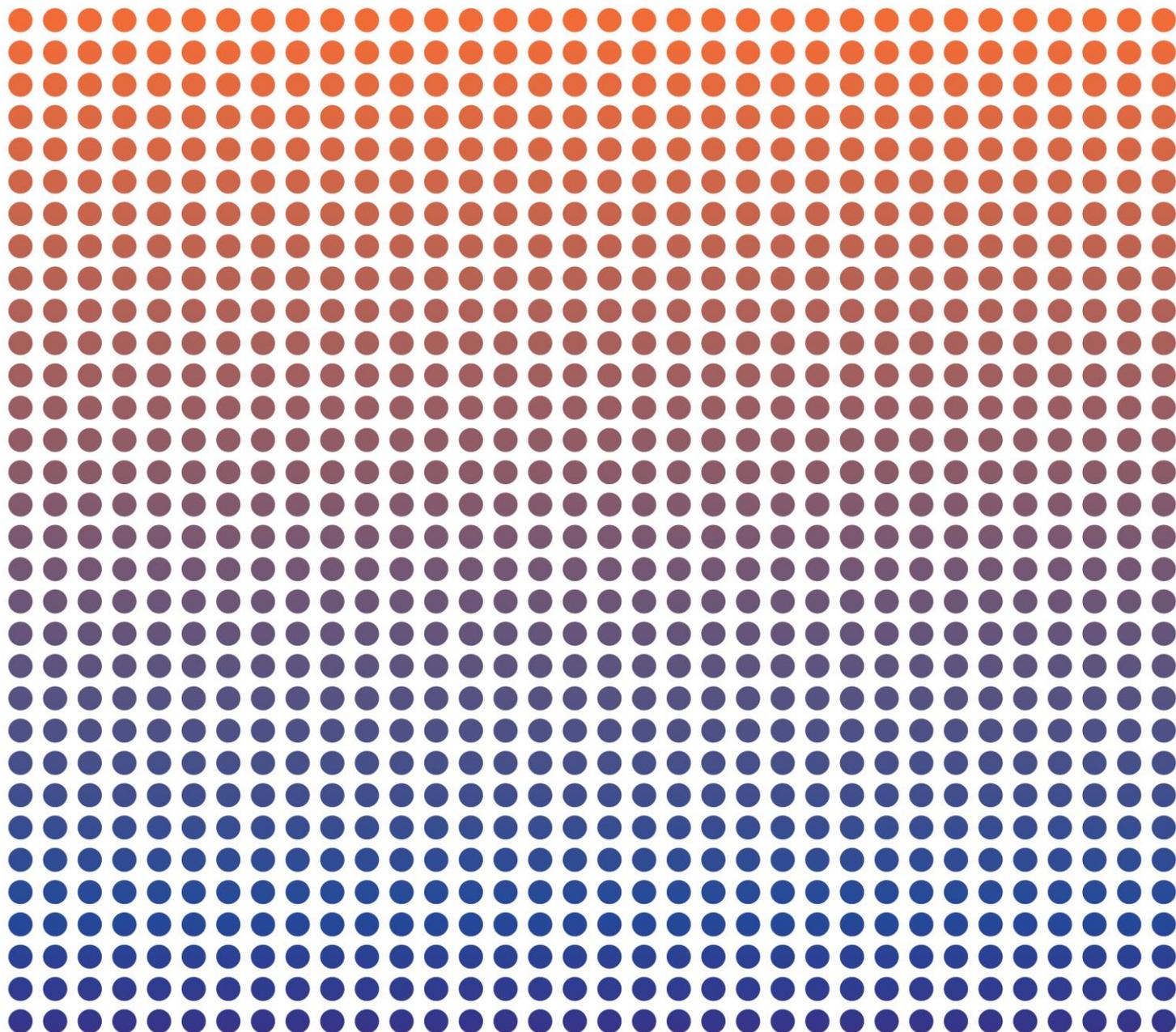


Environmental Assessment

Section 75W Modification Application to Modify Concept Plan MP06_0183 for a Mixed-Use Residential/Tourist Development (MOD 2)
147 Soldiers Point Road, Soldiers Point (Lot 31 DP 529002)

November 2021



Prepared by
Milestone (AUST) Pty Limited

Contacts
Lisa Bella Esposito

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Version	Status	Date	Prepared By	Reviewed By
A	Draft	17 November 2021	Ryan Kelleher, Assistant Planner and Tia Mills, Senior Planner	Lisa Bella Esposito, Director
B	Final	19 November 2021	Tia Mills, Senior Planner	Lisa Bella Esposito, Director

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APPENDICES:

Appendix A:	Notice of Determination of Concept Approval MP06_0183 and Project Approval MP06_0183 dated 4 September 2011.
Appendix B:	Approved (Stamped) Concept Plans No. MP06_0183 prepared by DJRD Architects.
Appendix C:	Site Analysis and Visual Impact Report prepared by DJRD Architects dated November 2021.
Appendix D:	State Environmental Planning Policy No. 65 Statement prepared by DJRD Architects dated November 2021.
Appendix E:	Bushfire Compliance Report prepared by Bushfire Environmental Management Consultancy (BEMC) dated 17 November 2021.
Appendix F:	Traffic and Car Parking Assessment prepared by Transport and Traffic Planning Associates dated 13 November 2021.
Appendix G:	Flora and Fauna Statement prepared by Eco Logical Australia Pty Ltd (Eco Logical) dated 19 November 2021.
Appendix H:	Water Management, Flooding and Coastal Processes Statement prepared by Advisian dated 19 November 2021.
Appendix I:	Modified Concept Plans prepared by Daryl Jackson Robin Dyke Architects Pty Ltd (DJRD Architects) dated 18 November 2021.
Appendix J:	Notice of Determination Section 75W Modification MP06_0183 MOD 1 dated 30 August 2016.
Appendix K:	Record of Meeting with Port Stephens Council held on 8 October 2021.
Appendix L:	Legal Advice Addressing Lapsing of Concept Approval MP06_0183 prepared by Addisons Lawyers dated 10 July 2018 and 10 August 2018.
Appendix M:	Aboriginal Heritage Information Management System (AHIMS) Web Services (AWS) Search Result Record, Client Service ID No. 639502 dated 17 November 2021.

1. STATEMENT OF VALIDITY

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In respect of

Applicant and Land Details:

Applicant Milestone (AUST) Pty Limited

Applicant Address PO Box 3149
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Subject Site to be developed No. 147 Soldiers Point Road, Soldiers Point
Lot No. 31 in Deposited Plan No. 529002

I certify that I have prepared the content of this Environmental Assessment and to the best of my knowledge it is in accordance with all available information that is relevant to the environmental assessment of the development to which the statement relates; and the information contained in the statement is neither false nor misleading. Milestone (AUST) Pty Limited operates under s Quality Management System and this report has been prepared and reviewed in accordance with that system.



Lisa Bella Esposito
Director
Milestone (AUST) Pty Limited

2. EXECUTIVE SUMMARY

This Environmental Assessment Report has been prepared for Salamander Properties Pty Ltd (also known as Bannisters Hotel) by Milestone (AUST) Pty Limited (Milestone) and is submitted to the Department of Planning, Industry and Environment (the Department) pursuant to Section 75W of Part 3A of the Environmental Planning and Assessment Act 1979 (the Act) to modify the Minister's approval of Concept Plan Approval No. MP06_0183 issued by the Department on 4 September 2011 for "mixed use residential/tourist development" at No. 147 Soldiers Point Road, Soldiers Point.

This Section 75W Application seeks approval to modify the Minister's approval to carry out Concept Plan Approval No. MP06_0183. Both Port Stephens Council and the Department have been consulted by Milestone and the project team to coordinate the preparation of this application to modify the Minister's approval, which involves the provision of appropriate updates and adjustments to deliver additional housing supply and enhance the tourist facilities approved on the site. As a result, the modified concept plan will adequately service the Port Stephens local tourist, business, and housing market.

Milestone and the project team have undertaken a comprehensive review of the relevant documents associated with Concept Plan Approval No. MP06_0183, which include the following:

- Notice of Determination of Concept Approval No. MP06_0183 dated 4 September 2011 (**Appendix A**).
- Approved Concept Plans No. MP06_0183 prepared by DJRD Architects (**Appendix B**).

The Approved (Stamped) Concept Plans held at **Appendix B** require revision to properly indicate the relevant total gross floor area (GFA) of 19,600m² and floor space ratio (FSR) of 1.6:1 of the approved Concept Plan Approval No. MP06_0183, which will be maintained. Further, this review has identified two discrepancies between the approved GFA and FSR listed under Condition A1 within the General Terms of Approval of the Notice of Determination (**Appendix A**) and the building envelope floor plates shown within the Approved Concept Plans (**Appendix B**).

Additionally, recent site inspections and geotechnical investigation of the site has revealed that a large portion of the land cannot be excavated without high environmental cost and a less disruptive strategy is proposed as it comprises an outcrop of elevated volcanic rock material. As a result, the approved car parking and basement location identified in Concept Plan Approval No. MP06_0183 is required to be relocated.

The economic recovery of NSW from the COVID-19 global pandemic will provide a cornerstone for growth within the Port Stephens region, through which the local tourism and services economy will experience significant expansion along with its employment base and housing demand. Additionally, the recently announced expansion of Newcastle Airport provides scope for increased visitation in both the domestic and international tourist and conference markets and will therefore facilitate positive economic benefits for the Hunter Region.

In summary, the proposed modified Concept Plan is being driven by the need to:

- Accommodate the increased housing demand within the Hunter Region as well as facilitate economic growth and the creation of jobs within an expanding regional tourist destination through the COVID-19 economic recovery;
- Update the Approved Concept Plans so that they reflect the total GFA and FSR approved as part of the original Concept Plan Approval No. MP06_0183 to remove ambiguity; and
- Appropriately respond to the geotechnical constraints of the site to facilitate the progress of future development and allow the orderly assessment of the future application.

Accordingly, the proposed modifications are critical to progress the redevelopment of the site in accordance with the Concept Plan Approval No. MP06_0183. Until such time that the proposed modifications are approved by the Minister or their delegate, the future redevelopment cannot occur. The current proposal to modify the Concept Plan Approval is paramount to the future growth of local housing and the tourist economy within the Port Stephens Local Government Area (LGA).

A number of detailed analyses have been undertaken to accompany the Department's assessment of the modified concept, including the following:

- Site Analysis and Visual Impact Report prepared by DJRD Architects dated November 2021 (**Appendix C** Appendix F).
- State Environmental Planning Policy No. 65 Statement prepared by DJRD Architects dated November 2021 (**Appendix D**).
- Bushfire Compliance Report prepared by BEMC dated 17 November 2021 (**Appendix E**).
- Traffic and Car Parking Assessment prepared by Transport and Traffic Planning Associates dated 13 November 2021 (**Appendix F**).
- Flora and Fauna Statement prepared by Eco Logical dated 19 November 2021 (**Appendix G**).
- Water Management, Flooding and Coastal Processes Statement prepared by Advisian dated 19 November 2021 (**Appendix H**).

The abovementioned documentation identifies and addresses the impacts of the proposed modification to Concept Plan Approval No. MP06_0183. Based on these studies, the modified Concept Plan is of minimal environmental impact and the development remains consistent with the intended outcome for the subject site and therefore this modification satisfies the scope of Section 75W of the Act.

In terms of visual impact, the submitted Site Analysis and Visual Impact Report prepared by DJRD Architects provides a comparison of the approved and modified built form from key vantage points that were considered as part of the original approval and concludes that visibility of the development will in fact, be significantly reduced, and in some cases, completely concealed, as a result of the increased canopy height of the native bushland reserve surrounding the site since the original Concept Plan Approval in 2011.

The modified concept ensures that the intended outcomes of the approved Concept Plan are maintained and that an appropriate built form response is achieved on the site. In terms of built form, the modified Concept Plan does not result in any significant material changes to the overall scale of the concept scheme, and on this basis the future development of the site will remain a suitable contextual fit within the local area. The proposed built form with respect to the number of building envelopes, siting and massing on the site will be retained, and continues to appropriately respond to the unique character of the site and is therefore considered acceptable on this basis.

We note that an Environmental Assessment Report was prepared by SAKE Development Pty Ltd dated September 2010 with respect to the original Concept Plan Approval and Project Plan Approval and includes a Draft Statement of Commitments held at Section 9.0 of the report. This Environmental Assessment prepared by Milestone will seek to amend the Draft Statement of Commitments as required to ensure the modification to Concept Plan Approval No. MP08_0183 maintains consistency with the originally approved concept, continues to ameliorate impacts associated with future development and addresses any changes to relevant statutory legislation and guidelines.

Whilst the scope of this Section 75W Application is broad, the approved parameters of the existing Concept Plan Approval No. MP06_0183 will remain unchanged and therefore the proposal is within this scope of Section 75W of the Act for the following reasons:

- The modified Concept Plan remains a mixed use residential and tourist development and the intended outcomes of the future development of the site are being retained.
- The approved GFA of 19, 600m² and FSR of 1.6:1 will remain unchanged.
- The modified development is of minimal environmental impact; and
- The impacts associated with the environmental site constraints, traffic and amenity can be appropriately managed and/or mitigated.

Given the nature of the proposed modifications, the modified Concept Plan will be of minimal environmental impact and will be consistent with the development originally approved under Concept Plan Approval No. MP06_0183. The proposal is acceptable in these circumstances and the Minister (or their delegate) can reasonably determine that this application is capable of being approved as a modification under Section 75W of the Act.

3. INTRODUCTION

3.1. Overview of the Project and Modification Sought

This Environmental Assessment has been submitted to the Department of Planning, Industry and Environment (the Department) pursuant to Section 75W of Part 3A of the Environmental Planning and Assessment Act 1979.

The Applicant, Milestone (AUST) Pty Limited, is seeking approval to modify Concept Approval No. MP06_0183 issued by the Department on 4 September 2011 for “mixed use residential/tourist development” at No. 147 Soldiers Point Road, Soldiers Point. The Modified Concept Plans prepared by DJRD Architects dated 18 November 2021 (**Appendix I**) provides the following future development scenario resulting from the modified concept:

- 90 hotel rooms.
- 98 residential apartments.
- Removal of serviced apartments.
- 310 car parking spaces.
- Maintain FSR of 1.6:1.
- Maintain gross floor area (GFA) of 19,600m².

This report has been prepared by Milestone (AUST) Pty Limited in collaboration with Daryl Jackson Robin Dyke Architects Pty Ltd (DJRD Architects) on behalf of Salamander Properties Pty Ltd. An Environmental Assessment was prepared by SAKE Development Pty Ltd dated September 2010 with respect to the original Concept Plan Approval and Project Plan Approval in response to the Director General’s Requirements (DGR’s) dated 16 March 2010. This report prepared by Milestone generally accords with the relevant DGR’s required to be considered as part of this Section 75W Application and should be read in conjunction with the appendices identified on **Page 2**.

3.2. Site Development and Approval History

A summary of the relevant approval history is provided below:

- On 4 September 2011, the Ministers Delegate approved the Concept Plan and Project Application (both identified as MP06_0183) held at **Appendix A**, including the following:

Project Application: Demolition of the existing buildings and structures and general site clearance.

Concept Plan: A mixed use residential and tourist development, building footprints, height and configuration within eight envelopes (Buildings A to H) with associated landscaping and car parking. The tourist components comprise a hotel, serviced apartments and associated facilities including conference rooms, bar, café, spa and gym. The residential component comprises 40 permanent residential apartments contained within one dedicated building envelope (Building H).

- On 30 August 2016, the Ministers Delegate approved a Section 75W Modification Application to extend the lapse date of both the Project Application and Concept Plan approval by two years from 4 September 2016 to 4 September 2018 (refer to **Appendix J**).

Various works associated with the approved Project Application including general site clearing and demolition have since occurred on the site, and as such the Project Approval No. MP06_0183 has been activated and does not require modification.

4. SITE DESCRIPTION

4.1. Site Location

The site is situated on the Tomaree Peninsula adjacent to the waterbody of Salamander Bay and is located at 147 Soldiers Point Road, Soldiers Point, legally described as Lot 31 DP 529002. An aerial map of the site is provided in **Figure 1**.



Figure 1: Site Aerial Map
Source: Six Maps 2021

The site is currently used for tourist purposes managed and operated by the luxury accommodation hotel brand, Bannisters Hotels, offering a range of accommodation suites, conference rooms, and recreational and leisure facilities. The site also includes other associated facilities and amenities such as car parking, swimming pool, a pub, bars, and restaurants on the ground floor. The existing hotel building was built in 1969 and ranges from 1 to 7 storeys in height.

Photos 1 to 7 (over page) illustrate existing views to the site and the current development located on the site.



Photo 1: View north of the site, taken from Soldiers Point Road
Source: Milestone 2021



Photo 2: View northeast of site, taken from Bagnall Road
Source: Milestone 2021



Photo 3: View northwest of site, taken from existing northern residential street
Source: Milestone 2021



Photo 4: View south of the site, taken from Soldiers Point Road
Source: Milestone 2021



Photo 5: View south of the site, taken from Salamander Bay
Source: Milestone 2021



Existing hotel located on site partly concealed by adjoining bushland

Photo 6: View east of the site, taken from jetty along the waterfront
Source: Milestone 2021



Existing hotel located on site partly concealed by adjoining bushland

Photo 7: View east of the site, taken from Port Stephens
Source: Milestone 2021

4.2. Existing Development

The subject site is not part of a centre, and naturally forms an island as it is surrounded by land zoned for public recreation purposes within a prominent coastal setting (**Figure 2**). The physical conditions of the site formed the key drivers for the urban design of the approved Concept Plan and primarily relate to the coastal setting and unique topography of the land. Given the unique geotechnical characteristics of the site, which comprises an elevated outcrop of volcanic rock, the site conditions which were considered as part of the urban design of the approved Concept Plan, remain unchanged and are still relevant to the site ten years later.

The site is located on the western side of an existing, densely vegetated knoll that forms part of the adjoining Council bushland reserve and establishes a direct connection with the coastline to the east (refer to **Photo 8** over page). However, given the nature of vegetation located on the knoll, which surrounds the site, the existing hotel as well as any future development of the land does not visually dominate the beachscape or the adjoining streetscape along Soldiers Point Road (refer to **Photos 1 to 7**). Despite the nature of the topography of the land, the physical presence of the site is concealed by the surrounding bushland which acts as a screen to the property.

Given that the site is surrounded by dense vegetation as well as public recreation areas including the adjoining Council bushland reserve to the north, east and south and John Eckersley Park to the west on the opposite side of Soldiers Point Road, the site is isolated from existing surrounding residential development (refer to **Figure 2**).



Figure 2: Aerial Map of site to indicate existing bushland surrounding the site
Source: Six Maps 2021

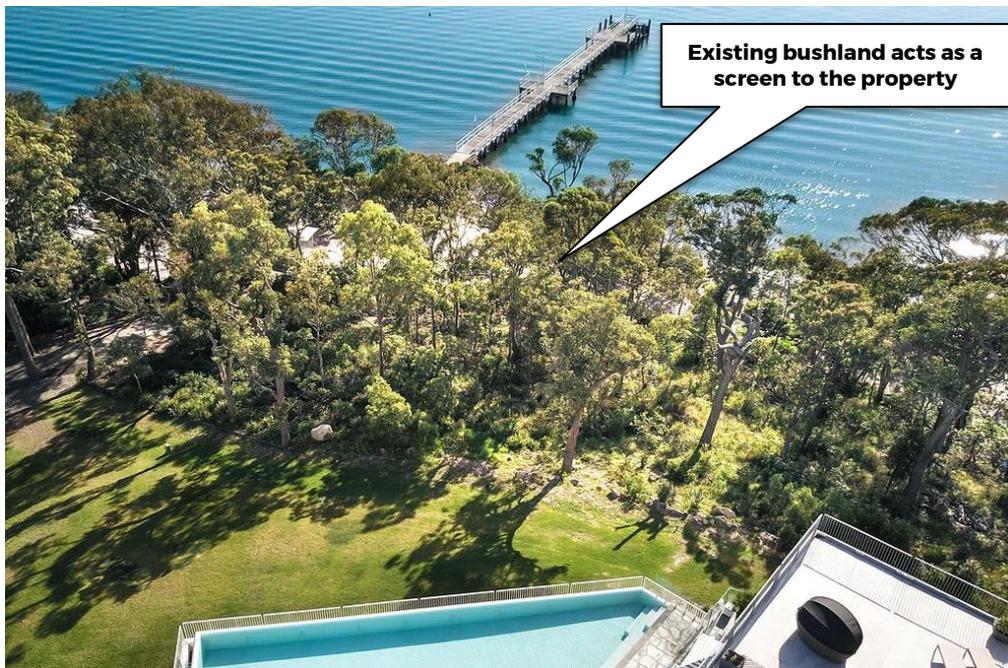


Photo 8: Eastern boundary of site immediately adjoining bushland and coastline
Source: Milestone 2021

Increased Canopy Height of Surrounding Nature Reserve

Since the approval of the original Part 3A Concept Plan in 2011, the physical constraints of the site have remained unchanged. Despite this, the existing native vegetation (as shown in **Photos 1 to 8**) surrounding the site has developed significantly over the last ten years including a substantial increase to the tree canopy height.

In order to address the visual impact of the modified future development, the updated Site Analysis and Visual Impact Report prepared by DJRD Architects dated November 2021 (**Appendix C**) provides a comparison of the views of the approved and modified Concept Plan from key vantage points including waterfront areas and local streets. The Report concludes that visibility of the development will be significantly reduced, and in some cases, completely concealed, as a result of the increased canopy height surrounding the site.

As such, the existing vegetation buffer or 'ring' located along the perimeter of the site has expanded significantly and provides for further screening and reduces visibility of the development.

4.2.1. Bannisters Hotels

The subject site is currently operated by the international brand, Bannisters Hotels. Bannisters Hotels is a 4.5-star boutique collection offering luxury seaside accommodation and modern restaurants and venues. Bannisters is home to 'Rick Stein at Bannisters' spectacular world-class celebrity chef restaurants showcasing the best of NSW's food and wine. The boutique, internationally renowned brand is unique in the state and across Australia.

The brand has already established the attraction of the 'Rick Stein Effect' for overnight visitation and is a destination within itself with a well-established customer base, attracting visitors from NSW, interstate, and a building international market. Bannisters Hotels is operated by a highly experienced senior management team lead by Managing Director, Peter Cosgrove, who founded the business in 2002 and named 'Entrepreneur of the Year' by Australian Business Magazine and the General Manager, Peter Bacon.

The existing hotel development located on the site, constructed in 1969 will be redeveloped by Bannisters Hotels under the approved Concept Plan Approval No. MPO6_0183, and the current proposal to modify this approval will deliver an internationally recognisable, exclusive product with panoramic views of Port Stephens that are unmatched regionally. The new Bannisters product will draw new markets to the Port Stephens area, as well as overnight visitation in traditionally low tourism periods. As such, the proposal addresses the gap in premium regional product as the industry recovers from the COVID-19 Pandemic, by injecting significant investment into the local economy of the Port Stephens region.

Whilst Port Stephens is a well-established tourism hub, many of its assets are ageing and cater to the budget or family traveller. Hunter Regional Economic Development Strategy identifies that tourism is significant in Port Stephens and the development and upgrade of key tourist facilities is a determined action for diversifying the region's economy. This proposal to modify the approved Concept Plan approval will therefore serve as a premium tourism asset, drawing a new market of high-spend clientele to the region and Australia

In terms of employment, the Lower Hunter is expected to boom as part of the 20-year Economic Vision for Regional NSW as a major population growth region and in need of job creation for these new residents. The modified proposal will directly facilitate its aim of growing tourism and the hospitality sector within the region and Bannisters Hotels will directly create employment outcomes throughout construction and operational roles, forecast to grow annually the economy navigates out of the COVID-19 pandemic. The tourism sector specifically creates jobs for young people, and Bannisters offers on the job training and formal certifications. The new high-end travelers attracted to the area will stay overnight and stay for longer with flow-on benefits to other local businesses, aiding in the creation of more jobs for the region.

Whilst the Lower Hunter is known for its nature-based experiences, high-end tourism is underrepresented in the region. The 12,220sqm waterfront subject site presents a unique development opportunity in Port Stephens as the property has 137m of waterfront reserve, looking directly out towards the heads of Yacaaba and Tomaree. Given the unique physical characteristics of the land, along with the exclusive offerings provided by Bannisters Hotels, the subject property is the only site in the Port Stephens region that a contribution such as the proposed modified Concept Plan could be developed.

4.3. Site Context and Surrounding Development

Land immediately adjoining the subject site is zoned for public recreation and open space purposes. Along the eastern, northern and southern boundaries are native bushland areas with some amenities (seating). A context map of the site is provided in **Figure 3**.



Figure 3: Site Context Map
Source: Milestone 2021

Located to the east of the site, beyond the existing bushland is Port Stephens which is the largest marine Park in NSW. There are also several water-based facilities in close proximity of the existing hotel including Port Stephens Sailing and Aquatic Club, the public wharf and boat ramp. Access is provided to these facilities along an existing pedestrian walk-way located to the north of the hotel.

Immediately to the south of the site is the existing bushland which shares part of the knoll of the existing hill with the site and comprises dense vegetation, including mature native trees.

The site is bounded by Soldiers Point Road to the west (refer to **Photo 3**) and located on the opposite side of the road is an existing public park (John Eckersley Park). Located further west of the park is Soldiers Point Ingenia Holiday Park and Soldiers Point Bowling Club.

Redevelopment of Soldiers Point Bowling Club – Seven Storey Seniors Living Development

The Soldiers Point Bowling Club has recently received approval to redevelop the site for the purpose of a seven storey seniors housing development comprising 62 self-contained dwellings. This was assessed by Port Stephens Council under Development Application No. 16-2020-242-1 and development consent was issued by Council on 16 July 2021.

4.4. Regional Context

Soldiers Point is located in the Lower Hunter Region of New South Wales within the Port Stephens LGA, which is approximately 220km from the Sydney Central Business District (Sydney CBD). The site is located approximately 60km to the north of Newcastle, which is the main centre for business, specialised shops, professional services, entertainment, educational and health facilities in the region.

Pacific Highway (Route A1) is the main transport route that bypasses the Port Stephens LGA through suburbs including Raymond Terrace, Kings Hill, Ferodale and Twelve Miles Creek. The key regional roads connecting the site to the Pacific Highway are Richardson Road from Raymond Terrace, which leads into Nelson Bay Road. Key local sub-arterial and collector roads include Nelson Bay Road, Port Stephens Drive and Salamander Road.

Public transport services in vicinity of the Salamander Shores Hotel are limited to the bus services operating along Soldiers Point Road which connects to Newcastle (Route 131) as well as other suburbs along the peninsula including Nelson Bay, Shoal Bay and Fingal Bay (Routes 132 and 133). Port Stephens has an extensive network of cycleways and consist of links between recreation areas, schools, business centres and community facilities.

In terms of population, Port Stephens has a significant retired population with people moving to the area for lifestyle and amenity reasons, while being relatively close to facilities and services in Newcastle and Sydney. The population of Soldiers Point is characterised by an aged population, with the median age being 53 years of age as well as 40.8% of the population over the age of 60 (Australian Bureau of Statistics, 2016).

In terms of employment and the regional economy, much of the employment is generated by a strengthening in key sectors being Williamstown Airport and associated aviation services, the RAAF base and defence support, engineering industries such as mining in the Hunter and general growth generated by population increase (Port Stephens Economic Development Strategy, 2007). Tourism and service industries remain an important employment generator and contributor to the local economy. Tourism services the local resident population and is a strategically important sector. It also provides significant part time and seasonal employment (ibid).

Port Stephens is located in a spectacular natural setting and environment with waterways and national parks. It is located within the Tomaree Peninsula. The Port Stephens waterway is a protected marine park and the Tomaree National Park provides the southern natural border. The locational and scenic qualities therefore make Port Stephens a desirable and attractive tourist and residential destination.

5. DESCRIPTION OF MODIFICATION

5.1. Introduction

The approved Concept Plan No. MP06_0183 was approved to guide the future development of the site by setting parameters for:

- Building envelopes to indicate height (eight in total including Buildings A to H);
- Land uses within the approved building envelopes (residential and tourist);
- Total gross floor area (19,600m²);
- Maximum floor space ratio (1.6:1);
- Pedestrian and internal road networks; and
- Car parking (number of spaces and location).

As a result of the proposed modifications, the approved site arrangement and built form parameters identified above will remain generally unchanged with the exception of:

Location of car parking: The approved car parking spaces are required to be relocated to alternative locations as a result of recent geotechnical investigations of the existing rock platform within the site. On closer examination, the extent of excavation would carry a high environmental cost and a less disruptive strategy is now proposed as part of this modification to Concept Plan Approval No. MP06_0183. The modified development results in an increase in car parking from 275 car parking spaces to 310 car parking spaces.

Minor increase to building footprints: The modified development includes the reconfiguration and widening of the approved building footprints to maximise solar access, outlook to views and cross ventilation into the buildings for the permanent residential accommodation and to provide for the change in use to residential flat buildings.

Minor increase to maximum ridge height: The maximum ridge height of the approved Concept Plan relates to Building H which will be increased by 600mm from RL 35.5 to RL 36.10.

The maximum ridge height of the overall approved Concept Plan, which relates to Building H, is being increased, the maximum number of storeys approved for each building envelope as part of the Concept Plan approval remains generally unchanged, with Building B resulting in an additional storey but only a 200mm increase in building height for the building.

As a result of the overall height variations to the approved building envelopes, along with the growth of the canopy height of the native bushland surrounding the site, the development will be less visually prominent when viewed from the public domain as well as from surrounding headlands to the north and east. The proposed overall maximum height increase is minor in nature and will not result in any significant material changes in terms of the perceived overall scale of the development.

In terms of the streetscape interface along Soldiers Point Road, the western building setbacks of the approved Concept Plan will generally be retained. On this basis, the proposed modified Concept Plan will improve the visual impact considerations of the development and is therefore considered acceptable in these circumstances. The impacts associated with the modified Concept Plan are further discussed in Section 10 of this report.

5.2. Key Changes to the Approved Development

The proposed modified Concept Plan involves the following key changes:

Land Use

- Modifications to the hotel and residential apartment mix includes the conversion of serviced apartments to permanent residential apartments. As a result, the 34 serviced apartments will be removed from the Concept Plan altogether and the number of permanent residential apartments will increase from 40 apartments to 98 apartments.

The approved tourist accommodation comprised both hotel rooms and serviced apartments, and despite the removal of serviced apartments, the modified Concept Plan will remain as a mixed use residential and tourist accommodation as both the approved residential and hotel (tourist) accommodation land uses are proposed to be retained.

- In addition to the removal of the serviced apartments component, alterations to the approved residential apartment unit mix and minor increase the number of hotel rooms are also proposed as well as GFA allocation to the approved bar, restaurant and conference room. The total GFA allocated to the bar, pre function and conference room will be reduced by 165m². Despite this modified reallocation, the total GFA (19,600m²) of the approved Concept Plan will be retained.

Building Envelope

- Reconfiguration and widening of building envelopes including the reorientation of the buildings (Buildings B and C as shown in **Figures 4 and 5**) to maximise the northerly aspect of the site, increase views opportunities, as well as and increase solar access and cross ventilation.

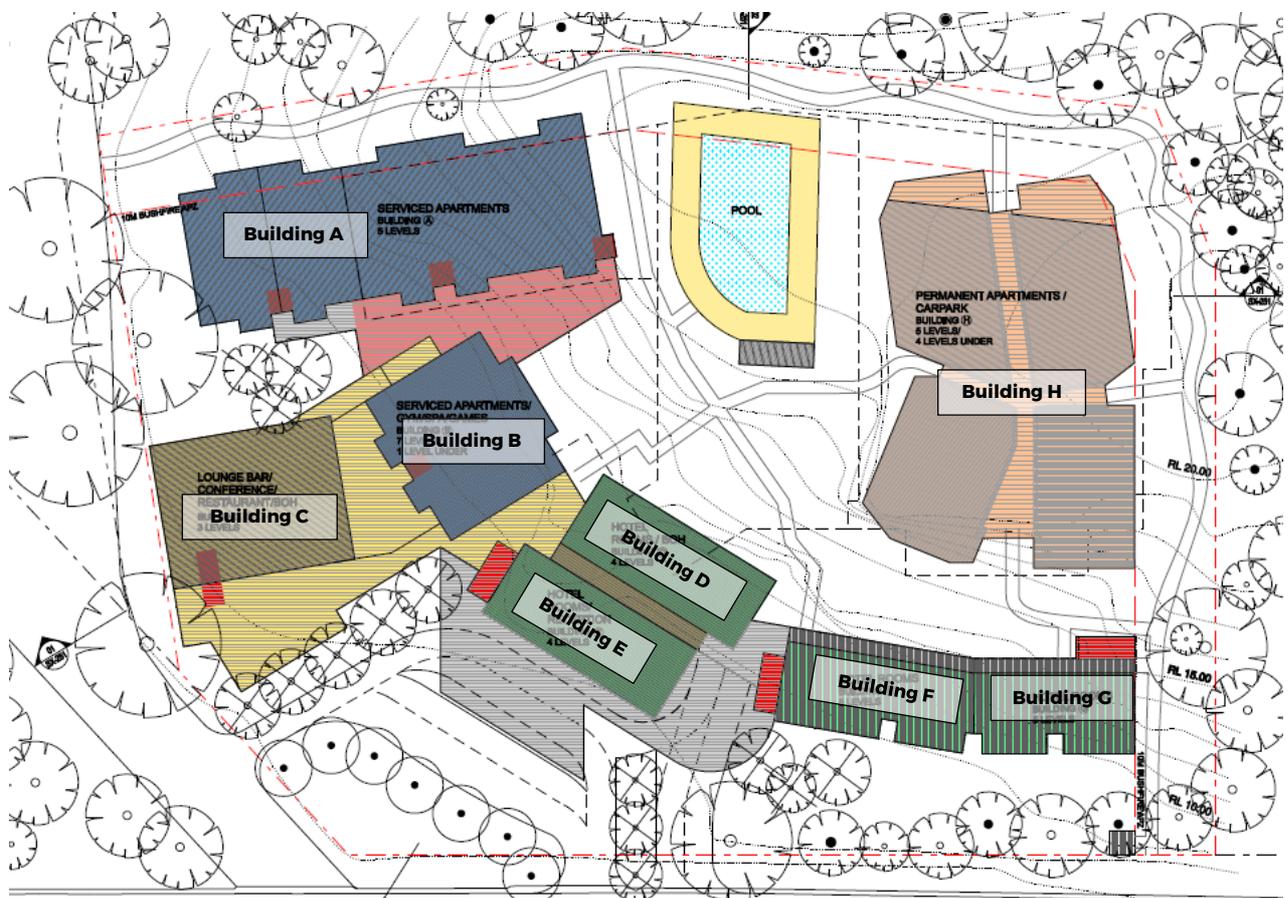


Figure 4: Approved Roof Plan of Concept Plan No. MP06_0183
Source: DJRD Architects 2011 (Drawing SK-107)



Figure 5: Modified Roof Plan of Concept Plan No. MP06_0183
Source: DJRD Architects 2021 (Drawing SK-107)

Building Height

- Increase to the maximum building height of the development (Building H) by 600mm to ensure compliance with BCA floor to ceiling inclusion requirements.

Table 1 provides a summary of the comparative conceptual building heights resulting from this Section 75W Application.

Table 1: Proposed Concept Building Height

Building	MP08_0183 Approved Concept Building Height	Modified Concept Building Height	Change
Building A	RL 30.50	RL 30.60	+0.1m
Building B	RL 34.00	RL 34.20	+0.2m
Building C	RL 20.30	RL 20.50	+0.2m
Building D	RL 24.50	RL 24.70	+0.2m
Building E	RL 24.50	RL 24.70	+0.2m
Building F	RL 24.50	RL 26.70	+2.2m
Building G	RL 27.60	RL 26.70	-0.9m
Building H	RL 35.50	RL 36.10	+0.6m
MAXIMUM BUILDING HEIGHT		RL 36.10 (Building H)	+0.6m

The RLs nominated on the drawings represent the minimum required height to achieve the fire, acoustic and waterproofing requirements of the National Construction Code (NCC). Architectural features may extend beyond these levels and will be developed in future project stages.

Car Parking Location

- Reconfiguration and relocation of car parking and basement levels so that they are located in areas that propose a better environmental outcome due to the geotechnical constraints of the site (**Figure 6**).

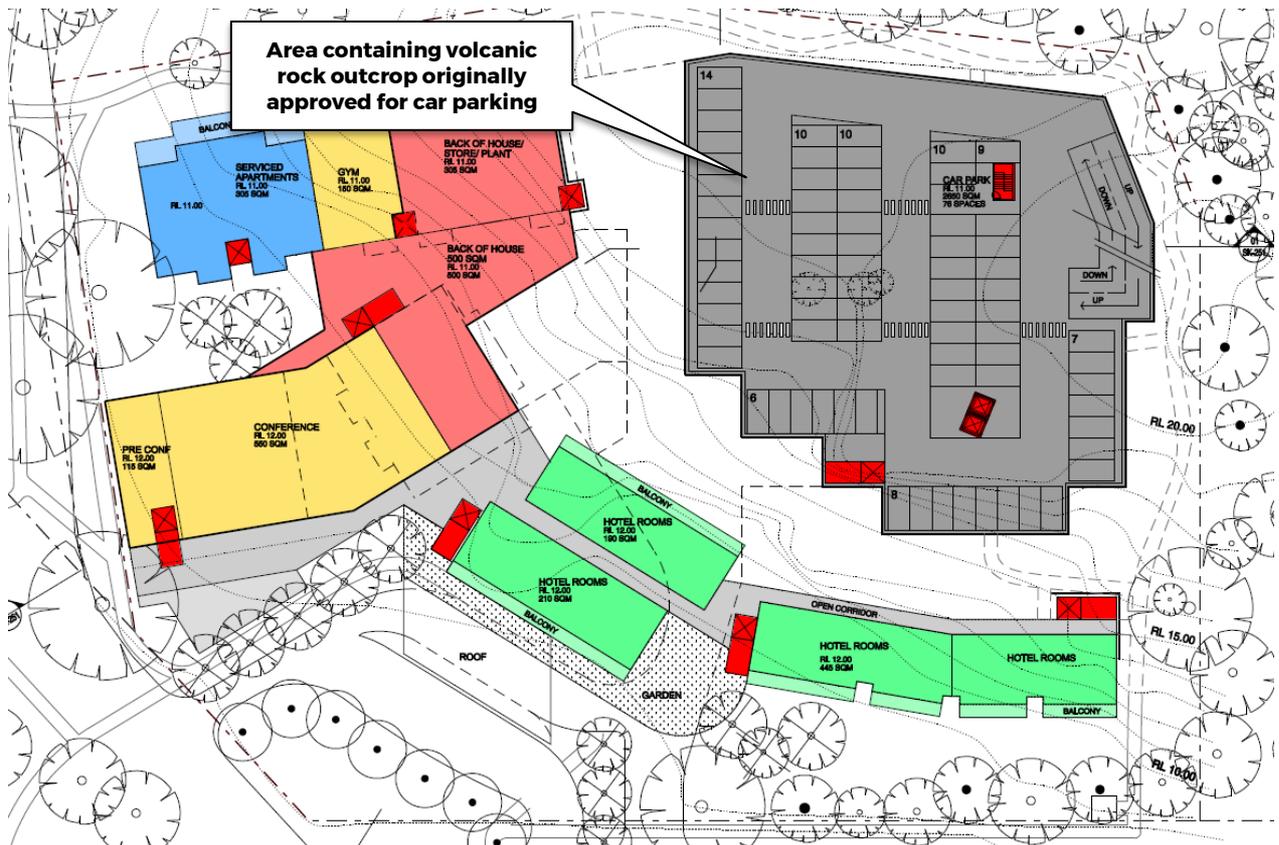


Figure 6: Approved Level 1 of Concept Plan No. MP06_0183
Source: DJRD Architects 2011 (Drawing SK-102)

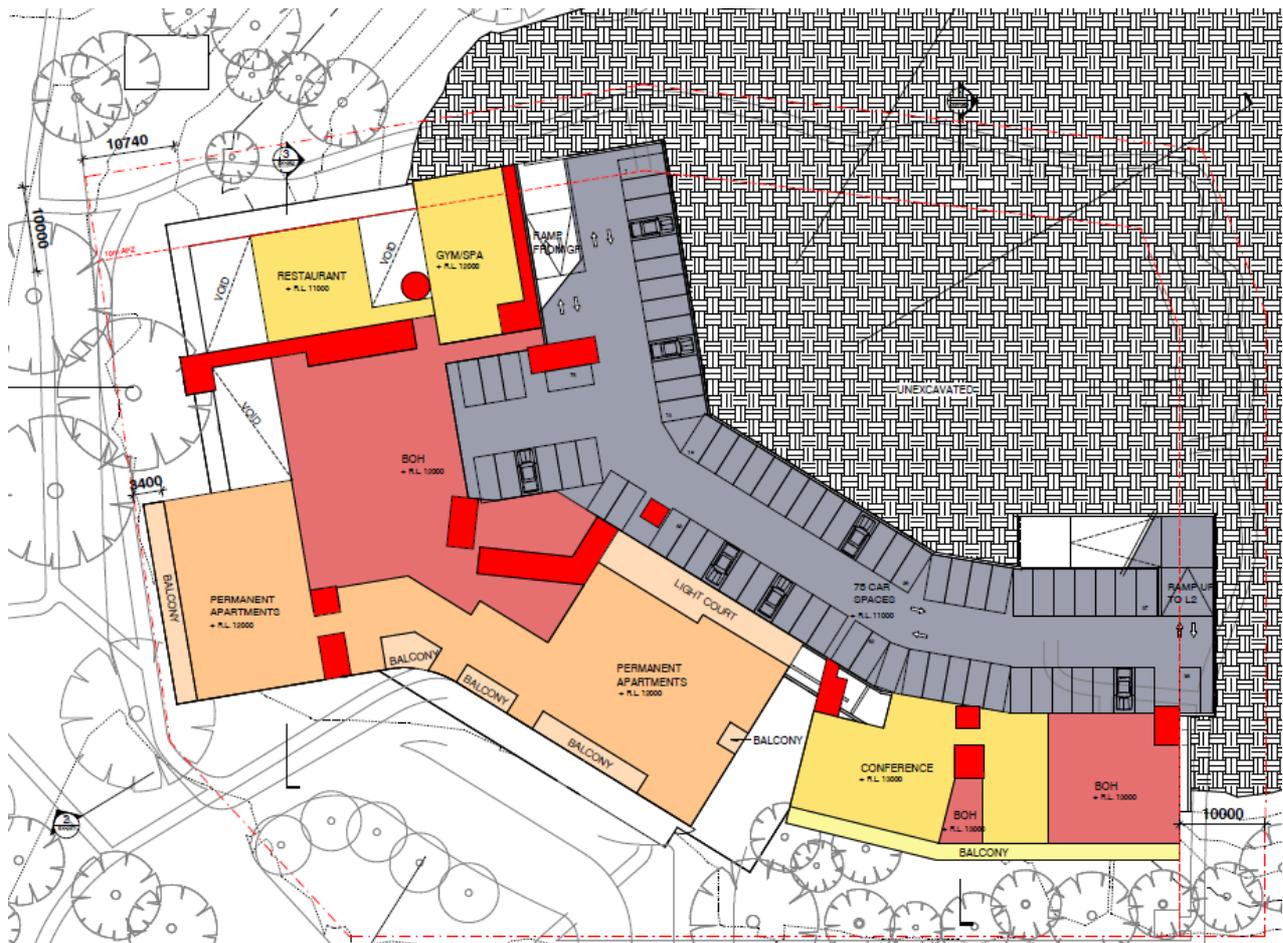


Figure 7: Modified Level 1 of Concept Plan No. MP06_0183
Source: DJRD Architects 2021 (Drawing SK-102)

Floor Space

The approved Gross Floor Area of 19,600m² and Floor Space Ratio of 1.6:1 will remain **unchanged**. The Section 75W Modification Application seeks to modify the approved Concept Plans to accurately reflect the approved FSR and total GFA and ensure that the car parking spaces are appropriately located close to the vehicular entry and in areas that can be easily excavated, as well as increasing the onsite parking provided as part of the development to 310 spaces.

Tree Removal

The proposal involves the removal of a small number of additional trees as a result of the modified development. Since the original Concept Plan was approved, a substantial number of trees have grown on the site that contribute to additional tree coverage to screen development from view and, subsequently, also results in the removal of a minor number of additional trees. The proposed tree removal is shown on Landscape Plan SK-L01 prepared by DJRD Architects.

5.3. Development Statistics

Table 2 provides a comparison of the key development statistics under the current Concept Plan Approval against the proposed modifications.

Table 2: Comparison to Concept Plan Approval No. MP06_0183

Component	Approved	Proposed
Hotel Rooms	84	90
Residential Apartments	40	98
Serviced Apartments	34	-

Car Parking Spaces	275	310
Bar/Cafe	570m ²	350m ²
Restaurant	400m ²	500m ²
Pre-function	115m ²	70m ²
Conference	550m ²	300m ²
Conference Bar	-	250m ²
Gym/Spa/Recreation	-	190m ²
General BOH/Storage	-	1360m ²
Floor Space Ratio	1.6:1	1.6:1 (no change)
Gross Floor Area	19,600m ²	19,600 m ² (no change)

5.4. Conditions of Consent to be modified

The following Conditions of Consent from Concept Approval MP06_0183 are required to be modified in the following ways to cater for the proposed modified development. It is noted that a number of other Terms of Approval and Future Environmental Assessment Requirements will be required to be modified and updated to relevant legislation and Australian Standards where necessary.

Part A Terms of Approval

"PART A – TERMS OF APPROVAL

A1 Development description

Concept approval is granted to the development as described below;

- (a) use of the site for residential and tourist purposes;
- (b) indicative building envelopes for 8 separate buildings comprising:
 - i. Building A containing serviced apartments, café, gym and storage, maximum 5 storeys;
 - ii. Building B containing serviced apartments, games, spa and back of house, maximum 7 storeys and 1 basement level;
 - iii. Building C containing lounge bar, conference rooms, restaurant and retail, maximum 3 storeys;
 - iv. Building D comprising Hotel rooms and back of house, maximum 4 storeys;
 - v. Building E comprising reception and hotel rooms, maximum of 4 storeys;
 - vi. Building F comprising hotel rooms, maximum of 5 storeys;
 - vii. Building G comprising hotel rooms, maximum of 5 storeys;
 - viii. Building H comprising permanent residential apartments, maximum of 5 storeys and 4 basement levels;
 - ix. Total 275 parking spaces of 4 levels, including coach/minibus/cycling parking and service vehicle areas;
 - x. Vehicular and pedestrian access; and
- (c) total gross floor area (GFA) of 19,600sqm, being an overall FSR of 1.6:1; and
- (d) internal roads, pedestrian and cycle pathways and parking infrastructure.

To read as modified:

A1 Development description

Concept approval is granted to the development as described below;

- (a) use of the site for residential and tourist purposes;
- (b) indicative building envelopes for **6** separate buildings comprising:
 - i. Building A containing **hotel rooms, restaurant and spa, maximum 7 storeys and 1 basement;**
 - ii. Building B containing **permanent residential apartments and back of house, maximum 8 storeys and 1 basement level;**
 - iii. Building C containing **bar, permanent residential apartment, maximum 3 storeys and 1 basement level;**
 - iv. Building D/E comprising **reception, permanent residential apartments, maximum 5 storeys and 1 basement level;**
 - ~~v. Building E comprising reception and hotel rooms, maximum of 4 storeys;~~
 - vi. Building F/G comprising **bar, conference room and hotel rooms, maximum 5 storeys;**
 - ~~vii. Building G comprising hotel rooms, maximum of 5 storeys;~~
 - viii. Building H comprising permanent residential apartments, maximum of 5 storeys and **2 basement levels;**
 - ix. Total **310 parking spaces of 5 levels**, including coach/minibus/cycling parking and service vehicle areas;
 - x. Vehicular and pedestrian access; and
- (c) total gross floor area (GFA) of 19,600sqm, being an overall FSR of 1.6:1; and
- (d) internal roads, pedestrian and cycle pathways and parking infrastructure.

A2 Development in Accordance with Plans and Documentation

- (1) The approval shall be generally in accordance with MP06_0183 and with the Environmental Assessment, except where amended by the Preferred Project Report & Response to Submissions, and the following drawings prepared by Daryl Jackson Robin Dyke Architects.

Concept Plans by Daryl Jackson Robin Dyke Architects			
Drawing No.	Revision	Name of Plan	Date
SK-001	B G	Demolition Plan	22/12/2010 18/11/2021
SK-099	E	Basement	18/11/2021
SK-101	B G	Ground Level Plan	18/01/2011 18/11/2021
SK-102	C H	Level 1 Plan	20/06/2011 18/11/2021
SK-103	C H	Level 2 Plan	20/06/2011 18/11/2021
SK-104	B G	Level 3 Plan	22/12/2010 18/11/2021
SK-105	B G	Level 4 Plan	19/01/2011 18/11/2021
SK-106	B G	Level 5 Plan	22/12/2010 18/11/2021
SK-107	C H	Roof Plan	20/06/2011 18/11/2021
SK-201	C H	Elevations - Sheet 01	20/06/2011 18/11/2021
SK-202	C H	Elevations - Sheet 02	20/06/2011 18/11/2021
SK-251	C I	Section - Sheet 01	20/06/2011 18/11/2021
SK-L01	C D	Landscape Plan	20/06/2011 18/11/2021
SK-MD01	A F	Movement Diagram Vehicles	22/12/2010 18/11/2021
SK-MD02	A F	Movement Diagram Pedestrian and Cycle	22/12/2010 18/11/2021

Future Environmental Assessment Requirements

The modification of Future Environmental Assessment Requirement No. 2(a) of Concept Plan Approval No. MP06_0183 relating to traffic and parking to reflect the updated number of car parking spaces provided as part of the modified development. The proposed modification of the condition is shown in red below:

2 Traffic, parking and access

The first application for a building shall be accompanied by a Traffic and Pedestrian Management Plan providing for:

- A total number of ~~275 310~~ on-site car spaces. Of these, ~~75 20~~ spaces at ground level designated for use by ~~lounge bar~~, restaurant and retail patrons;
- Minimisation of internal conflict points between Solders Point road, the port cochere, internal driveways, pedestrians, cycle movements and the car park.
- Internal access to loading and unloading areas, logical access to all relevant buildings for service and delivery vehicles; and resolution of any conflicts points with other vehicles, pedestrians and cyclists.
- Allocation of spaces between the residential flat buildings and tourist uses.
- Details for lawful access to the residential flat building and associated parking areas to reflect future land titling arrangements.

Future applications must be consistent with this plan."

We also seek to remove Environmental Assessment Requirement No. 13(c) in Schedule 3 of Concept Plan Approval No. MP06_0183 due to the site no longer being identified as bushfire prone land and the following reasons outlined in the Bushfire Compliance Report in **Appendix E**:

- "Part 3A Concept Application No. MP06_0183 did not provided for internal perimeter access road. The proposed modification also does not provide for an internal perimeter road.
- Assessment for NSW Fire Brigade emergency vehicle access is outside the assessment process within PBP."

The proposed removal of this condition is shown in red below:

"13 Bushfire

- (a) *The first application for the first building shall be accompanied by evidence that a legally formed easement has been created over the Asset Protection Zone (APZ) on adjoining land to ensure that the APZ is maintained in perpetuity, together with the adjoining land owner's consent.*
- (b) *If future environmental assessment requirement 13(a) cannot be met, future applications shall include further details of the development's compliance with the requirements of 'Planning for Bushfire Protection 2006' such as the introduction of higher construction standards in accordance with AS3959 for relevant buildings.*
- ~~(c) *Future applications must demonstrate that the NSW Fire Brigade emergency vehicles can adequately access the site, buildings and structures in the event of an emergency via the internal perimeter access road.*~~

6. STRATEGIC CONTEXT

The modified Concept Plan will ensure that the development will provide long term social and economic benefits to the Port Stephens region, through the creation of employment opportunities during construction and operation, increasing the supply of residential accommodation and enhanced tourist and conference facilities. In accordance with the strategic plans and policies, the proposed modification will:

- Meet an identified demand for additional high-quality tourist and visitor accommodation within the Port Stephens region;
- Promote housing diversity to suit a range of household types and lifestyles, and contribute to housing supply to meet the future housing needs of the region;
- Provide additional opportunities for local employment within the Port Stephens region for the hospitality and tourist sectors; and
- Aligns with the strategic planning directions set out in the current NSW State Plan 2021.

6.1. Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy (the Strategy) provides the regional context for development and commercial centres hierarchy within the Lower Hunter area between 2006 and 2031. Pursuant to the Strategy, the subject site is identified as being located within the Nelson Bay Precinct which is defined as a specialised regional and tourist growth area, with forecasted targets of 1200 additional dwellings and 1500 additional jobs by 2031. On this basis, the modified Concept Plan will continue to positively contribute to the achievement of both targets and will therefore support the strategic direction of the region.

6.2. Hunter Regional Plan 2036

The goals of the Hunter Regional Plan 2036 are to the leading regional economy in Australia, a biodiversity-rich environment, thriving community, and greater housing choice and jobs by 2036 (**Figure 8**). Direction 6 of the Plan relates to expanding the Port Stephens economy that is currently heavily reliant on seasonal, serviced based industries, these factors reflect the tourism economy and the ageing community. The proposed development meets this direction by contributing to the economic diversity of the area through the provision of high-end conference facilities and the provision of a luxury tourist accommodation that supports new tourism opportunities all year round.

The Plan also focuses on the retention and protection of the biodiversity of the local area to reflect the character of the area and the value of the Port Stephens – Great Lakes Marine Park; the largest marine park in Australia. The development proposes to retain the existing vegetation on the site and will have no adverse impact on the coastal environment in which it is located.

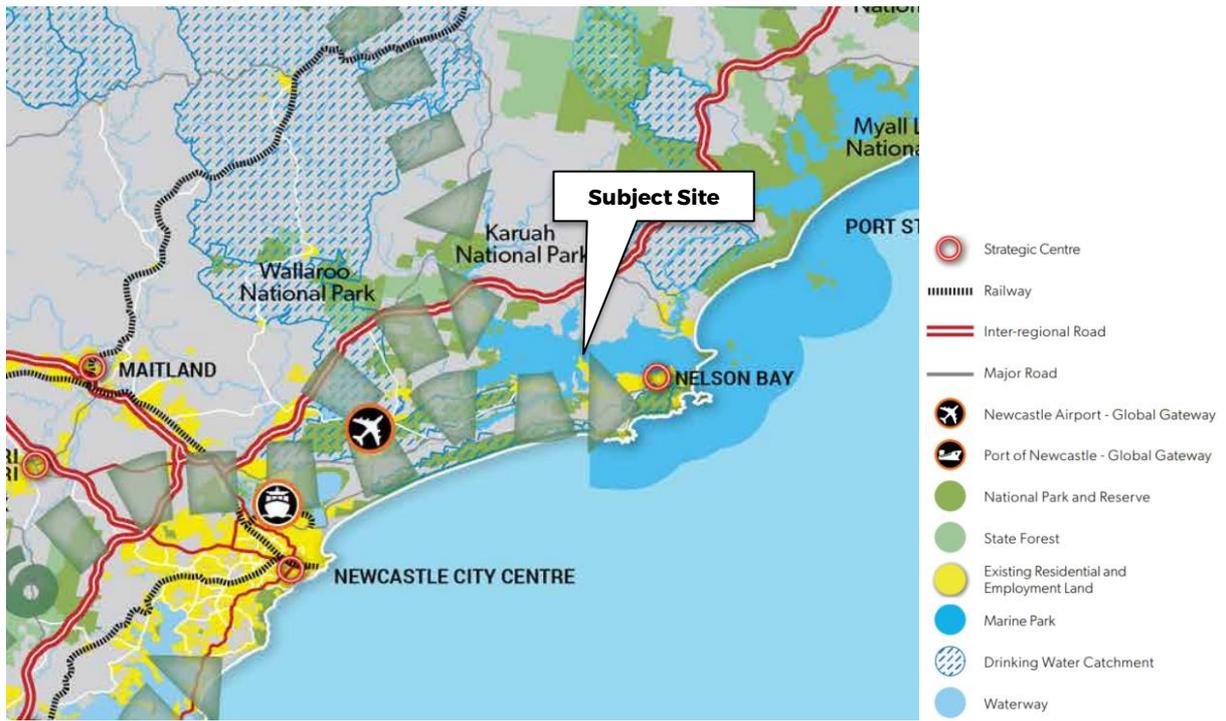


Figure 8: Hunter Region Map
Source: Hunter Regional Plan 2036

7. STATUTORY FRAMEWORK

Section 7 provides an assessment where the proposed modification's compliance with the relevant Statement Environmental Planning Policies (SEPPs) and Environmental Planning Instruments (EPIs) has been altered.

7.1. NSW Legislation

7.1.1. *Environmental Planning and Assessment Act 1979*

The Concept Plan and Project Application was originally approved under Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act). The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. On this basis, the provisions of Schedule 2 (Clause 3) continue to apply, and the proposed Modification Application will be prepared in accordance with the requirements of Part 3A and associated regulations. Accordingly, the delegate of the Minister is able to approve the proposed modifications to the Concept Plan Approval No. MP06_0183 under Section 75W of the Act.

Concept Plan modifications under S.75W are required to be consistent with Clause 3BA(5) of Schedule 2 of the EP&A (Savings, Transitional and Other Provisions) Regulation 2017, as follows:

(5) A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that—

- (a) the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- (b) the proposed modification is of minimal environmental impact, or*
- (c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

Based on the nature of the proposed modifications, the modified Concept Plan constitutes a Section 75W Modification rather than a new application. The scope of Section 75W is broad, the approved parameters of the existing Concept Plan Approval No. MP06_0183 will result in minimal environmental impact and is consistent with the original Concept Approval. Therefore, the proposal falls within the parameters of a Section 75W Modification for the following reasons:

- The modified Concept Plan remains a mixed use residential and tourist development and the intended outcomes of the future development of the site are being retained.
- The approved GFA of 19,600m² and FSR of 1.6:1 will remain unchanged.
- The nature of the modifications will not result in any adverse impact on the environment and the impacts associated with the environmental site constraints, traffic and amenity can be appropriately managed and/or mitigated. Specifically;
 - The modified development will result in minimal impacts in relation to to significant flora and fauna on the site as the building footprints will remain generally consistent with the approved design.
 - The height, bulk, scale and architectural design of the modified buildings is consistent with that which was approved in the Concept Approval and will result in a reduced overall visual impact due to the increased canopy height as a result of the last ten years.
 - The approved basement car parking has been relocated to alleviate the requirement to excavate into the existing volcanic rock in the south-eastern corner of the allotment reducing any potential geotechnical concerns.
 - The modified development will provide a comparable impact to that which was approved with respect to acoustic impacts from construction or operation of the site.

7.2. State Environmental Planning Policies

The following State Environmental Policies are considered relevant to the proposed modification of the Concept Approval. The State Environmental Planning Policies not mentioned in this section will remain consistent with the justification provided in the Environmental Assessment Report prepared in September 2010.

7.2.1. *State Environmental Planning Policy (Major Developments) 2005 (SEPP Major Developments) (repealed)*

On 14 September 2006, the Director-General, as delegate of the Minister formed the opinion that the project was development of a kind described in SEPP Major Developments (as it existed), specifically Schedule 1(17)(b) – a tourist related facility employing more than 100 people and was therefore a project to which Part 3A of the Act applied.

On 16 June 2011, the NSW Government introduced a Bill into the Parliament to repeal Part 3A of the EP&A Act and replace it with an alternative system for the assessment of projects of state significance; Part 4 State Significant Development under the EP&A Act. The project was in an advanced stage when SEPP Major Projects and Part 3A of the EP&A Act were repealed and was continued to be assessed by the Department under Part 3A.

As expressed in Section 7.2.1. of this report, the proposed modification is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. On this basis, the provisions of Schedule 2 (clause 3) continues to apply, and the proposed modification application will be prepared in accordance with the requirements of Part 3A and the repealed SEPP Major Developments.

7.3.2 *State Environmental Planning Policy No. 65 - Design of Residential Flat Buildings (SEPP 65)*

A SEPP 65 Statement was prepared as supporting documentation for the original Concept Approval. The modified development is supported by a revised SEPP 65 Statement prepared by DJRD Architects. The revised report addresses the SEPP 65 Design Quality Principles and provides comments for the proposals consistency with the design quality principles (refer to **Appendix D**).

7.3.3 *State Environmental Planning Policy (Coastal Management) 2018*

The originally approved Concept Plan was required to address State Environmental Planning Policy No. 71 – Coastal Protection. SEPP No. 71 has since been repealed and replaced with SEPP Coastal Management. The site is identified as a Coastal Use Area and a Coastal Environment Area pursuant to SEPP Coastal Management. The coast environment area provisions prevail over the Coastal Use Area provisions, the Coastal Environment Area provisions require development to consider the following:

- The integrity and resilience of the biophysical, hydrological and ecological environment (including fauna and flora, and rock platforms);
- Coastal environmental values and natural coastal processes;
- The water quality of the marine estate;
- Existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; and
- Aboriginal cultural heritage.

The modified development is infill development on an existing developed site within an urban area. The development does not involve extensive clearing and construction and any excavation is located away from land affected by natural coastal processes. The modified development will retain public access to the foreshore and public jetty and will not result in any adverse impacts to any coastal processes and continues to respond to the characteristics of the site to mitigate visual impact.

7.3.4 State Environmental Planning Policy No. 44 – Koala Habitat Protection

Port Stephens Council has prepared a Comprehensive Koala Plan of Management for the Port Stephens LGA which provides performance based criteria to be used for assessment. The Koala Plan of Management Plan will be addressed as part of the detailed biodiversity investigation for the subsequent Development Application.

The Flora and Fauna Statement prepared by Eco Logical concludes that the preferred Koala habitat on the site occurs to the east of the study area but will not be impacted by the modified proposal.

7.3.5 State Environmental Planning Policy No. 55 – Remediation of Land

Section 10.8 of this report details the results of the Phase 1 and 2 Site Contamination Investigations and the Hazardous Materials Survey undertaken as part of the original Concept Approval. The reports prepared by Coffey Environments reveals that the likelihood for significant contamination to be present on the site is considered to be low and further investigations (including Management or remediation) are not required to be undertaken in accordance with SEPP 55 for the purposes of the modified development.

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

The Director General Requirements require projects to demonstrate in concept, compliance with BASIX. The originally approved Concept Plan provided a BASIX compliance check for Building H. The modified development has been checked, in concept, for compliance with BASIX for Building B, Building C, and Building D/E. A comprehensive BASIX Compliance Check and BASIX Certificate will be submitted as supporting documentation for the subsequent Development Application.

7.3. Key Local Planning Controls

7.3.1 Port Stephens Local Environmental Plan 2013

Zoning

The site was previously zoned 3(a) Business General A under Port Stephens Local Environmental Plan 2000 (LEP 2000) at the time of the Concept Approval. The site is now zoned R3 Medium Density Residential under the Port Stephens Local Environment Plan 2013 (LEP 2013) (**Figure 9**). Residential accommodation and tourist facilities including hotel (or motel) accommodation is permitted with consent within the R3 Zone.

The proposed modifications involve the conversion of the approved tourist accommodation (serviced apartments) to permanent residential apartments. Further, the ancillary tourist facilities and services approved on the site are permitted with consent within the R3 Medium Density Residential Zone and will remain unchanged.

The R3 Medium Density Residential Zone objectives seek to “provide a variety of housing types” as well as “enable other land uses that provide facilities or services to meet the day to day needs of residents”. Based on the nature of the proposed modifications which will increase the proportion of residential accommodation approved on the site, the modified proposal has regard to the objectives and is consistent with the intended land use outcomes of the zone. Accordingly, the proposed modified Concept Plan is consistent with the desired future character of the local area and is considered acceptable on this basis.

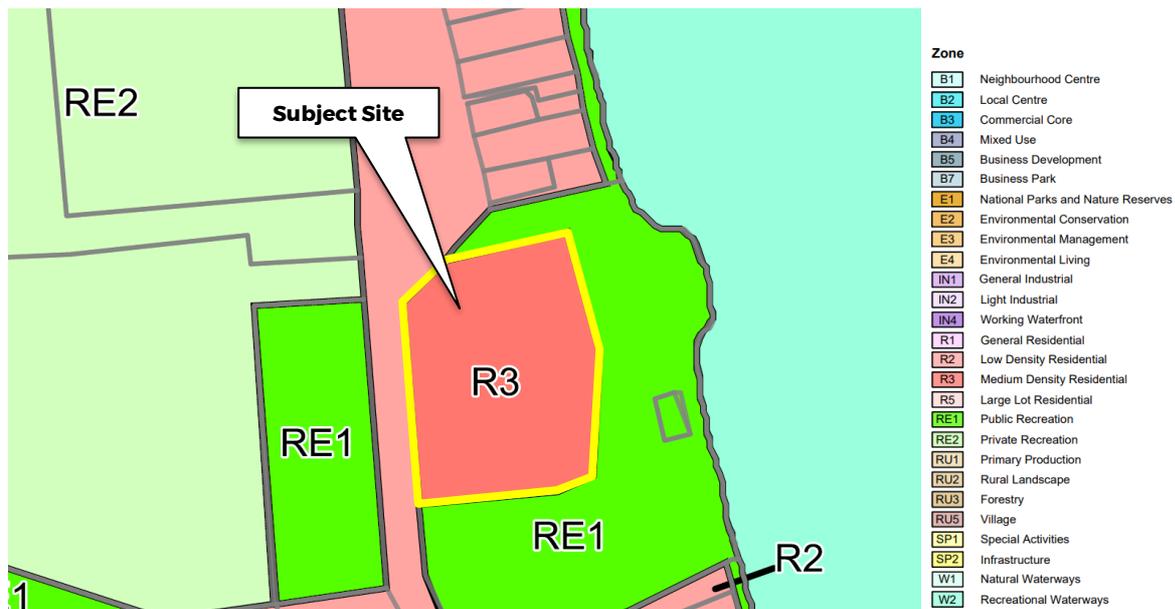


Figure 9: Land Zoning Map
Source: LEP 2013

Clause 4.3 Height of buildings

A maximum building height of 8 metres applied to the site at the time that the original Concept Plan was approved pursuant to Port Stephens Development Control Plan 2007 (DCP 2007), no LEP Development Standards for height applied to the site at the time. The site is now subject to a maximum building height of 8m pursuant to Port Stephens Local Environmental Plan 2013 (LEP 2013).

In terms of number of storeys, the original Concept Plan was approved with a maximum of seven storeys (Building B). Building B comprises the greatest number of storeys within the approved Concept Plan and is located within the northern portion of the site which is also the lowest lying part of the land.

Notwithstanding this, Building H, comprising 5 storeys, is the tallest building envelope approved within the Concept Plan given that it is located within the highest portion of the site to the south. The maximum ridge height of the approved Concept Plan (Building H) is RL 35.5.

The proposed modifications will result in a minor height increase of 600mm to Building H to ensure compliance with current Building Code of Australia floor to ceiling inclusion height requirements and minor modifications to the building design. The maximum ridge height of the approved Concept Plan relates to Building H which will be increased by 600mm from RL 35.5 to RL 36.10.

It is acknowledged that the maximum building height of the approved Concept Plan is being increased, this increase is minor in nature and will not result in any significant material changes in terms of the perceived scale of the development. The change in the maximum building height is required to ensure the buildings compliance with the current Building Code of Australia and Australian Standards applicable to the development.

The building height approved within the original Concept Approval was non-compliant with the maximum building height prescribed in DCP 2007 and remains non-compliant with LEP 2013. The increase in non-compliance will be negligible and will not result in any adverse environmental and built form impacts.

7.3.2 Port Stephens Development Control Plan

Floor Space Ratio

A maximum FSR of 1.8:1 applied to the site at the time that the original Concept Plan was approved, pursuant to the DCP 2007, and still currently applies to the site today pursuant to Port Stephens Development Control Plan 2014 (DCP 2014).

The original Concept Plan was approved with a maximum FSR of 1.6:1 which will remain unchanged as part of the proposed modifications. On this basis, the proposal complies with the relevant FSR control of DCP 2007 and DCP 2014.

Built Form Controls

DCP 2007 anticipated commercial and mixed-use development on the site, DCP 2007 specifies that development must not exceed 2 storeys and a maximum building height of 8 metres. These controls applied at the time that the original Concept Plan was approved and still apply today.

Whilst the original Concept Plan did not comply with the relevant controls for building height and maximum number of storeys, the original concept scheme was approved on the basis that the built form provisions within DCP 2007 primarily related to development that is located within a town centre context. Given that the site is not part of a commercial centre, and naturally forms an island based on its physical conditions and as a result of being surrounded by land zoned for public open space, within a coastal location, strict application of the DCP 2007 building height controls was not deemed necessary. It was considered by both Council and the Department at the time of assessment that the DCP 2007 controls would not achieve the best environmental outcomes for the site.

In terms of the modified Concept Plan, the physical conditions of the site have not changed, and therefore the built form considerations which were previously determined and accepted by Council and the Department, still remain relevant to the current modifications.

The modified Concept Plan is substantially the same as the approved Concept Plan in terms of built form and will have minimal environmental impact. The proposed modification are considered acceptable in these circumstances.

There are no other controls contained within DCP 2007 that are relevant to the assessment of the proposed Section 75W Modification.

8. HEADS OF CONSIDERATION

8.1. Site Suitability

The suitability of the site for the proposed mixed use development was established in the original Concept Approval. The site context of the development, the site constraints and environmental considerations and the essence of the proposed development remains as was approved as part of the Concept Plan. The site is suitable for the development for the following reasons:

- The site has been used as Salamander Shores since the 1960s, and now known as Bannisters Port Stephens, a 4.5 Star world class luxury hotel. The proposed modification will retain this tourist accommodation use and will provide upgraded facilities that are BCA compliant and will entice internal and domestic tourists, as well as business to the area.
- The permanent residential accommodation is a compatible land use with the tourist and visitor accommodation and is consistent with the R3 Medium Density Zoning of the site and the residential land uses surrounding the site.
- The modified development is consistent with the objectives of the R3 Medium Density Residential zone in that it will provide for the housing needs of the community and contribute to providing a diverse range of housing in the Port Stephens locality and will provide a compatible land use in the tourist and visitor accommodation, restaurant and conference facilities that will support the day to day needs of residents and will contribute to positive the economic growth and social vitality of the local community.
- The strategic direction for the site as outlined in the Hunter Regional Plan 2036 and Lower Hunter Regional Strategy identifies the site as a regional tourist growth centre within the Nelson Bay precinct. The proposed modified development continues to be consistent with these policies for housing and tourism.

8.2. Justification of Modification

8.2.1. Ensuring the Concept Plan accurately reflects the approved parameters set within the Concept Approval No. MP06_0183

The Section 75W Modification Application seeks to modify the approved Concept Plan in order to accurately reflect the approved parameters for FSR and GFA contained within Condition A1 of the Concept Plan Approval No. MP06_0183 (**Appendix A**). Additionally, the development is required to be updated to comply with current Building Code of Australia, Australian Standards and other relevant legislation guidelines.

8.2.2. Relocation of car parking as a result of Geotechnical constraints

A large portion of the subject site comprises an elevated volcanic rock platform and recent investigations following the Geotechnical study carried out as part of the original Concept application, has revealed that excavation of the rock material would carry a high environmental cost and a less disruptive strategy is recommended. The approved car parking location conflicts with this rock material and is therefore no longer appropriate. To progress future development applications for construction, modifications to the approved Concept Plan are required to appropriately relocate the approved car parking spaces in other areas of the site that are suitable for excavation.

8.2.3. Responding to the continued growth and expansion of Regional Tourism within NSW

Short term forecasts as identified within the recent Tourism Recovery Study dated August 2020, prepared by Tourism Research Australia and released by the Australian Government, regional centres are expected to recover first as part of the State's economic recovery from the COVID-19 pandemic as a result of increased domestic visitation as well as families moving away from metropolitan areas.

The proponent has been engaging with key stakeholders including Port Stephens Council, the local community and the Project Architect regarding the potential to enhance the current approved Concept Plan scheme to accommodate the rise of regional tourism within NSW and additional demand for quality accommodation in the Port Stephens Region following the continued internal travel ban as well as the recent lifting of COVID-19 travel restrictions across NSW and other states within Australia.

8.3. Environmental Impacts

The key environmental impacts from the proposal are discussed in depth in Section 10 of this report. Section 10 of this report provides a detailed response on the following:

- Aboriginal Cultural Heritage
- Visual Impact
- Height, bulk and scale
- Traffic and Parking
- Coastal Processes
- Site Contamination
- Coastal Processes
- Acid Sulphate Soils
- Bushfire
- Geotechnical
- Flooding
- Water Cycle Management
- Flora and Fauna
- Noise

8.4. Economic and Social Impacts

The social and economic benefits of the development were established in the original Concept Approval. The modified development will have a positive social and economic impact for the following reasons:

- Meeting the significant demand for high quality and large scale conference facilities in Port Stephens for the domestic corporate market including accommodation and leisure facilities.
- Support for continued growth and expansion in tourism, which is important to the local economy and a significant local and regional employer as well as consistent with the strategic direction for the area.
- Additional tourist accommodation will result in more full time and casual employment.
- Generate economic and employment opportunities during construction with multiplier effects on the local economy with increased trade in food outlets and hardware.
- Support the aging population and high proportion of retirees in the Port Stephens area that are seeking to downsize or relocate to high quality and secure apartment accommodation that requires minimal maintenance.
- Provide greater housing diversity and choice in Soldiers Point.

Consultation with the local community was undertaken during the preparation of documentation for the Concept Approval. The results of the community consultation demonstrated the community's support for the proposal and the desire for a world-class facility that provides business and recreation services for the community and contributes to the economic growth of the locality, particularly in light of the COVID-19 pandemic.

8.5. Consideration of Alternatives

The alternative of options for the redevelopment were considered as part of the original Concept Approval for the redevelopment of the site.

The development is substantially the same building design, with changes primarily required due to the geotechnical constraints resulting in the relocation of the car park and the increase in building heights required for compliance with relevant BCA and Australian Standards. The change to permanent residential accommodation on the north-western side of the site is compatible with surrounding residential land uses, the residential zone and will not alter the essence of the mixed use development.

No further alternatives are required to be considered.

9. CONSULTATION

9.1. Port Stephens Council

On 8 October 2021, a meeting with Port Stephens Council (Council) Planning Officers including Senior Management was held to present the proposed modifications and canvas key planning considerations. A record of this meeting is held at **Appendix K**. Council Officers were provided with a copy of the proposed modified concept plans and a Site Analysis and Visual Impact Report prepared by DJRD Architects dated October 2021.

During the meeting Council Officers confirmed the relevant planning matters and environmental considerations that have been addressed within this Report. Each consideration as well as a response is provided within **Table 3** below:

Table 3: Port Stephens Council Comments

Council comment	Response
Visual Impact. <i>The appearance of buildings from the waterfront and public areas including Wanda Wanda headland, Shoal Bay and the jetty along the waterfront. Height, bulk and scale will be key considerations. Visual impact is unlikely to be a critical issue given that the updated visual analysis is demonstrating that the modified built form is less visible from the public domain.</i>	<p>These key vantage points were identified within the Visual Impact Report approved as part of the original Concept Plan Approval and are addressed in the updated Report which reveals that the development will be less visually prominent from the public domain.</p> <p>Further, the updated images indicate that the existing canopy height of the surrounding bushland extends above the height of the development when viewed from the majority of the vantage points. In some cases, the development will be completely concealed. On this basis, the modified Concept Plan continues to provide a positive visual impact.</p>
Traffic and Access. <i>An updated Traffic and Car Parking report will be required to demonstrate that the modified Concept Plan can be appropriately integrated within the local area in terms of the road network surrounding the site.</i>	<p>A Traffic and Car Parking Assessment Letter has been prepared by TTPA to support the proposed modification that addresses DCP 2014 car parking rates.</p> <p>Based on the nature of the proposal, the modified Concept Plan complies with the relevant Council car parking rates and the Statement confirms that the proposed modifications will not result in any adverse or significant changes with respect to the expected car parking demand and overall number of trips generated by the approved development.</p>
Ecological Values of the site. <i>Ensure that any ecological values of the site are appropriately managed and preserved including any significant vegetation.</i>	<p>There is potential for threatened orchid species to occur on the site and therefore the approved Concept Plan was assessed by Heritage NSW (former Office of Environment and Heritage) and as result, it was recommended that the site is surveyed prior to the commencement of works on the site.</p> <p>A supplementary Flora and Fauna Statement has been prepared to support the modification application.</p> <p>Based on the revised flora and fauna statement, it has been demonstrated that the proposal will not cause any further impact to the potential location of threatened species identified in close proximity to the site on the basis that the siting of the building envelopes remaining generally consistent.</p>

9.2. NSW Department of Planning, Industry and Environment

On 2 November 2021, a meeting was held with the Department of Planning Industry and Environment (the Department) representatives including Emma Butcher, Senior Planner - Regional Assessments, Louise Starkey, Manager and Kieran Thomas, Direct and Hayley Tasdarian, Associate Planner and Lisa Bella Esposito, Director at Milestone. The meeting was held to discuss the preliminary documentation sent to the Department on 20 October 2021 via email correspondence to Emma Butcher.

The meeting identified the key issues to be addressed as part of the submission of the S75W Modification Application to modify the Concept Approval. The issues identified from email correspondence from Emma Butcher dated 8 November 2021 are as follows along with how the application addresses these concerns.

- *A copy of the advice advising that the Concept Plan approval has not lapsed.*

Legal Advice was prepared by Addisons Lawyers on 10 July 2018 and 10 August 2018 to address the potential lapsing of the Concept Approval and the subsequent Development Consent that was approved by Port Stephens Council in 2017. The legal advice concluded that the Concept Approval consent had not lapsed and demolition had begun on the site. The second legal advice prepared on 10 August 2018 addressed the Development Consent approved in 2017 and its relationship to the Concept Approval.

Both Legal Advice Letters have been submitted as supporting documentation for this modification Application (**Appendix L**).

- *Justification that the proposal is substantially the same as the approved project, particularly focusing on the removal of the 'serviced apartments' use.*

The proposed modifications to the development will continue to deliver a development of a mixed use character that was approved in the Concept Approval. The development will continue to incorporate a mix of tourist and visitor accommodation and permanent residential apartments, as well as ancillary land uses of conference facilities and a restaurant/café. The development will be consistent with the building locations and building envelopes with the overall development only resulting in a maximum increase in height of 600mm to the overall development.

Concept Plan modifications under Section 75W are required to be consistent with Clause 3BA(5) of Schedule 2 of the EP&A (Savings, Transitional and Other Provisions) Regulation 2017, as follows:

(5) A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that—

- (a) the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- (b) the proposed modification is of minimal environmental impact, or*
- (c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

The modified development will utilise the provisions of Clause 3BA(5)(b), as the proposed modification will be of minimal environmental impact. The minimal environmental impact of the development, and the modified development's compliance with Clause 3BA(5) is addressed in further detail in Section 7.2 of this report.

- *Application and technical reports to consider updated legislation and guidelines such as Planning for Bushfire Protection 2019, Biodiversity Conservation Act 2016, State Environmental Planning Policy (Coastal Management) 2018*

The modified Concept Approval Application is supported by the following revised documentation:

- Modified Concept Plans prepared by DJRD Architects dated 18 November 2021 (**Appendix A**);
- Site Analysis and Visual Impact Report prepared by DJRD Architects dated November 2021 (**Appendix C**);
- State Environmental Planning Policy No. 65 Statement prepared by DJRD Architects dated November 2021 (**Appendix D**);
- Bushfire Compliance Report prepared by BEMC dated 17 November 2021 (**Appendix E**);
- Traffic and Car Parking Assessment prepared by Transport and Traffic Planning Associates dated 13 November 2021 (**Appendix F**);
- Flora and Fauna Statement prepared by Eco Logical Australia Pty Ltd (Eco Logical) dated 19 November 2021 (**Appendix G**); and
- Water Management, Flooding and Coastal Processes Statement prepared by Advisian dated 19 November 2021 (**Appendix H**).

- *Visual impacts associated with changed building layout and height.*

The modification of the Concept Approval is supported by a revised Site Analysis and Visual Impact Report prepared by DJRD Architects dated November 2021. The Report is based on the originally prepared Site Analysis and Visual Impact Report prepared in July 2010.

The modified development results in an increase in building height of 600mm from the previous approval as outlined in Section 5 of this report. The modified development will have negligible impact in terms of additional bulk and scale and visual impact. The visual appearance of the buildings from Soldiers Point Road will be improved through the retention of the eastern (front) setbacks, the reduced building height for the building envelopes front Soldiers Point Road (Building F and G) and additional mature tree planting to integrate with the existing vegetation surrounding the site.

- *Traffic and parking to consider changed layout and uses.*

The modified development is supported by a Traffic and Parking Assessment Letter prepared by TTPA dated 13 November 2021. The modified development proposes a total of 310 car parking spaces which is compliant with DCP 2014's parking controls. The development will result in a large amount of shared trips to utilise one or more of the facilities on the site. For example, occupants using the hotel will also utilise the restaurant/café on site, reducing the number of car parking spaces and the generation of vehicular traffic to the site.

The meeting with the Department did not result in the issuing of environmental assessment requirements that must be complied with before the application will be considered by the Minister.

9.3. Local Community and Community Groups

In preparation for the submission of the original Concept Application, the applicant held an information night with members of the local community. This information night allowed members of the public to understand the proposed development and raise any concerns. The concerns raised related to potential traffic and acoustic issues. However, the overall response from the local community was positive and all those that attended the evening were supportive of the development.

The proposed modifications retain a mixed use development for residential and tourist purposes and are considered to be of minimal impact and generally consistent with the approved outcomes that were discussed with the community.

The modified development will be publicly notified in accordance with the Department's requirements and all submissions from members of the public will be considered and responded to where necessary. All submissions received during the modification of the Concept Approval will be considered as part of the subsequent Development Application.

10. KEY ISSUES

10.1. Director General's Environmental Assessment Requirements

This section of the report assesses and responds to the environmental impacts of the modified Concept Plan and the key potential issues. It addresses the matters for consideration set out in the Director General's Environmental Assessment Requirements. The modified draft Statement of Commitments supports the findings of this section and is found in Section 11 of this report.

10.2. Strategic Planning

Section 6 of this Environmental Assessment addresses strategic and statutory planning matters that are relevant to the proposal and the locality. These include the Hunter Regional Plan 2036 and the Lower Hunter Regional Strategy.

This report adequately addresses relevant matters and continues to demonstrate consistency with these strategic strategies.

10.3. Height, Bulk and Scale

The proposed modifications are limited to a minor increase of the maximum ridge height of the approved Concept Plan (Building H) and a slight reorientation and widening of all building envelopes, whilst retaining the approved number of buildings, the total GFA, FSR and residential and tourist land uses. The modification of building height incorporates an alteration to the maximum building height by 600mm.

The purpose of the reorientation of the building envelopes is to maximise the northerly aspect of the site to improve solar access for the residential units and hotel rooms as well as maximise views to the water.

The increased canopy height of the mature trees surrounding the site contributes to mitigating the bulk and scale of the development and conceals the development from view in a number of places.

Based on the minor nature of the proposed height increase being 600mm and the current vegetation conditions of the site, no additional overshadowing impacts are caused by the modified Concept Plan.

10.3.1 Streetscape Presentation to Soldiers Point Road

The development will provide a balanced built form along the street edge of the site and as a result, improve the transition of scale between the approved building envelopes and surrounding development. This is achieved through the retention of the eastern (front) building setbacks, the reduced building height of the building envelopes fronting Soldiers Point Road (Building F and G) and additional mature tree planting to integrate with the existing vegetation surrounding the site.

In addition to the increased canopy height of the surrounding bushland within the adjoining reserve, the existing landscaping located within the front setback along Soldiers Point Road has also matured. As a result, the modified development will be less visually prominent within the streetscape and therefore minimise the overall visual impact compared to the original scheme.

Whilst it is acknowledged that the modified concept Plan will result in a slight increase of building height to Building H, this building is located within the southeast portion of the site, the lowest point of the site, and therefore does not have frontage to Soldiers Point Road and is adequately screened by the surrounding vegetation. On this basis, the modified height of the overall modified Concept Plan will not cause any additional visual bulk within the existing streetscape.

10.4. Visual Impacts

Much of the development currently located on the site is obscured from view due to the gradient of the land from Soldiers Point Road to the east towards the adjoining reserve. The remaining buildings are concealed by the existing vegetation within the reserve along the sites eastern and southern boundaries. Further, there are existing mature trees located to the north and northeast which adequately screens the site.

Whilst it is acknowledged that the replanning has resulted in revised floorplates and the building envelopes will slightly increase, the overall perceived scale of the modified Concept Plan is substantially reduced in comparison to the approved scheme and will continue to provide a positive streetscape presentation as well as minimise visual impact of the development.

More importantly, the proposed modifications significantly minimise the visual impacts of the approved Concept Plan given that the canopy height of the surrounding vegetation located within the adjoining Council reserve has increased and provides an increased landscape buffer. An updated Site Analysis and Visual Impact Report prepared by DJRD Architect dated November 2021 is submitted with this submission which demonstrates the increased canopy height of the adjoining vegetation extends above the proposed building height. The comparison images are provided within the Site Analysis and Visual Impact Report contained in **Appendix C**. The Site Analysis and Visual Impact Report prepared by DJRD Architects concludes the following in regard to the proposed modification:

"From all the viewpoints, the tree height and density has increase from 2010 to 2021. The Part 3A modification envelope is effectively the same as the approved 2010 scheme. There will be NO additional visual impact resulting from the proposed modifications to the approved master plan."

As a result of the increased canopy height, and the proposed reduction of the overall scale of the development, the modified Concept Plan will not cause any additional visual bulk impacts when viewed from the public domain and will be of minimal visual impact. In summary, the proposed modified will not create any additional or new adverse environmental or visual impacts.

10.5. Aboriginal Cultural Heritage

An Aboriginal Cultural Heritage Assessment was submitted and approved as part of the original Concept Plan Approval which concludes the site has been subject to significant disturbance including site clearing and construction as a result of the establishment of the existing hotel building currently located on the site in 1969. Accordingly, the original Concept Plan was approved on the basis that the site has been assessed to have 'low archaeological significance'.

Additionally, Milestone has undertaken a due diligence assessment via the Aboriginal Heritage Information Management System (AHIMS) Web Services (AWS) Search Result Record, Client Service ID No. 639502, dated 17 November 2021 (**Appendix M**). Based on this search, Milestone confirm that no Aboriginal sites have been recorded and no Aboriginal places have been declared within a 200m buffer area of No. 147 Soldiers Point Road, Soldiers Point.

Reference is made to the Aboriginal Cultural Heritage Assessment prepped by Dominic Steele Consulting Archaeology dated December 2008 which was submitted with the original Concept Plan and Project Plan. This report concluded that the site contains no currently identified Aboriginal sites or objects, as identified by the search held at **Appendix M**. It further stated that the Salamander Shores Hotel redevelopment project was unlikely to have an adverse impact upon the Aboriginal cultural heritage values of the land at that time. It is anticipated that the proposed modification to Concept Plan Approval No. MP06_0183 will not require further archaeological work to be undertaken prior to the commencement of the redevelopment of this site resulting from the Minister's approval of this application.

Notwithstanding, we note that the site falls within the administrative boundaries of the Worimi Local Aboriginal Land Council (WLALC), who were documented to have been extensively consulted along with Mur-Roo-Ma Incorporated and Nur-Run-Gee Pty Ltd at the time of preparing the Aboriginal Cultural Heritage Assessment dated December 2008.

10.6. Traffic, Access and Parking

A supporting Traffic and Parking Letter has been prepared by Transport and Traffic Planning Associates (TTPA) to support the proposed modification to the Concept Approval. The letter concludes that the proposed modifications to the development, including the alteration of serviced apartments to permanent residential accommodation, will result in comparable traffic movements to and from the site and an increase in car parking required. The modified development provides an additional 25 car parking spaces and is compliant with the required car parking provisions in DCP 2014. Based on the nature of the proposal in its current form, the revised traffic analysis confirms that the proposed modifications will not result in any

adverse or significant changes with respect to the expected car parking demand and overall number of trips generated by the approved development.

An updated Traffic and Car Parking Assessment Report will be prepared for the subsequent Development Application with current traffic data counts undertaken.

As outlined in Section 5 of this report, Future Environmental Assessment Requirement 2(a) is required to be amended to reflect the increase in parking provided on the site from the modified development.

10.7. Coastal Processes

Whilst it is acknowledged that the development has potential to impact the adjacent marine environment, through the potential increase in sedimentation, erosion and stormwater discharge, the impacts associated with the original Concept Plan Approval are minimal given that the site comprises an existing elevated outcrop of high strength volcanic rock. Recent geotechnical investigation of the site has revealed that there has been no change to the strength of the elevated rock material and as such erosion and recession will not impact the site or constrain the proposed modified Concept Plan.

Given that these site conditions remain unchanged and based on the nature of the proposed modifications, the proposal will not cause any additional or new environmental impacts to the surrounding marine environment.

A Water Management, Flooding and Coastal Processes Statement was prepared by Advisian dated November 2021. Based on this updated assessment, it can be demonstrated that the conclusions of the original report in terms of the coastline hazard, hydrological, groundwater, water cycle management, and flooding considerations remain relevant and apply to the modified concept in context of current legislation requirements.

10.8. Contamination

An Environmental Site Assessment, Phase 1 and Phase 2 Site Assessment (March 2009 and April 2010) was completed by Coffey Environments Pty Ltd as part of the original Concept Approval. This assessment concluded that 'the likelihood for significant contamination to be present at the site is considered to be low, and further investigations (including management or remediation) are not required'.

The Hazardous Materials Survey, however, did identify potentially hazardous materials such as refrigerants but no high risk asbestos containing materials. The management practices outlined in the assessment will be followed and suitably qualified contractors will be employed delivering demolition works as part of the Project Approval.

10.9. Acid Sulphate Soils

The site is identified as containing Class 4 and Class 5 Acid Sulphate Soils pursuant to LEP 2014. A Geotechnical Assessment was prepared by Coffey Geotechnics as part of the original Concept Approval and identified that an Acid Sulphate Soils Management Plan would not be required for the project.

An updated Geotechnical Report that addresses the relevant criteria for Acid Sulphate Soils will be prepared to accompany the subsequent Development Application.

10.10. Bushfire

The site was previously identified as bushfire prone land under LEP 2007. The updated Port Stephens Bushfire Prone Land Map 2021 does not identify the site as bushfire prone land. Nevertheless, as the site was previously identified as bushfire prone land, a Bushfire Compliance Report has been prepared by BEMC to support the proposed modification to the Concept Approval.

The previously approved bushfire protection arrangements required an Asset Protection Zone (APZ) located along the western boundary of the site immediately adjoining the existing Council reserve, this will remain unchanged as part of the proposed modifications.

Condition 13(c) of Notice of Determination of MP06_0183 is proposed to be removed as part of the modification of the Concept Approval. The condition relates to an internal perimeter access road for emergency vehicles. The original Concept Plan did not include an internal perimeter access road and as the site is no longer bushfire prone land, NSW Fire Brigade emergency vehicle access is not required.

The modified development does not result in any adverse impacts to bushfire protection and the development will continue to comply with all relevant bushfire planning requirements.

10.11. Geotechnical

A Geotechnical Assessment was undertaken by Coffey Geotechnics as part of the original Concept Approval. This report concluded that the site has an overall low risk of site instability. However, the report also identified a significant geotechnical constraint of volcanic rock (rhyodacite) in the south-eastern corner of the site. The south eastern corner of the site was proposed to be heavily excavated for the basement car parking for the proposed development. On closer examination, the extent of the excavation would carry a high environmental cost and a less disruptive strategy is now proposed through the relocation of the basement car park to remove the need to excavate high strength rock.

The modified development will result in the reduction of excavation that would require heavily plant equipment and has an overall positive impact through the relocation of the basement car parking to a more suitable location on the site.

10.12. Flooding

Given that the site conditions have not changed since the time of approval, the location of the site remains well above the 100-year flood level and is not identified as flood prone land pursuant to LEP 2014, and therefore there are no impacts on the site as a result of overland flow paths traversing either through or around the site. Further, the approved siting of buildings will remain unchanged as part of the proposed modifications nor does the proposal involve any significant filling on the land. Therefore, the modified Concept Plan is unlikely to impact flood levels both within the site and surrounding properties.

Despite this, the flooding considerations of the proposed modifications are also addressed within the Water Management, Flooding and Coastal Processes Statement prepared by Advisian. The report concludes that the proposed modifications will have no further impact on the site in regard to flooding.

10.13. Water Cycle Management

The original Concept Approval was supported by a Water and Coastal Engineering Report prepared by Worley Parsons. A subsequent Water Management, Flooding and Coastal Processes Statement has been prepared by Advisian to address the proposed modification.

The report concludes the following in regard to Water Cycle Management:

"The 2010 WorleyParsons Report adopted Integrated Water Cycle Management (IWCM) principles across the site to ensure no negative impact, in regards to stormwater runoff, water quality and quantity, and wastewater. These principles include a reduction in potable water consumption, utilisation of rainwater, minimising impacts on downstream receiving waters and safe conveyance of stormwater.

The DCP echoes the IWCM principles to ensure development does not detrimentally impact on water quality in addition to setting requirements of water quality modelling, such as through model for urban stormwater improvement conceptualisation (MUSIC) and subsequent water sensitive urban design (WSUD) measures and stormwater quality improvement devices (SQIDs). For the 2010 report, WorleyParsons conducted MUSIC modelling and prepared WSUD strategies for the site, meeting this requirement as shown in the following sections."

The Water Management, Flooding and Coastal Engineering Statement prepared by Advisian confirms the modified development will not result in any adverse impact to water management and coastal processes for the site and continues to be acceptable.

10.14. Flora and Fauna

A Flora and Fauna Assessment was submitted and approved as part of the original Concept Plan Approval and subsequent further comment was prepared on 19 November 2021 by Eco Logical Australia for the modified development. The modified development results in the removal of 28 trees from the site as a result of the development. The Report concludes that the redevelopment of the site is likely to result in the removal of only four native trees, which represents less than 0.02 hectares of significant clearing. Due to the small amount of clearing proposed, the report recommends that a Biodiversity Development Assessment Report (BDAR) waiver be submitted in accordance with the Biodiversity Conservation Act.

The removal of native vegetation requires consideration under the NSW *Biodiversity Conservation Act 2016* (BC Act). ELA requires further clarification of the assessment pathway under the NSW *Environmental Planning & Assessment Act 1979* (EP&A Act) to determine whether a Biodiversity Development Assessment Report or application for a waiver under section 7.9 of the BC Act is required or a Flora and Fauna Assessment will be required.

A BDAR or Waiver for Flora and Fauna and will be completed prior as part of any future application.

Threatened Species

There is potential for threatened orchid species to occur on the site and therefore the approved Concept Plan was assessed by Heritage NSW (former Office of Environment and Heritage) and as result, it was recommended that the site is surveyed prior to the commencement of works on the site.

Based on the revised flora and fauna assessment, it has been revealed that the proposed modification will not cause any further impact to the potential location of threatened species identified in close proximity to the site on the basis that the siting of the building envelopes remain unchanged.

Additional surveys are required to determine whether any of the existing structures to be demolished are used as habitat for threatened species.

10.15. Noise

An Acoustic Impact Assessment was prepared by Wilkinson Murray was submitted as supporting documentation for the original Concept Approval. The report assessed the background noise levels of the traffic travelling on Soldiers Point Road at various times of the day. The report concluded that the existing background noise levels did not exceed current external noise regulations.

In regard to the ongoing use of the site, the modified development includes additional permanent residential apartments to replace serviced apartments used by tourists and visitors. The inclusion of additional permanent residential apartments will result in a reduction in noise levels from the use of the site through less vehicular traffic movements and permanent residential accommodation generally contributing to less acoustic impacts than short term accommodation. Further acoustic testing and consideration of the proposed mixed use development will be undertaken for the subsequent Development Application.

11. DRAFT STATEMENT OF COMMITMENTS

The Environmental Assessment prepared by SAKE Developments provided draft Statements of Commitments as part of the proposal in accordance with the Director General's Environmental Assessment Requirements and to address the environmental management and mitigation measures on the site.

The modified development does not propose to alter the draft Statement of Commitments provided in the Environmental Assessment Report prepared by SAKE Developments. Notwithstanding, the draft Statement of Commitments requiring updating to reference the newly prepared and revised documentation that has been submitted as part of this modification application to modify the Concept Approval.

The draft Statement of Commitments previously prepared is outlined below, with the changes shown in red. Additionally, the Department may need to update any outdated Australian Standards and repealed documentation.

The applicant undertakes to carry out the development in accordance with the commitments given below.

GENERAL

A. The proponent will undertake the development in accordance with the Environmental Assessment report prepared by SAKE Development Pty Ltd dated September 2010 and the Environmental Assessment report prepared by Milestone (AUST) Pty Limited dated November 2021 including:

- Concept Plan Application drawings (~~SK-01 SK099~~ to SK-107 dated ~~1 July 2010~~ 18 November 2021), landscape plan (SK-L01 dated ~~7 July 2010~~ 18 November 2021) and sections/elevations (SK-201, SK-202, SK-251 dated ~~1 July 2010~~ 18 November 2021) prepared by Daryl Jackson Robin Dyke Architects Pty Ltd, provided under separate cover;*
- Stormwater Concept plan in the Water and Coastal Engineering Report prepared by Worley Parsons (September 2010) and the Addendum to this report prepared by Advisian and dated November 2021.*
- This Statement of Commitments.*

FLORA AND FAUNA

B. Planting of additional koala feed trees and winter flowering eucalyptus trees such as Swamp Mahogany and Forest Red Gum will be undertaken to ensure that connectivity with surrounding bushland continues for the local koala population.

C. Any pool fencing is to be designed to exclude koalas from the pool enclosure.

D. Fencing around the proposed development is not recommended, however if fences are necessary a gap at the base of the fence that allows for koala passage (ie 30-40cm) should be provided.

E. Emergent trees are to be retained wherever possible.

F. Where possible, native eucalyptus trees including any hollow bearing trees should be retained. Where this is not possible, a suitably trained ecologist should inspect hollows prior to tree felling and be available during tree felling.

WATER CYCLE MANAGEMENT AND CLIMATE CHANGE

G. Water quality control measures will be designed and installed in accordance with the recommendations of the Water and Coastal Engineering Report prepared by Worley Parsons (September) and the Addendum to this report prepared by Advisian and dated November 2021. Specific measures to be undertaken include, but are not limited to, the provision of rainwater tanks either centrally located on the site or dispersed amongst the buildings as shown on the Stormwater Concept Plan.

FIRE MANAGEMENT

H. Asset protection zoned will be provided in accordance with the Bushfire Protection Assessment prepared by Ecological Australia dated June 2010 and the Bushfire Compliance Report prepared by Bushfire Environmental Management Consultancy dated 17 November 2021 including the implementation of an APZ Maintenance Plan which includes requirements in relation to landscaping, tree management and maintenance of ground fuel.

I. Provision of reticulated water using a hydrant system with hydrant spacing, sizing and pressures to comply with AS 2419.1 - 2005.

J. Appropriate installation, location and maintenance of electricity and gas services.

K. Access and egress via looped driveways linked to Soldiers Point Road, as well as perimeter access incorporated into the 10m wide APZ which is to be a minimum of 4m wide and able to support a Category 1 fire fighting vehicle.

CULTURAL HERITAGE

L. If any artefacts or sites relating to Aboriginal heritage are uncovered during site works, all work should temporarily cease and the NSW Department of Environment and Climate Change will be contacted to advise on what action must occur prior to recommencing works.

M. All site contractors will be briefed prior to the commencement of future works about the statutory responsibilities and obligations concerning Aboriginal cultural heritage according to the National Parks and Wildlife Act 1974. Aboriginal community organisations should also be given the opportunity to brief the proponents, site managers, and site contractors prior to the commencement of works.

N. It is considered unlikely that human burials are present on the site, however should human skeletal remains be exposed, works must cease immediately and the Department of Environment and Climate Change and Aboriginal organisations will need to be contacted to determine the appropriate course of action.

TRAFFIC AND ACCESS

O. Traffic and parking arrangements are to be consistent with the requirements of the Traffic, Transport and Parking Implications report prepared by TTPA and the Traffic and Car Parking Assessment prepared by Transport and Traffic Planning Associates dated 13 November 2021 including but not limited to:

Designing the accesses to comply with the requirements of AS 2890.1 and 2.
Provide the required number of spaces for disabled drivers.

ACOUSTICS

P. 6mm float glass is to be used for glazing in the permanent residential accommodation (Building H)

SUSTAINABILITY

Q. Adequate levels of wall and roof insulation and high efficiency performance glazing are to be used in future buildings.

R. Use of smart electrical metering and compact fluorescent or LED lighting throughout the hotel buildings including serviced apartments.

S. Use of low water consumption plant species in landscape areas.

T. Rain water harvesting for landscaping and flushing including storage of between 20 - 50kL of rainwater in centralised or dispersed rainwater tanks throughout the site. The number and size of rainwater tanks will be determined in future applications.

U. Use of water saving devices such as AAA rated tap wear and dual flush toilets.

DEMOLITION AND CONSTRUCTION MANAGEMENT

V. Demolition and removal of materials will occur in accordance with the requirements of the hazardous materials survey prepared by Coffey Environments dated March 2009. Works will occur in accordance with the legislative requirements of the National Occupational Health and Safety Commission Code of Practice for the Management and Control of Asbestos in Workplaces and other relevant legislation.

W. In relation to any obligations under other Acts, the proponent will ensure that all licences, permits and approvals are obtained as required throughout demolition works.

X. All construction works associated with the demolition of the existing hotel will be undertaken in accordance with the Soil and Water Management Plan prepared by Worley Parsons dated September 2010 provided within the Water and Coastal Engineering Report.

Y. Detailed Water and Soil Management Plan will be provided at future design phases of the hotel development and will accompany future development or project applications.

Z. Demolition will occur consistent with the Demolition Plan prepared by Daryl Jackson Robin Dyke Architects dated 16 July 2010 and the Demolition and Waste Management Plan dated July 2010 prepared by Daryl Jackson Robin Dyke architects.

AA. An on-site waste management plan will be developed in the future by the building contractor. This plan will address the recycling of construction waste materials and encourage the use of recyclable packaging for any materials sent to site and encourage the recycling of demolition debris.

12. CONCLUSION

The Environmental Assessment report is submitted to the Department of Planning, Industry and Environments under Section 75W of the Environmental Planning and Assessment Act 1979 to modify the approved Concept Approval No. MP06_0183 approved by the Department on 4 September 2011. Concept Approval No. MP06_0183 was approved by the Department for *“mixed use residential/tourist development”* at No. 147 Soldiers Point Road, Soldiers Point. The key purpose of the Section 75W Modification is to relocate the location of the basement car parking to ensure reduced environmental impact and to respond to the continued growth and expansion of Regional Tourism with NSW as well as the demand for residential units.

The revisions include relevant legislative and documentation updates in the terms of approval and statement of commitments respectively, and seek to provide clarity and certainty in the assessment and determination of the detailed Development Application that will be lodged in early 2022. Specifically, the application seeks to make modifications to the approved Concept Approval to remove the serviced apartments from the approved development, and incorporate permanent residential accommodation. The modifications to the built form relate primarily to the alteration of the location of the car park due to geotechnical constraints, and the minor increase to the maximum building height and footprints of the buildings, along with a number of other associated alterations.

The modified development will continue to provide long term social and economic benefits for the Port Stephens area including employment opportunities during construction and operation of the development, increase housing supply and diversity in choice, an upgraded tourist facility to encourage additional visits and associated commercial activity in the area and conference facilities to accommodate mixed business/tourist functions.

The modified development does not alter the essence of the approved Concept Plan as a mixed use residential/tourist development and continued results in an acceptable environmental impact. The revised Concept Plan includes supporting documentation from relevant consultants who have concluded that the proposed development will have acceptable impacts in regards to flora and fauna, coastal processes management, bushfire planning or traffic and parking management. On this basis, the Minister (or his delegate) can reasonably form the view that this modification request is within the scope and capable of being approved as a modification under Section 75W of the Act.

The revised development is subject to a new zoning pursuant to LEP 2013, being R3 Medium Density Residential. The modified development is consistent with the objectives of the zone and provides additional permanent residential accommodation, enhanced high-end tourist facilities and state of the art conference facilities.

The modified development has been discussed in length with Port Stephens Council and the Department of Planning, Industry and Environment and it is considered that the revised development will result in minimal environmental impact and meets the requirements of a Section 75W Modification under Part 3A of the Act.

The proposed modification to Concept Approval MP06_0183 will remove any ambiguity, ensure the detailed design is consistent with the Concept Approval, and allow the orderly assessment of the future development application which is intended to be lodged in early 2022.

Given the merits described within the comprehensive assessment it is requested the modified application be supported to enable the redevelopment of the and to progress without delay.

MILESTONE (AUST) PTY LIMITED