 lift? Also why is the Clubhouse Facility in Stage 1(A) [Pre DA Form (p. 3) and Appendix J – Updated Proposal Plans] when it is right at the front of the development and any future development has to go. This is even more obvious when it is noted that Lots 17-32 and Lots 70-78 are in Stage 1(B) but are at the back of the development. This also includes three of the modified dwellings as double storey.

The second reason why this is not a "minor modification" is that 29 of the 78 houses, under the modification, have been changed to double storey which is roughly 37% of the houses. This is certainly more than a simple modification. Furthermore both the Applicant, Palm Lakes Works and the developer, Palm Lake Resort Pty Ltd, state that the Development Consent is under the SEPP (Housing for Seniors and People with a Disability) 2004 and yet on pages 26/27 of the Statement of Environmental Effects they have stated that conditions 4 and 5 are **not applicable**. The conditions are: Condition 4: "This development shall only accommodate of the following residents: a) seniors or people who have a disability, b) people who live within the same household with Mentors or people who have a disability, c) staff employed to assist in the administration of and provision of services to housing provided under this Policy. As defined by the SEPP (Housing for Seniors or People with a Disability) 2004. Condition 5 A restriction as to user shall be registered against the title of the subject property on which the development is to be carried out, in accordance with section 88E of the Convenyancing Act 1919, limiting the use of any accommodation to the following residents: a) seniors or people who have a disability .... As defined by the SEPP (Housing for Seniors or People with a Disability) 2004. A copy of this restriction shall be lodged with Council prior to occupation of the development.

This seems to be really at odds with their supposed objective as wasn't it approved in the first place as a Seniors development? If it is approved under this guise, then how can it be stated that these conditions are not applicable? Perhaps this may explain why both the developer and applicant think that they can make the modification of 29 double storey houses but without lifts and with a common wall or partiwall between them. However, there are inherent contradictions in the documentation as on page 10 of Statement of Environmental Effects the Council Comment under Access for Persons with a Disability was, "Access for persons with a disability will need to be provided to and within the building in accordance with the requirements of Part D3 of the Building Code Australia. Parking spaces for persons with a disability will need to be provided." The Applicant's Response was, "Demonstrated compliance with such matters will be provided to council within varying stages of the development." Thus are we to assume that the Applicant/Developer wants these modifications approved and they will let Council "know" after development has commenced? Surely, all these conditions need to be worked out before approval is given?

I also have to query the house plans as under "Plans for House Types" Elevations 1-4 have a "fire rated party wall between duplexes" and "Hebel "Power-Panel" Fire rated Wall" and a "clear PartiWall between duplexes". Thus the goal posts have been changed again as not only are 29 of the houses double storey but they have a common wall or party wall between them. This does not appear to follow what is outlined in Appendix I – Updated Proposal Plans as it gives the impression that the double storey house are separated; not that they are duplexes. This common wall also raises questions about safety even though it states there is a "fire rated wall." However, I know people who had to put a fire rated wall to separate their house from their garage which had a flat over it and it cost a fortune.

It would appear that these "minor modifications" to a 2007 DA are more about business and financial reasons than addressing a policy that allows 78 housing lots on supposedly 4.1 hectares of land. However, it was difficult to actually work out what the size of the development is as "Updated Proposal Plans" also state that there are 23.5 dwellings per hectare which makes it considerably less than 4 hectares. Also I note that on 29 July 2020, the Seniors SEPP was amended by *State Environmental Planning Policy (Housing for Seniors or People with a Disability) Amendment (Metropolitan Rural Areas Exemption) 2020* to prevent new proposals for seniors housing on land within the Metropolitan Rural Area of Greater Sydney. Although this Amendment does not apply to Orion Drive, it is interesting that this Amendment was necessary as obviously developers are using SEPP 2004 to circumvent proper planning development.



At this point I note in the Applicant's own accompanying documentation that the "Relevant Policies" section of Appendix H – Pedestrian Access and Mobility Plan (p.3) that the SEPP Housing for Seniors or People with Disability is about increasing "the supply and diversity of residences that meet the needs of seniors or people with a disability." I hardly think putting a 4m<sup>2</sup> lift in a double storey clubhouse and having over a third of the houses double storey, lends itself to addressing this policy. People who are getting older and/or people with a disability want and need single storey houses. Furthermore, in Appendix I – Updated Proposal Plans it states on pages 1-2 that "10% of Dwelling Houses (as a minimum) will be wheelchair accessible" and yet there is a difference between actually trying to use all the facilities of a house with a wheelchair and being "wheelchair accessible". Also I believe there is a move to make all housing wheelchair accessible and you would think that this would be the case with a SEPP 2004 or at least whereby "wheelchair accessible" is more than 10%; especially when 37% of the houses are already not accessible.

It needs to be also noted that this DA was supposedly approved in 2007 but there have been a lot of changes to Local Government Acts since then. There was certainly a lot of accompanying documentation and to the best of my ability I have tried to decipher them as well as I can. However, there are a number of areas of concern.

First of all, with regard to fill and flood planning. I note that on pages 15/16 of the Statement of Environmental Effects it states that the "Site will be filled to different PAD levels in order to facilitate the development." And on p.17 "The subject site is required to be filled to ensure future residential development complies with flooding requirements. A selected area of the site encompassing 26,8963m<sup>2</sup> of space will be filled with 12,257m<sup>3</sup>, whilst 7,127m<sup>2</sup> of separate space will be cut". In Appendix L- Civil Engineering Plan on page 33, the diagram appears to show that most of the development has to be filled and it is further stated that the area of fill is 26,918m<sup>2</sup> and the volume of fill is 12,519m<sup>3</sup>. This is really at odds with page 17 of the Statement of Environmental Effects as it is stating that the area of fill is larger than the supposed space! Why are the figures different?

I would also like to ask, especially after the fiasco of Carr's Drive, how this fill is being monitored. I return to the Statement of Environmental Effects pages 30-40. The amended Condition 41 clearly states that, "Prior to the commencement of work, a traffic control plan on Orion Drive during construction of the development must be submitted to and approved by Council. **The plan must incorporate measures to ensure that motorists using the road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to**

**minimal time delays due to construction on the site or adjacent to the site.**" First of all, Orion Drive is a public road but the developers have amended Condition 48 which was "The intersection of the internal access road and Orion Drive shall be designed in accordance with Austroads 'Part 5 Intersections at Grade' for the speed zone applicable to Orion Drive and the traffic volumes generated by the subdivision development....Intersection construction shall form part of the required development" TO "Prior to the issue of a construction certificate, a turning path plan must be submitted to and approved by the certifying authority"; **deleted** Condition 49 (stating that the intersection from Yamba Road to Orion Road is upgraded AND THAT **The design proposed shall specifically be aimed at reducing the current and future delay times and queue lengths for vehicles turning right into Yamba Road from Orion Drive. Delay times shall be limited to an absolute maximum of 15 seconds per vehicle and queue lengths shall be limited to 6 vehicles.**); and, stated that condition 7 under Table 10 (page 40) is **not applicable** - "Working/Construction Hours - Working hours on the construction project being limited to the following: 7.00 am to 6.00 pm 7 days per week. Waste materials shall not be burnt on site but are to be disposed of to an approved recycling service or waste depot."

Please explain how the residents and rate payers of Newport/Bayview Drive and the cul-de-sac of Orion Drive are not being disadvantaged???

Other issues that need to be addressed are that individual water tanks are mentioned on p.8 of the Basix Certificate but cannot be found on the "Plans for House Types" even though hot Water Systems, solar panels etc were drawn in. I also have to question why the number of disabled parks have not been included. I am also extremely concerned that I could not find any concrete evidence of how high the retaining wall is that runs the length of the development along Orion Drive. It does state in the Appendix L - Civil Engineering Report that there is a rock retaining wall around the club house but the rest is a "concrete sleeper retaining wall. On page 9 - Retaining Wall notes it looks like it is blockwork and gives the impression that it is ten blocks high but this could be the retaining wall near the mangroves. However, if you look at Appendix K- Landscape Plans - the screening plants are on the inside; on page 8 the property boundary looks very high especially in comparison with human figures; and, on page 9 it states that the 1.8 boundary fence, near the pool, needs to refer to architect. There is simply no evidence, that I could find, of how high the boundary fence on Orion Drive will be. It should also be noted that in the Updated Proposal there is an 1800 high timber "good neighbour" fence where the boundary faces Cannon's Paddock, rather than Orion Drive. It does state there is a 6 metre

dwelling wall setback from Orion Drive but that is the setback rather than the height.

Lastly, in a meeting between Clarence Valley Council staff and the Applicant, Palm Lakes Works, on Feb. 2021 the Applicant stated they did not want a roundabout as they wanted to start the works immediately. However, it is pretty obvious that the Applicant wants to move quickly and this is where to Council needs to be very cautious as any DAs or modifications need to be examined very carefully. I do find it "amusing" that Clarence Council discusses with a developer about the possible closure of part of a public road, who doesn't even live in Yamba and especially Orion Drive, but not with the other individual land owners who really have been shafted over the years. At this point, I would like to make the suggestion that if another roundabout (god forbid) is going to be put in near the new Quays Estate that the present left turning lane into Orion Drive, from Yamba, be at least retained as some sort of compromise. However, that is a digression as my focus is on objecting to what is definitely **not** a minor modification of a 2007 DA.

Trish Bowes (mobile and address are attached to submission)

**You have indicated you have not made a political donation or gift to a Clarence Valley Council employee or councillor in the last 2 years.**

**Contact details:**

**Name:** Patricia Bowes



**Additional supporting documents:**





21 July 2021

Assessment Manager  
Clarence Valley Council  
Locked Bag 23  
Grafton 2460

Via NSW Planning Portal & Email: [patrick.ridgeway@clarence.nsw.gov.au](mailto:patrick.ridgeway@clarence.nsw.gov.au)

Council Reference: MOD2021/0029

Dear Sir/Madam,

**Public Consultation Submissions Response – Development Application MOD2021/0029 to Modify Development Consent under the State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 – Make Amendments to Update Resort Layout and Design (DA2007/0884).**

Reference is made to the 4 public consultation submissions received by Clarence Valley Council relating to development application MOD2021/0029 at Lot 2 & 3 Orion Drive, Yamba. This document has been prepared to respond to each of the submissions.

The following table identifies the nature of the issues raised in each submission and the corresponding response from Palm Lake Works:

Submission No.	Summary of Issues Raised	Palm Lake Works Response
1	a. Nature of Proposal	The nature of the proposed development includes modifications involving minimal environmental impact. Meaning, a consent authority may modify the consent. Palm Lake Works have provided Clarence Valley Council with an application package which clearly demonstrates that the proposed modification is substantially the same development as the development for which the consent was originally granted.
	b. Local Amenity	The proposed Clubhouse has been located and design in order to provide a positive influence to the amenity of the area.
	c. Double Storey Homes	The double storey homes have been located and designed in order to: <ul style="list-style-type: none"> <li>• Remain appropriate with the overall layout of the resort;</li> <li>• To comply with AS1428.1 – Australian Building Standards for Access for People with Disabilities; and</li> <li>• To comply with the Clarence Valley Local Environmental Plan.</li> </ul>
	d. Height of Retaining Wall	The retaining wall has been located and designed in order to remain consistent with the layout of the resort and to provide a positive influence to the overall amenity of the area, as per the original approval (DA93/007). As per the Civil Engineering Plans prepared by Westera Partners and submitted to Clarence Valley Council as part of the modification, the height of the retaining wall ranges from 0.8m to 2m. These heights are considered appropriate for the scale of the development and are lower than that of the original approval (2.4m).
	e. Connection between Villages and	Palm Lake Works have provided Clarence Valley Council with a Pedestrian Access and Mobility Plan (PAMP) as requested within Condition 6 of Development Consent DA2007/0884. Further consultation with council



Submission No.	Summary of Issues Raised	Palm Lake Works Response
	Pedestrian Pathways	regarding the road crossing and pathway will be required in order to progress this matter.
2	a. Bin Storage	All homes will be provided with bins. Bin collection will occur from each home on a weekly basis.
	b. Lot 25	Battle-axe lots are not suitable.
	c. Proposed Pathway	Palm Lake Works Pty Ltd have provided Clarence Valley Council with a Pedestrian Access and Mobility Plan (PAMP) as requested within Condition 6 of Development Consent DA2007/0884. Further consultation with council regarding the road crossing and pathway upgrades will be required at Construction Certificate stage.
	d. Layout – Bushfire	The proposed modification does not include any changes to the existing (approved) road layout (excluding the roundabout).
	e. Choice of Planted Tree's	The selected plant species are considered appropriate.
	f. Fill	Will be addressed at CC stage.
3	a. Lack of Caravan/Boat Storage	This storage area is not a legislative requirement, but rather an additional service.
	b. Capacity of Bio Basins	Basins are of sufficient size and adequate detail has been provided.
	c. Treatment of removed Vegetation	Palm Lake Works Pty Ltd have no issue with a condition imposing removal of cleared vegetation.
4	a. Economic Viability of the Clubhouse Facility	The Clubhouse is a private facility for the use of residents only.
	b. Size of the Clubhouse Lift Facility	The proposed Clubhouse Facility has been designed in order to comply with AS1428.1 – Australian Building Standards for Access for People with Disabilities.
	c. Applicability of Conditions 4 and 5 of the SEPP (housing for Seniors and People with a Disability) 2004	Page 26 and 27 of the Statement of Environmental Effects submitted as part of the proposed Modification does not state that Conditions 4 and 5 of the original consent are “not applicable”. Section 5.0 (inclusive of Table 6 – <i>General Conditions of Consent</i> ) was created in order to outline the proposed changes to the conditions of consent for the future approval of the modification. These two conditions were not included within this as they are not proposed to be amended or deleted.
	d. Area of Space to be Cut and Filled	Detailed earthworks designs will be provided at CC stage.
	e. Traffic Disadvantages to Residents and Rate Payers	Traffic impacts and road design proposed have been assessed by a qualified Traffic Engineer to ensure compliance with the applicable legislation.
	f. Individual Water Tanks	Water tanks will be provided if required by BASIX for individual homes.



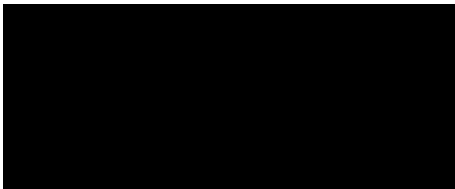
Submission No.	Summary of Issues Raised	Palm Lake Works Response
	g. Number of Disabled Car Parks	Car parking spaces for people with disabilities are proposed to be provided as required by Part D3.5 of Building Code of Australia. These spaces will be nominated on CC plans.
	h. Height of Retaining Wall	The retaining wall has been located and designed in order to remain consistent with the layout of the resort and to provide a positive influence to the overall amenity of the area, as per the original approval (DA93/007). As per the Civil Engineering Plans prepared by Westera Partners and submitted to Clarence Valley Council as part of the modification, the height of the retaining wall ranges from 0.8m to 2m. These heights are considered appropriate for the scale of the development and are lower than that of the original approval (2.4m).

Palm Lake Works has comprehensively reviewed and addressed the concerns raised within the submissions received by Council. Note that further information to support our responses will be covered in our response to the Request for Further Information ('RFI').

Should you have any questions relating to this document or require any further information, please contact the undersigned on phone number (07) 5552 1313 or via email [alexandere@pallmlake.com.au](mailto:alexandere@pallmlake.com.au).

Yours Sincerely,

**Palm Lake Works**



**Alexander Elms**

**Town Planner**



**SECTION 4.55 AMENDMENT  
FILE REPORT FORM**

<b>FILE NO:</b>	DA2007/0884
<b>APPLICATION:</b>	MOD2021/0029
<b>APPLICANT:</b>	Palm Lake Works Pty Ltd
<b>OWNER:</b>	Palm Lake Resort Pty Ltd
<b>LEGAL DESCRIPTION:</b>	Lot 2 & Lot 3 in DP833711
<b>PROPERTY ADDRESS:</b>	Orion Drive YAMBA NSW 2464
<b>APPROVED DEVELOPMENT:</b>	78 independent seniors' living apartments

**REQUESTED AMENDMENT:** The applicant has requested an Amendment under Section 4.55(1A) of the Environmental Planning & Assessment Act, in relation to:

**ADVERTISING REQUIRED UNDER CPP OR REGULATION? YES**

**DETAILS & BACKGROUND OF DEVELOPMENT CONSENT:**

Clarence Valley Council approved DA2007/0884 at its Council meeting of 11/2/2007 for 78 Seniors Living dwellings, clubhouse, pool and gymnasium, including the clearing of vegetation and filling of land on Lot 2 & Lot 3 in DP833711, Orion Drive, Yamba.

Council has received a request for modification of the development approval which proposes to amend the internal road layout, redesign of clubhouse, redesign of house types and removal of the small caravan/boat storage facility to provide room for a third bio-retention basin.

The proposed dwelling types are to be amended to a mixture of eight (8) different types of dwellings of which 3 types are of 2 storey design (29 two storey dwellings). The dwellings shaded green in Figure 1 below shows the proposed two storey dwellings. The dwellings are approved under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* and will continue to be compliant with the Policy.

Consent authorities are required to consider if a modification is substantially the same development (qualitatively and quantitatively) and whether the proposal is not a radical transformation to that approved. A S4.55 modification under the *Environmental Planning and Assessment Act 1979* also requires the consent authority to consider those matters listed in S4.15 which are required under a normal development application.

By comparison to the buildings that have been approved on the site there will be minor changes to the layout and appearance of the dwellings other than an increase to the number of two storey dwellings. These are not inconstant to other types of residential development that could otherwise be approved on residential zoned land. The development is considered to be substantially the same development to that approved.

**SECTION 4.15 EVALUATION:**

**(1) Matters for consideration – General**

**In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:**

- (a) the provisions of:**
  - (i) any environmental planning instrument, and**

State Environmental Planning Policy 55 – Remediation of Land

Under the Policy contamination and remediation is required to be considered in determining a development application. A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The area to be developed is not known to have been used for a 'hot-spot' potentially contaminated past uses. The subject land has been vacant since the demolition of a building that was used to construct manufactured homes. It is considered that the subject site is suitable for the proposed use of land.

The proposal does not nominate a change to the current use of the land to that already approved, being a type of residential use. After carrying out the initial evaluation there is sufficient information demonstrating that the land is suitable for the proposed use in accordance with the Policy. No further investigation is required and the application can be determined in the normal way.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* requires a BASIX Certificate to be submitted for all BASIX affected development; the proposal triggers the need for this certificate. Valid BASIX Certificates have been submitted with the application which sets out the obligations of the applicant in regard to the proposal to reduce greenhouse gas emissions, energy efficiency and reduce potable water consumption. Compliance that these commitments have been met will be required to be demonstrated prior to issue of the Occupation Certificate.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The proposed development is consistent with the following aims of the SEPP as the development will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

The proposal is permissible on the R2 zoned land subject to development consent in accordance with Clause 4 (1) of the SEPP. In accordance with Clause 18 of the SEPP, Council must ensure/condition the development that only accommodation of the following is permitted:

- (a) seniors or people who have a disability;*
- (b) people who live within the same household with seniors or people who have a disability;*
- (c) staff employed to assist in the administration of and provision of services to housing provided in accordance with the SEPP.*

A restriction as to user is required to be registered against the title of the property on which development is to be carried out, in accordance with 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to above. The DA has been conditioned accordingly.

The proposed development will be connected to reticulated water and sewage facilities in accordance with Clause 28 of the SEPP.

In considering the design principles of Part 3 Division 2, the proposed amendment to the approved development will not detract further from the surrounding character of the neighbourhood amenity or streetscape and provides for visual and acoustic privacy of neighbours in the vicinity of the development area.

Clause 33 (d) of the SEPP provides that *'the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line'* which has been met.

The development has been designed to provide adequate solar access and provides for accessibility, suitable storm water and waste management are conditions of the consent consistent with the policy.

The proposed development has been designed in accordance with Clause 41 for accessibility and usability of the SEPP. Under Clause 50 of the SEPP, Council **can not** refuse an application for self contained dwelling on the following grounds:

- (a) **building height:** *if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),*
- (b) **density and scale:** *if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,*

The parking for this use is to be provided at 1 space per 10 beds and 1 space for 2 staff.

Overall the proposed development is not inconsistent with the principles and requirements of the SEPP, and as such the development is recommended for approval subject to the imposition of suitable conditions.

#### State Environmental Planning Policy (Non-Rural Vegetation) 2017

The removal of native vegetation was considered under the Native Vegetation Act which was the relevant legislation at the time of approval. There are a number of trees to be removed from the site as a result of the development and approval for the removal has been granted. An environmental offset has been required for the removal of marine vegetation under the Fisheries Management Act and this has been provided to NSW Fisheries satisfaction under separate approval.

#### State Environmental Planning Policy (Coastal Management) 2018

The subject land is located within the Coastal Use Area and the Coastal Environment Area. Coastal environment areas are areas that are characterised by natural coastal features such as beaches, rock platforms, coastal lakes and lagoons and undeveloped headlands. Marine and estuarine waters are also included. A coastal use area is land adjacent to coastal waters, estuaries and coastal lakes and lagoons.

Consideration of this application under the former Coastal Policy, SEPP Coastal Wetlands.

#### Clarence Valley Local Environmental Plan 2011

The subject land is zoned R2 Low Density Residential under the provisions of the Clarence Valley Local Environmental Plan 2011 (LEP). For the purposes of this application the development is defined as:

**seniors housing** means a building or place that is:

- (a) a residential care facility, or



- (b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or*
- (c) a group of self-contained dwellings, or*
- (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for:*
- (e) seniors or people who have a disability, or*
- (f) people who live in the same household with seniors or people who have a disability, or*
- (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.*

Seniors Housing is a form of Residential Accommodation which is permitted with consent within the R2 zone under the provisions of the LEP. The objectives of the zone are as follows:

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

The proposed development is not considered to be inconsistent with the objectives of the zone.

#### Clause 4.3: Maximum Height of Buildings

The two storey dwellings are below the height specified on the Height of Building Map of the Clarence Valley Local Environmental Plan 2011 (the LEP) which is 9 metres for this site.

#### Clause 5.10: Heritage Conservation

The subject land is not listed as containing a heritage item and is not within a heritage conservation area. An AHIMS search was requested on 30 May 2019, no sites or places of Aboriginal significance were shown on the site.

#### Clause 7.1: Acid Sulfate Soils

The subject land is mapped as containing class 2 potential acid sulfate soils which requires consideration where earthworks will be below the surface. Any works that excavate soil will be required to be managed in accordance with the relevant Acid Sulfate Management Guidelines.

#### Clause 7.2: Earthworks

Earthworks are proposed in associated with the development and an earthworks management plan is required for the works that consider current ground levels, floor heights and the fill to be imported.

#### Clause 7.3: Flood Planning Area

The subject land is located within a flood planning area. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

To meet Council's Floodplain Management Controls the floor level of the primary habitable floor level is to be a minimum of 2.7 metres Australian Height Datum (AHD).

Provided the conditions are complied with, the development is not likely to significantly adversely affect flooding behavior in the area or increase risk to life.

#### Clause 7.8: Essential Services

The subject site has access to reticulated power, sewer, water and storm water drainage. The site also has frontage to a Council maintained road.

- (ii) **any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There are no proposed environmental planning instruments that apply to the land that is or has been the subject of community consultation or public exhibition.

- (iii) **any development control plan, and**

#### Residential Zones Development Control Plan 2011

The proposed development is subject to consideration under the Residential Zones DCP. Overall the proposed development was considered to be not inconsistent with the controls of the plan. A full assessment against the DCP provisions is provided below:

Clause	Requirement	Comment
C1. Objectives for development in residential zones	Responsive to site constraints; High quality and sensitive to the character of the locality; Streetscapes which enhance the amenity; Open space and landscaping; Services & Infrastructure Streetscape requirements	The proposed development is functional and high quality. The bulk, scale and size of the proposed development are addressed through design elements, setbacks and landscaping and are not considered to be so out of proportion with existing development in the locality to warrant refusal.  The proposal is sensitive in design and is not considered to greatly detract from the amenity of the existing streetscape.
C13: Building Height controls	Max.9m	See comments under Clause 4.3 of the LEP
C16: Setbacks	Front – 6m Side and Rear – 900mm	Yes
C19. Landscaping		Yes.
C24: Services	Water, electricity, sewer, road access	Complies. The proposed development will be connected to all available services.
C25: Development on flood liable land		See comments under Clause 7.3 of LEP.
C27. Development of Land with Acid Sulfate Soils		The land is identified as containing class 2 acid sulfate soils, see comments under Clause 7.1 of LEP.

Part D Floodplain Management Controls		See comments under Clause 7.3 of LEP.
Part E: Vegetation Controls		See comments under State Environmental Planning Policy (Non-Rural Vegetation) 2017.
Part F: Heritage Conservation		See comments under Clause 5.10 of LEP.
Part G: Parking Controls		See comments made under Seniors Living SEPP.
Part H: Sustainable Water Controls		The proposal is to drain to the existing stormwater infrastructure and conditions of consent require a detailed assessment to be provided with the CC to determine if additional detention is required.
J10: Stormwater	Water sensitive design	It will be required that adequate calculations be provided to demonstrate that the proposed catchment area can be accommodated within the existing detention/infiltration basin. These details are to be provided prior to issue of the Building CC.
J12: Provision of services	Provision of services	Complies. The proposed development will be connected to all available services.

- (iii) **any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and**

N/A.

- (iv) **the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,**

The proposed development is not considered to be inconsistent with the prescribed matters. The applicant is not proposing any demolition works.

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.**

The built environment will be impacted upon through the construction of buildings on vacant land. Through appropriate landscaping and design the development the potential impacts are reduced and any adverse impact on the visual amenity or character of the residential area suitably mitigated.

Socially, the proposed development will provide for an overall increase in the availability of seniors living to the Yamba area which has positive benefits to the community through an increase in services. By increasing the supply of seniors living in Yamba it may assist local families keep elder members of the family nearby which will improve social wellbeing of families. The development will also have flow on economic effects through increases in long term employment opportunities at the facility and also economic benefits during the construction phase if local labour and materials are sought and will have an impact on the local economy through an increase in the population and additional services that may be required.

Conditions have been imposed to ensure compliance with sediment and erosion control and stormwater management requirements to minimise any potential impacts on neighbouring properties and the environment.

**(c) the suitability of the site for the development,**

In regard to the location of the subject site, the proposal will result in the provision of additional aged housing in an established urban area with suitable access to commercial, recreational and other opportunities. The proposal is not considered to have a detrimental impact on existing services in the area and is generally consistent with surrounding residential development. The proposed development is suitable for the proposed development as approved subject to the imposition of suitable conditions.

**(d) any submissions made in accordance with this Act or the regulations,**

The development was advertised and exhibited in accordance with the Community Participation Plan. During the exhibition period 4 submissions were received.

**Issues raised in submissions**

**Issue 1: Requirement to upgrade Intersection**

In response to an additional information request the applicant provided a consultant's response to the criteria used in the assessment for traffic generation and movements. The applicant has requested that condition 49 be deleted based on the results of the Bitzios Intersection Assessment dated 14/08/2019.

Condition 49 states:

*Upgrading of the intersection of Yamba Road and Orion Drive shall be provided in accordance with Austroads 'Part 5 Intersections at Grade' for the speed zone applicable to the intersecting roads and the traffic volumes generated by the subdivision development. Plans for the intersection shall be submitted to and approved by Council prior to the issue of a Construction Certificate for the works. The design proposed shall specifically be aimed at reducing the current and future delay times and queue lengths for vehicles turning right into Yamba Road from Orion Drive. Delay times shall be limited to an absolute maximum of 15 seconds per vehicle and queue lengths shall be limited to 6 vehicles. Intersection improvement works shall form part of the required development works for the site.*

Comment

Council officers support the proposed modification with the exception of the applicant's justification that an upgrade of the intersection of Yamba Road and Orion Drive is not required. Council's Development Engineers have determined that on completion of the development the intersection will be at capacity and require upgrading.

Council's Development Engineer has provided the following comments in regard to the applicant's traffic assessment:

a. Revised SIDRA intersection analysis

The revised analysis does not consider background traffic produced by the Orion Drive catchment. The revised analysis applied a 1.5% growth rate for Yamba Road and has not applied the requested 3.0% cumulative growth rate. The revised intersection analysis is not accepted as an accurate indication of traffic impacts on the road network

b. Intersection Level of Service (LOS) Criteria



The response from the applicant refers to Table 4.2 of Roads and Maritime Guide to Traffic Generating Developments (2002) for intersection LOS. It is noted that section 4.2.2 states that '*In Many situations, a comparison of the current and future average delay provides a better appreciation of the impact of a proposal...*'. With this in mind, the following observations are made in relation to the SIDRA analysis results originally provided:

- The proposed development results in a reduce Level of Service (LOS) from LOS - C to a LOS - D (i.e. increase in over 9 seconds of delay). This means that increased traffic from the development will cause the existing intersection to go from a satisfactory capacity to near capacity. In all cases the maximum wait time exceed 15 seconds.
- The overall increase in intersection delay goes from 18.9 seconds in 2020 to 49.3 seconds – and will result in an increase in over 30 seconds in delay time.

The request to remove condition 49 is not supported based for the following reasons:

- The traffic impact assessment has not applied the appropriate background traffic from existing development within the Orion Drive network catchment. The assessment adopted a background traffic volume of 66 vehicles approaching the Yamba Road intersection from Orion Drive in the AM peak. Council assessment indicates that an approximate maximum of 159 vehicles can be expected in the AM peak from Orion Drive based on the existing development within the catchment area. The traffic generation rates, and assessment was based on the current Transport for New South Wales traffic generation rates.
- The proposed development will result in the intersection being near capacity (Level of Service D) with a maximum wait time for the right turn manoeuvre, from Orion Drive onto Yamba Road, of 49.3 seconds. It is again noted that this assessment did not include appropriate background traffic in this result. Therefore, it is expected that, with the correct background traffic, the intersection will be at capacity and require a new intersection control mode.

The intersection upgrade was assessed and required under the original approval of DA2007/0884 in January 2008 which was approved by Council resolution 11.12.2007. The requirement to upgrade the intersection should still be required as the additional 78 dwellings will result in a significant increase in traffic generation and impact on the intersection.

The traffic impact assessment provided by the applicant has not considered the correct background traffic volumes and projected data which underestimates traffic movements from the development. The objective of Council's DCP and the specific DCP controls are in place to ensure that the road design is safe and suitable for vehicles, pedestrians and bicycles in residential development (Part A2(c) – DCP Objectives, Part G Parking and Vehicular Access Controls, Part J – Subdivision and Engineering Controls).

When compared with the correct current traffic volumes the intersection will be at capacity meaning that the intersection will become dangerous for vehicular, pedestrian and bicycle movements. Council should not accept a lesser and unsafe standard of road design nor should rate payers be burdened with the future expense of the road and intersection upgrade.

## **Issue 2 - Issues raised in submissions**

The application was notified and advertised in accordance with Council's Community Participation Plan and four (4) submissions were received from the exhibition of the application.

### Comment

The following comments are provided to the issues raised in the submissions. The applicant has also provided a response to the issues raised which addressed concerns raised and is included as an attachment to this report.

- **Alternate pedestrian access, bin storage and collection point, filling of the site, bushfire considerations, amount of fill**

Comment

The Pedestrian Access and Mobility Plan (PAMP) has been provided to Council's Civil Services for assessment. Council will need to approve the plan prior to the issue of a Construction Certificate.

The bin storage will be required to be provided on-site. As there is some uncertainty as to the ability to collect waste internally or on the roadside Council has required that the applicant submit a waste management plan for the ongoing collection of waste.

Council requires that dwellings have habitable floor areas above the flood and parts of the site have been approved for filling to meet the minimum requirement of 2.5m Australian Height Datum.

The site is not mapped as being bushfire prone land.

- **The modification proposed is not substantially the same as the original development (double storey club house, larger main entrance, 37% increase in 2 storey dwellings, development impacts, large retaining walls, accessibility issues).**

Comment

Consent authorities are required to consider if a modification is substantially the same development (qualitatively and quantitatively) and whether the proposal is not a radical transformation to that approved. A S4.55 modification under the *Environmental Planning and Assessment Act 1979* also requires the consent authority to consider those matters listed in S4.15 which are required under a normal development application.

By comparison to the buildings that have been approved on the site there will be minor changes to the layout and appearance of the dwellings other than an increase to the number of two storey dwellings. These are not inconstant to other types of residential development that could otherwise be approved on residential zoned land. The development is considered to be substantially the same development to that approved.

The proposal was approved under *State Environmental Planning Policy (Housing for Seniors or people with a disability) 2004*. A height limit of 8m is required under the Policy and 2 storey dwellings are permitted. The amended dwellings are still self-contained dwellings consistent with the Policy.

Filling of the site and retaining walls will only be required to contain fill and retain soils along boundaries where the adjoining land is a lower level.

By comparison the footprint of the clubhouse and elevations show that while the clubhouse design has been amended it will present as a two-storey building and cover the same footprint in the (see figure 1 and figures 2 & 3).

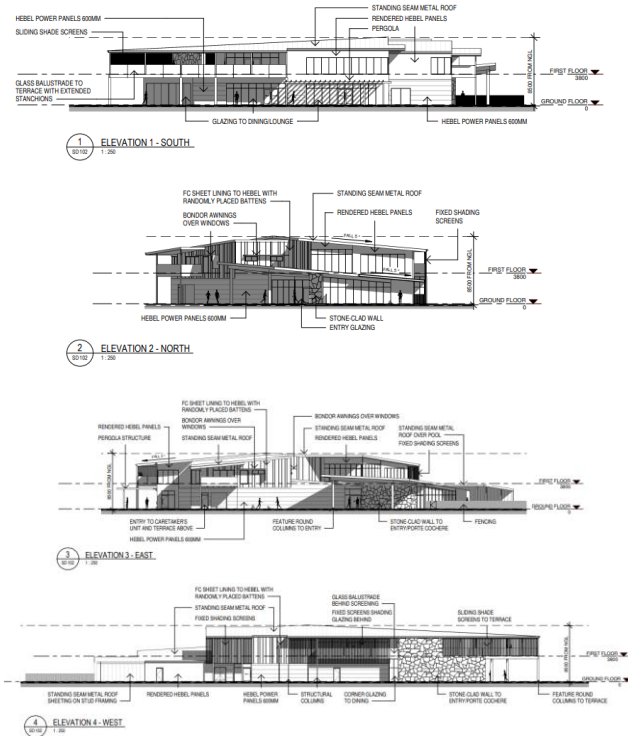


Figure 2: Elevations of modified clubhouse

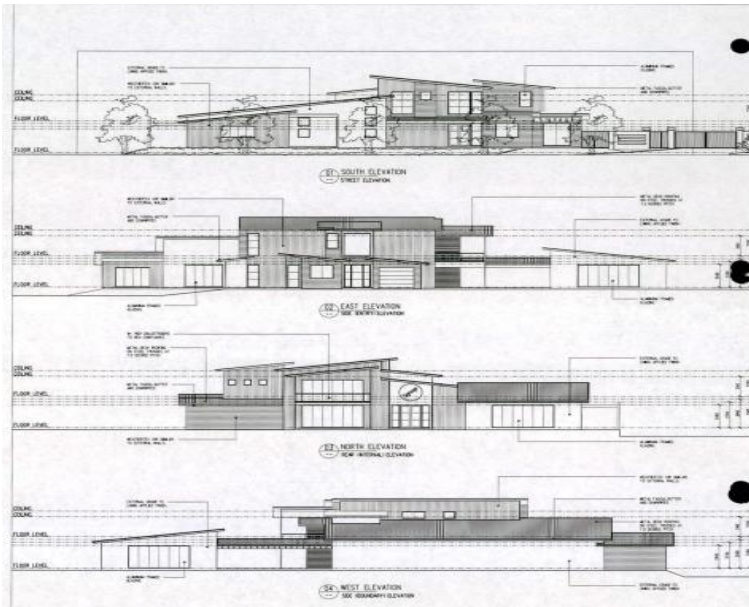


Figure 3: Elevations of previous approve clubhouse

- Access to original documentation, lack of detail on parking and parking for recreational vehicles and removal of parking facilities for stormwater management, vegetation to be removed should be mulched, offset contributions not acceptable, filling of land and negative impacts on surrounding lands.

The applicant has lodged amended plans with the application that have been considered regarding the original approval. Access to Council documentation can be applied for through an informal information request where documents that were public documents can be made available.

The requirement to provide additional parking for recreational vehicles is not a requirement for the development nor under the seniors housing state policy. Accessible parking spaces are required in accordance with the Building Code of Australia.

Mulching is the preferred method to process cleared vegetation and common practice is to reuse mulch for ground cover and to prevent sediment moving offsite.

The offset contributions were subject to offsetting requirements under the Fisheries Management Act. An appropriate offset has been provided by the previous developer to NSW Fisheries satisfaction.

The site has approval for filling and the site will be required to be managed to prevent sediment leaving the site. There will be cut and fill of the soils on-site and a deficit of fill will be transported to the site. The soils are classified as potentially containing Class 2 acid sulfate soils. Any earthworks will require appropriate controls to manage soils in accordance with the Acid Sulfate Soils Manual.

- **Housing for seniors and people with a disability, fire rating applied to double storey dwellings, density of development, impacts of construction works**

#### Comment

The requirement for the development to provide housing for seniors and for persons with disabilities and the imposition of a restriction on the development will remain as a condition of consent. The requirement for the buildings to be accessible as per the original approval will remain a requirement of the consent. There are no changes to the overall footprint of the development and the density of the development essentially remains the same to that approved.

There will be an unavoidable temporary impact from construction activities and in particular on the road network. The impacts from construction traffic and trucks transporting fill to the site can be suitably managed under construction management plans.

**SECTION 4.55(2):** Section 4.55 provides that where the development, the subject of consent, will be substantially the same, the consent may be amended. The requested amendment is reasonable and does not substantially change the approved development. In this instance the consent can therefore be amended under section 4.55(2).

The original determination of the application was determined by Council and the application is reported to a Council meeting for determination.

**RECOMMENDATION:** It is recommended that the consent granted by Council under DA2007/0884 at its Council meeting of 11/2/2007 for 78 Seniors Living dwellings, be amended, pursuant to section 4.55(2) of the Environmental Planning and Assessment Act 1979, by amending the approved plans as per the amended plans provided in the application.

Report prepared by: Pat Ridgway, Senior Development Planner  
Date: 9 November 2021