

Submission regarding DS22/1032 4 Murdoch Street, Huskisson

On behalf of Keep Jervis Bay Unspoilt

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Submission regarding DS22/1032. 4 Murdoch Street, Huskisson

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Brief Description of DS: Section 4.55(2) application to modify Development Consent DA10/1377 (as modified) – To make amendments to the external footprints of the buildings, internal configuration changes to both apartment buildings, and increase the unit numbers from 32 dwellings to 38 dwellings comprising eight (8) three-bedroom units and 30 two-bedroom units.

1. Introduction

Keep Jervis Bay Unspoilt's principle concern is the protection of the values that Jervis Bay is currently renowned for. These include natural, cultural, economic and social values. In this instance we are particularly concerned about the potential environmental damage to Moona Moona Creeks, as well as the impact on character of the area and current tourism. This modification increases our environmental concerns, and greatly increases concerns relating to the character and current cultural use.

Our key points are:

- The scale, bulk, aesthetics which dramatically clash with the natural and cultural values of Jervis Bay and Moona Moona Creek. The proposal is not visually sympathetic to the natural and cultural aspects of the site.
- The risks of the complex construction to the environmental integrity of the natural resources, both the waterway, the National Park and the Council Reserve immediately in front of the block.
- The local community believe that flood mapping is incorrect, and the coastal management mapping is incomplete.

Imposing such a large new tourism amenity in an area already struggling to cope with its increased popularity will result in significant increased costs to Council and ratepayers. Over the last 5-10 years the number of visitors to this particular reserve have increased exponentially. Car parking is inadequate and road congestion occurs around the entire area especially at the junction of Murdoch and Burrill Street. Illegal parking on Murdoch Street occurs every day by people with cars, boats and trailers. This development will create a far worse parking problem. We are not advocating greater infrastructure to support greater numbers of tourists – rather we are arguing for a recognition of Limits of Acceptable Change and responsible tourism.¹

KJBU has canvassed opinions from its supporters, has sought advice from experts and experienced locals. With this input, we have undertaken a detailed critique of the Purdon Planners' Statement of Environmental Effects in support of their modification to DA for 4 Murdoch St. The critique is in the order it was presented, several of the relevant planning policies duplicate assessment criteria and our critique has tried to avoid duplication by referencing earlier paragraphs. Page numbers from Purdon's Statement of Effects are included for your convenience.

¹ <https://responsibletourismpartnership.org/limits-of-acceptable-change/>

2. Background and Rational, Purdon p 2²

We find this heading misleading as the information provided does not describe the background or rational for the amendment. We are very keen to know what led to this modification application and why the Bulum Group have decided to request the particular modifications being sought?

3. Existing Conditions, Purdon p 6

Access

Murdoch Street is described as bitumen sealed and ending in a cul-de-sac; this is an **error** as the road is not bitumen sealed around the cul-de-sac, nor is it sealed for the full distance of the frontage of the site. The bitumen is in poor condition requiring major roadworks.

Vegetation - Terrestrial biodiversity

To be discussed later in the report section 7h.

Bushfire

According to Council advice given by email 5/5/2021 "Were the application to be amended a new assessment of the bushfire assessment may be required and would be assessed by Council and the NSW RFS under s4.55 of the EP&A Act."

Notations on Councils DA Tracking site for DS22/1032 suggest that a new referral has been sent to the RFS for comment. However, at the time of writing our submission no report from NSW RFS was available to be viewed. We assume that the report will be assessed prior to any determination by Council on this application. KJBU request the opportunity to view the RFS referral response.

Site Location, P 8

It is an **error** to say that the southeast corner of the site is 33m from the bank of Moona Moona Creek; **the entire front boundary** of 4 Murdoch Street runs parallel with Moona Moona Creek, at a distance of 33m.

4. Commonwealth Planning Context, Purdon p 9

We **contest** that there are no Listed Threatened Species on the site.

Gang Gangs attempted to nest on this site in September 2021. They were harassed by the contractors employed to undertake clearing and vacated their hollow. The contractors climbed the tree they wanted to nest in and looked into the hollows, despite the fact that the tree was NOT scheduled for removal. A full report was sent to the Council CEO but no written reply to the email has been received (see Attachment 1 - copy of emails). However, the Council's Environmental Assessment staff did respond to an emergency call and stopped work at the site. A full report with photographic evidence of this event is available. Several other breaches of the Consolidated Consent 2018 are described in this report.

The Gang Gang Cockatoo is now listed as Endangered under Commonwealth Threatened Species listing, and therefore the owner has a responsibility to refer this project for assessment under the EPBC Act because of this modification application.

Gang Gangs are not the only threatened species in the vicinity of the site. A comprehensive report by KJBU was sent to the Federal Government, Department of Agriculture, Water and Environment,

² Page numbers refer to location in the Purdon report.

in December 2021 asking for their advice and intervention. See Attachment 2 for a copy of original email as well as their email reply. Please consider that in December the Gang Gang status was under assessment. It has since been listed as Endangered by the Commonwealth Government.

5. State Planning Context

EP&A Act matters for Consideration Table 2, p Purdon 11

KJBU has no argument that the footprint of the modification has not changed in any significant way. We also acknowledge that there are improvements to the sustainability of the build. Changing from gas to solar and electric, rainwater harvesting, and improving passive solar abilities are all improvements. In 2022, however, these changes are no more than would be expected of any build. We are extremely pleased with the opportunity to update this construction methodology to modern standards because of the modification application process. We assume that any improvements to increased sustainability will be considered favourably.

We do have serious concerns about the design which we refer to in sections 6d and 6e.

We are also pleased to see NSW agencies, RFS, Natural Resources Access Regulator and NSW Water are all being consulted regarding the modifications. Since referral responses are not yet available, we would like to reserve the right to respond after they are received.

6. State Environment Planning Policies, Purdon p12-13

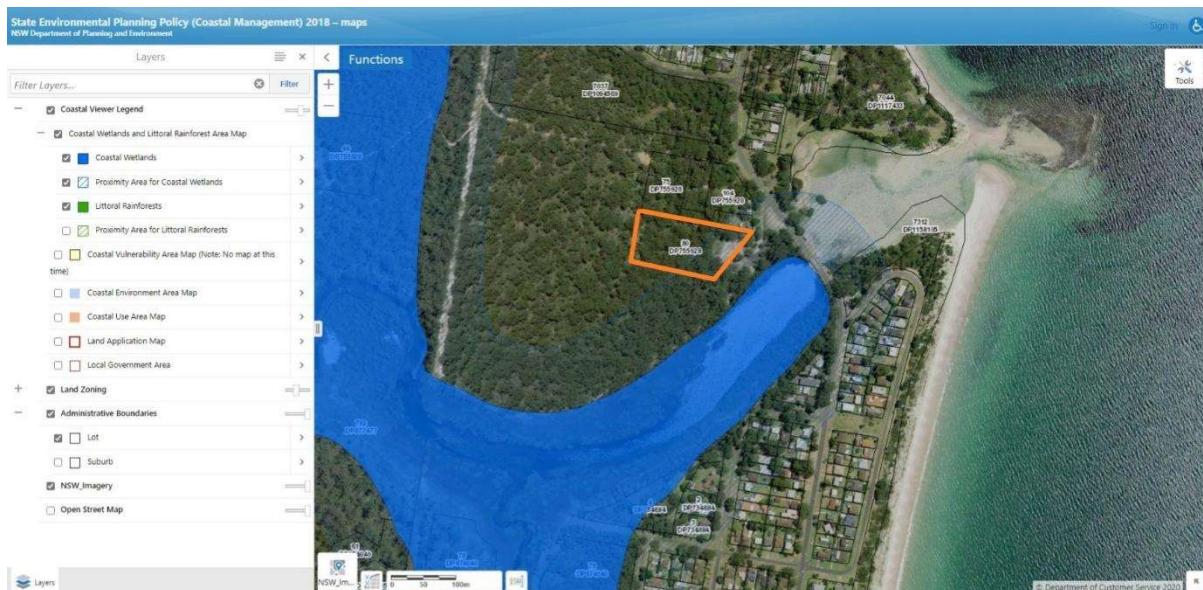
a. SEPP BASIX 2004

We note that the BASIX has resulted in an acceptable result

b. SEPP Coastal Management 2018

i. Coastal Wetland and Proximity Area for Coastal Wetland

The site is clearly located within the Proximity Area for Coastal Wetlands, as defined by the 'hatched area' in The Coastal Wetlands and Littoral Rainforests Area Map in the Figure below. Whilst the development is not located on the Coastal Wetland Area (marked in solid blue), increased activity during and following habitation of the development has the potential to cause significant damage to this Area.



Source: [NSW Coastal Management State Environmental Planning Policy Maps](#)

State Environmental Planning Policy- SEPP- (Coastal Management) 2018 states:

Part 2 Division 1 Coastal wetlands and littoral rainforests area

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—*
- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

The proponent is yet to present any evidence that the development will not significantly impact:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Areas and modifications including the grading carpark, scale of the build and drainage needs to be assessed as such.

ii. Coastal Vulnerability Area

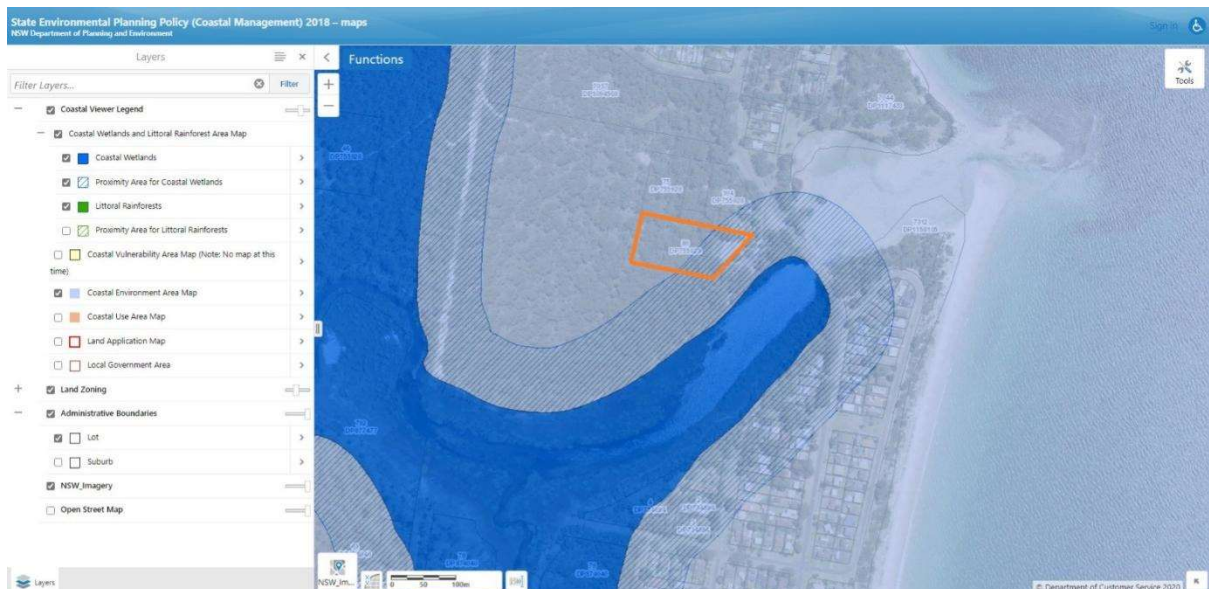
The department mapping tool **has not yet mapped Coastal Vulnerability Areas**. It is an **error** to say that the site 'is not located within the coastal vulnerability area'.

Of great interest, the State Department is promoting that Vulnerable Area mapping exercises can be undertaken by individual Councils where it would be advantageous to do so and have devised a guide to do so. **KJBU requests that the Shoalhaven undertake this exercise and that no further developments or modifications be approved until this mapping has been done.**

To approve developments and their modifications without adequate knowledge of their vulnerability, when this science is available, might be considered negligent. It is necessary to understand vulnerability both for the development and future owners, as well as the watercourse of Moona Moona Creek, and Jervis Bay.

iii. Coastal Environment Area

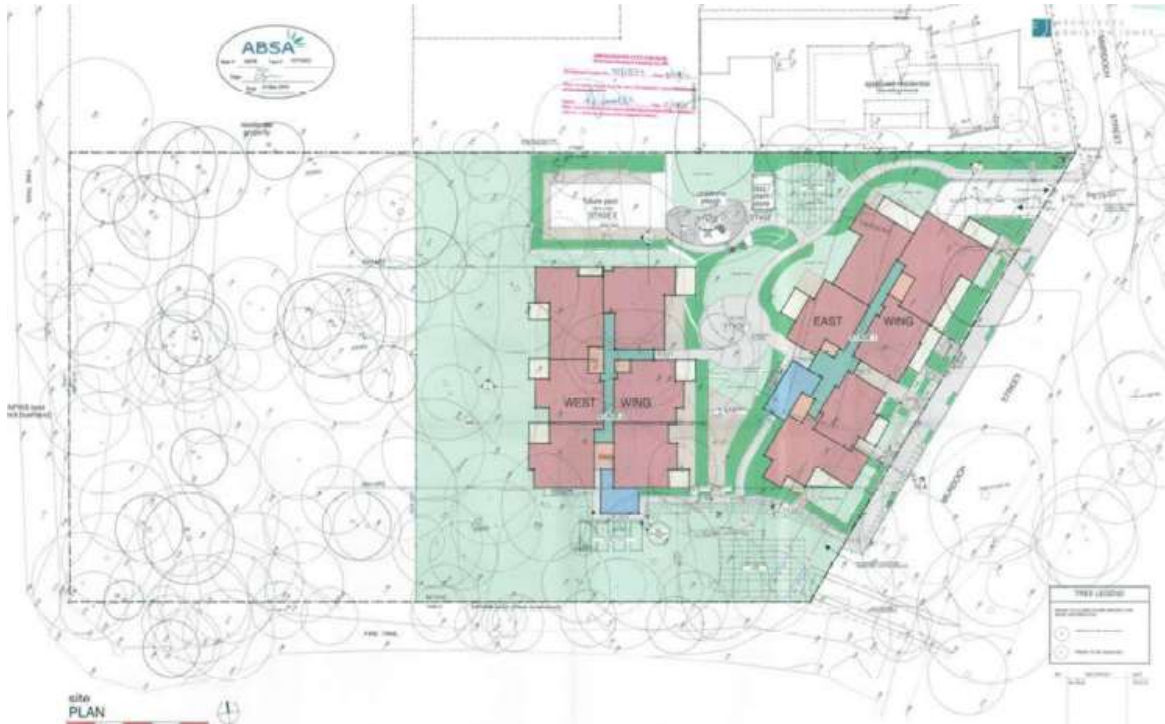
The State Environmental Planning Policy (Coastal Management) 2018 is relevant for this development as it is located within the *Coastal Environment Area Map* (Purdon Planning pg.13).



Source: [NSW Coastal Management State Environmental Planning Policy Maps](#)

Purdon Planning claims that “the adverse impact in terms of coastal environment area will be minimal and will not be significantly different from the previous design” (pg.13). The argument for the former is that “the footprint of the development has been resolved through consideration and balancing the ecological constraints” as “the building only sits on a portion of the land with the majority of the site to be retained as native vegetation”.

The site plan from the 2020 Vegetation Management Plan indicates that **the majority of the site will be cleared with a portion retained as native vegetation**, but not the majority retained as native vegetation (see Figure below).



Vegetation Management Plan 2020 p. 6

The legislative management objectives for the Coastal Environment Area are:

- (a) to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,
- (b) to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,
- (c) to maintain and improve water quality and estuary health,
- (d) to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,
- (e) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,
- (f) to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.

KJBU **questions Purdon's interpretation** and argues that "minimal" is not good enough. Indeed, what is the definition of "significantly different"?

The development and its modification should have NO adverse effect on objectives a), b), c) and d) above.

We argue that the development is dangerously close to the creek and that accessing the block to excavate with heavy earth moving equipment, bringing cranes on site to haul the concrete walls, and bringing in tons and tons of building materials will undoubtedly cause damage to the riparian zone, and destabilise the creek embankment.

The road upgrade will require similar heavy machinery as close as 10-15m to creek and mangrove beds.

We argue that the car, boat and trailer parking is inadequate and will result in street parking and encroachment on the public reserve and Coastal Wetland. Accessing the creek through the reserve will be irresistible to residents taking boats, kayaks, paddle boards etc to launch in the creek. Illegal fishing, or shell collection will very likely increase and be impossible to police. These activities are harmful to the mangrove habitat and will impact on Moona Moona Creek and Jervis Bay Marine Park.

Moona Moona Creek is classified as TYPE 1 – Highly Sensitive Key Fish Habitat and CLASS 1 – Major Fish Habitat. CLASS 1 habitats are marine or estuarine waterway or permanently flowing or flooded freshwater waterway (e.g. river or major creek), habitat of a threatened or protected fish species or ‘critical habitat’.

c. [Vegetation in Non-Rural Areas 2017, Purdon p 13](#)

Planners state this modification will result in no change to current plans. KJBU accepts this statement however feels compelled to remind Council of the illegal conduct of the Vegetation Management Contractors employed by this Developer on Day 1 and Day 2 of the intended tree and vegetation clearing. After receiving emergency phone calls, Council staff stopped clearing work. A full description of the breaches is provided in Attachment 2. The tree clearing did nothing to instil confidence in the ability of this developer to fulfill his legal obligations. No fines were imposed and, according to our understanding, the Council cannot inspect and monitor the site on a regular or random basis because of lack of resources. It will therefore be up to the community to monitor and report concerns. Previous experience demonstrates that there will be time delays between report and a site inspection by which time the damage is already done.

d. [SEPP 65 Response to Design Principles, Purdon pp 14-18](#)

i. [Context and Neighbourhood Character](#)

KJBU points out that the dominant context and neighbourhood character of this site is the natural environment as it is surrounded on three sides by Marine or National Park. Murdoch Street, a semi made road, leads into the National Park providing pedestrian and cyclist access, and it also is a vital access point important for emergency vehicles.

There is only 1 other building (Aquamist) in the vicinity, yet the Planners base Context and neighbourhood on this block of units.

The Principle outlines that ‘context is the key natural and built features of an area ... well designed buildings respond to and enhance the qualities and identity of the area’.

We would argue that the development does degrade the public domain. The development has insufficient parking spaces and will create an unsafe street through extensive offsite parking.

The development also encroaches on the adjoining Jervis Bay National Park through its scope and design. Purdon Planning claim that “the contours of the land and its position indicate that the site can accommodate the number of storeys proposed” with “the appearance of a 3-storey building when viewed from the street” (pg.15). In fact, the building when viewed from a distance it is recognisably 4 stories with an undesirable visual impact.

The development further affects the general area due to its design and colour choice. Purdon Planning claim that the revised design “will not have a significant visual impact on the surrounding environment” in part as no “highly reflective building material” will be used in the new design (p.25). Smooth white concrete as proposed here has a reflexivity of over 50%. If a white emulsion is added, surface reflectance can be 70% (concrete.org.uk).

The response indicates it fits into the dominant environmental character because it retains ‘the bulk of the remnant vegetation on the land.’ (See point 6b.iii). This point has no relevance to the apartment design and how the design of the apartment enhances the quality and identity of the area. In short, the response focuses solely on the existing building as context, even though we presume the motivation for building on the site is its ecological beauty and environmental amenity.

KJBU argues the responses to all the principles about design are based on an overly narrow focus with Aquamist as the sole context for the site. Any comparison to Aquamist is questionable as the proposal is nearly 3 times larger in terms of the number of units.

We understand that the design is based on a banksia cone. However, the suggested stark white colouring, does not suggest a development that fits in with the context and character of site; in fact, this building design with brilliant white concrete façade is at odds and an obvious contrast to the bushland, creek and mangroves, as well as dominant housing character within 200m.

The modification will definitely provide “variation to the built form and building mass in the precinct”, but in a manner that is not obviously sympathetic to context and character. The proposal is an extension of the current trend of luxury apartments spreading from the main tourism area of Huskisson to this outer area which, has until now, been prized for its natural environment. Across the road the reserve is used as a picnic area and safe swimming place in clean water; the water quality has been protected due to lack of development, but will not remain so if the area is over-developed.

ii. Built form and scale, Purdon p 14

The modification increases the number of units, on-site car parking has been reconfigured and reduced, and this design is arguably a heavier build and will impact the site considerably more, both visually and tangibly, than the original.

The view from the street may be 3 storey because of the set back on level 4, however the new design of this building will dominate the landscape, rather than fit in with the context that gives it its amenity value.

The Design Guide suggests it should not spoil views and vistas. This will depend on maintaining the quality of the reserve in front of the proposed 4 storey building. The tall mature trees may effectively screen the building so long as they are not removed or damaged during mandated roadwork. Since there are no plans available of the roadworks KJBU would like to reserve judgement on this Principle.

The protection of tree lined views of Moona Moona Creek from Elizabeth Drive and Ilfracombe Street and as you cycle or walk over the bridge, is a major concern, especially as Purdon justify their visual impact by explaining that the units will be screened from view from this perspective.

iii. Density, Purdon p 15

This a major point of contention, as discussed under Context and Neighbourhood Character. The principle points out that appropriate densities can be sustained by existing or proposed infrastructure ... and the environment. In this case, the addition of 38 units at a location on the only

through road to Vincentia, adjacent to a key access point to the public reserve, will place additional pressure on this already congested roadway. There is no easy solution to providing adequate infrastructure, other than making planning decisions NOT to further burden the infrastructure in this locality.

The building is likely to be mostly, if not 100%, investor owned and dedicated to short term tourism. It will not provide a range of housing options as stated in the proposal. See also our response to Principle 8 Housing diversity.

iv. Sustainability, Purdon p 15

KJBU is pleased to see a more sustainable build and is aware that solar panels on a block of units in Huskisson will be a first. In addition, see points in Attachment 3 critiquing assertions of cross ventilation, solar access and passive thermal design.

We are not privy to all the details and would like to ask whether the green roof is a definite feature and whether double glazing is included? The owner had mentioned this but it does not appear to have been included in the application documentation.

v. Landscaping, Purdon p 16

A number of non-indigenous species are included in the landscape design, including clivia, rosemary, hibiscus, and Star and Asiatic jasmine. These should be investigated for their potential as environmental weeds. Star and Asiatic jasmine seem to be what is used as climbers in design, but this is unclear in the design. The use of low maintenance natives around the building Westringia, Lomandra, and Myoporum, is commended.

A wetland and walkway have been proposed, seemingly to capture overflow from the 1st infiltration tank. Perhaps the safety and health issues from this should be assessed? For example, does the wetland require fencing to exclude the potential for children to drown? Will it serve as a breeding ground for mosquitos?

vi. Safety, Purdon pp16-17

This principle raises a serious concern regarding whether this development and its modification will create a negative rather than a positive relationship between the public and private spaces. There is a long torrid history of prominent vegetation in street frontages in Jervis Bay and Basin being vandalised by property owners in order to improve views, creating personal pathways to beaches and other waterways, across public reserves, and shortcuts into the National Parks, as well as using public reserves to park caravans, boats and cars. This behaviour has been observed in Murdoch Street since Aquamist was built. KJBU argues this will increase significantly with an increase to 38 holiday apartments. The results of this kind of behaviour is not only the negative visual impact but also the cost to rate payers in upkeep and repairs to reserve infrastructure and vegetation, and most importantly, the harm this behaviour has on the natural environment.

vii. Housing Diversity and social interaction, Purdon pp 17-18

The only variation provided in this proposal is 2-bedroom apartments, or 3-bedroom apartments. This hardly provides for a housing diversity or a 'social mix'. The response fails to consider the existing housing needs, nor future housing needs. KJBU argues strongly against the Planners response to this principle and the suggestion that this will be used as residential housing. The undeniable facts are that this modified development will be predominantly used as top end tourist accommodation.

Under Housing diversity and social interaction there is also a requirement for “communal spaces for a broad range of people” (pg.17). Nowhere in the application is the issue of disability access raised.

It is unlikely to add any housing supply to the area at all. Any research into tourist accommodation investment in Huskisson will confirm this supposition. As experienced by residents of Aquamist, many apartments which were sold in the first instance to intended permanent home owners were quickly on- sold to investors; those units occupied by tourist occupants were a deterrent to permanent residency. One of the few permanent home owners in Aquamist sold last month for this reason.

Such development destroys the connectivity and sense of ‘Community’.

(see also Principle 1 to Context and Neighbourhood, Principle 3 Density).

viii. Aesthetics, Purdon pp 17-19

When the local media released images of the modifications proposed, the local reaction was fast and furious. To date, not a single positive response has been posted on local Facebook pages including our own. A non-judgemental email was sent to supporters informing them of the opportunity to comment, replies were strongly opposed to a stark white contrasting design to the natural bush setting, and people thought the design is better suited to Bondi, Gold Coast, how about Canberra! It has been described as way too big for the location.

We are aware that the developer was intending an ‘organic’ and ‘Australian bush feel’ by using the banksia cone as inspiration for the design. However, the proposed design is not ‘visually compatible with adjacent development’ – the proposed development will visually dominate with its white walls and choice of materials, as well as its size. Even though the proposal has ‘interesting’ curves – the visual result is a very ‘solid’ and ‘overwhelming’ building. We note that an artist’s representation of what it might look like sitting next to Aquamist has not been provided – just words to say that it ‘will be compatible’.

KJBU ‘s response to this principle is that the design does not fit the location, it makes much too big a statement of its own and detracts attention away from the natural surrounds. White might suit a beachfront but does not blend with the bush vegetation at all. The green walls require expert maintenance which the developer will have no responsibility for after he sells and moves on.

Principle 9 refers to the “future local context”. KJBU is very concerned about what the future for Moona Moona Creek, the Marine Park Sanctuary Zone, the waterfront reserve, the smaller creek reserve of Murdoch Street and the other block of land designated B4 on Moona Street will be. We strongly advocate that rezoning should be considered to avoid future conflict and environmental damage.

e. SEPP 65 Design of Residential Apartments, - Architect’s response to ADG Objectives

Our key comments on the response to ADG objectives are:

- Ignores public amenity, including character of area as a result of the natural features (creek and national park) which is an objective. It seems the intention is to locate next to natural features of creek and bush, but then create a building that will be in stark contrast to these features.
- Incorrect or inconsistent information re excavation for carpark
- Incorrect or inconsistent information re flood zone

- Inconsistent re ventilation
- Ignores own shadowing re solar access and implications of east and west facing glazing
- May have living areas narrower than 4m
- May have habitable rooms longer than 8m with only one end glazed
- Does not provide adequate information re storage

Please see Attachment 3 for further detail.

7. Local Planning Context – SLEP 2014, Purdon pp19-26

a. Land Use Zone, Purdon p 19

Contrary to the map provided on p. 19 there is no R4 High density residential in Huskisson.

b. Principle development standards, Purdon p 20

The zoning allows a height of 13m, and floor space ratio of 0.8:1. The Planners state the height is 12.5m from ground level, and yet the architectural drawings indicate the building is 14.75m, and the excavation for the carpark is 1m. This means the **final height will be 13.75m** not 12.5m

c. Heritage, Purdon p 20

We understand that the developer has been advised that Aboriginal artifacts have been found on the site adjoining his and that it was necessary to undertake an Aboriginal Cultural Heritage Assessment, (Attachment 4 - Copy of email sent to Sue Tolley from Elliott Weston 5/5/2021 response to question 2)

We were advised by the owner that he was conducting a survey, however no report is available to view on the council DA tracking web page. Planners have stated “no known Aboriginal heritage archaeological sites are located”.

We ask that evidence to support this statement be provided and put on public display via the website. Council should not make a determination without the survey report.

d. Bushfire hazard reduction, Purdon pp 20-21

It would appear that the referral to local RFS has not as yet been responded to, and we would like to defer response until that is able to be reviewed.

e. Flood Planning, Purdon p 21

It is reported by Purdon that the site is a flood prone area, and that the site is flood liable. 1% AEP is 2.2m AHD with a flood planning level of 2.7m AHD. This contradicts the Architects ADG response which indicates that the site is not a known flood area.

KJBU requests that this contradiction be clarified.

At the time (8/3/2022) of writing this report the worst ever flooding on record has happened along the entire NSW sea border. River and creek inlets are breaking their banks. Moona Moona Creek is level with its banks. The partially cleared development site of 4 Murdoch St is completely under water and water overflow is running off the block and into the creek. This is the 2nd flood event that has inundated 4 Murdoch Street in the past 2 years. Climate change forecasts predict higher intensity rain events, an occurrence which calls into questions existing flood mapping.

KJBU suggests that new flood mapping for the Shoalhaven is urgently needed. Is the Council prepared to approve this development going ahead when all the evidence suggests current mapping

and the flood predictions adopted by Council are in fact in error? Shouldn't the Council at the very least warn the developer that the flood risks may be greater than previously estimated?

See Attachment 5 for images of 2020 inundation on 4 Murdoch St, and 2022 flooding.

[f. Acid Sulphate soils, Purdon p 21](#)

The Planners state there is a low probability of soil to contain acid sulphate.

The SLEP 2014 maps the area as having Class 3 Acid Sulphate Soils – that is they are expected to be found 1 metre below the natural ground surface, the equivalent of proposed excavation.

KJBU representatives observed that on February 10, 2022, SEEC (Strategic Environmental and Engineering Consulting) carried out Acid Sulphate sampling. Purdon Planning refers to testing by Southern Geotechnics, this reported was carried out 17/12/2009) claiming that a copy of that report was “attached to the application” (p 22). The SEEC report appears not to have been submitted. No reports on Acid Sulphate soils are attached to the modification application.

Purdon Planning offers “a further acid sulphate soils report” can be “submitted to Council upon request prior to the issue of a Construction Certificate” (p.22). As the presence of Acid Sulphate soils has such a potential to critically impact the surrounding area through runoff during construction, and post-construction via overflows from the proposed filtration tanks and soil management, this report must be requested and made available to the public for comment.

KJBU strongly urges that the details of the surveys performed be publicly clarified.

[g. Earthworks, Purdon p 22](#)

Planners describe this as minor in nature and will not affect adjacent properties, any watercourses or drainage, soil stability, or heritage items. The earthworks are not “minor in nature” and involve the removal of a total of 1200 m3. Before each of these transports the soils are to be checked for acid sulphate soils (DA16). The DA requires that this take place in a dedicated site for storage of excavated materials (DA29f). How these competing pressures for site management (traffic and management of excavated material) is not insufficiently addressed in the proposed plans. Furthermore, earthworks will affect both natural drainage and watercourses e.g. Moona Moona Creek.

KJBU has concerns as to the factual description that excavation will be within 1m but the architectural drawings state the height of the building will be 14.75m with a final above ground height being 12.5m. This suggests the excavation will be more than 1m, if so, there are implications for the amount of soil to be removed, the amount of acid sulphate soil to be managed, as well as ground water management (including de-watering).

The proponents claim, however, to create minimal amounts of construction waste. There are numerous requirements for the handling of these in the original DA all of which will require dedicated space.

Large movement of construction vehicles on the site is also not addressed and at odds with the requirements to protect the root systems of trees in the adjoining park and EPZ as well as those to be retained in the APZ. All trees and vegetation to be retained onsite and the Asset Protection Zone must be surrounded by barrier fencing to the drip line (DA42 and DA47). This is also to ensure no mechanical disturbance of the roots or soil build-up around the base prior and during the build. The fencing shall stay in place throughout the build and areas within the fences kept clear (DA76q). In the Civil Drawings provided with the modification application tree fencing is even greater. Under

General Notes #21: “All tree protection fencing to be chainwire fence type, 1.8 m high and erected 2.0 – 5.0 metres **outside** the tree canopy” (our emphasis).

This fencing was not put in place prior to recent tree removals onsite. Currently there is minimal fencing (not to dripline, as required, or beyond) surrounding trees to be retained. There is no plan in the proposal to ensure that large machinery will not operate in the vicinity of fencing against the EPZ and National Park.

High volumes of traffic and storage of materials during construction outlined above should necessitate the procurement of further details as to how root systems of trees to be retained on site, as well as trees in the neighbouring National Park and EPZ zones will be protected, before the construction certificate is granted.

The current Vegetation Management Plan (VMP) shows several habitat trees will be left on site, as well as trees at the boundary of the site. It is likely that movement of machinery on the site will compact the soil over the root zone, causing harm to the mature trees. Conditions of how to protect these trees from damage and longevity need to be followed diligently. This was not the case in the first stage of clearing and the community need some reassurance that no further breaches will occur.

[h. Terrestrial biodiversity, Purdon pp 22-23](#)

The planners acknowledge the site as having biodiversity values and being situated within 33m of a natural waterway.

Council must consider:

(a) whether the development is likely to have—

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land,

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Purdon Planning notes that on the NSW Biodiversity Map the site is identified as having “terrestrial biodiversity values” (pg.6). Bangalay Sand Forest not present on site but does exist in the vicinity which may be affected by construction traffic (there were examples of trucks during the tree removal period traversing nearby vegetation).

Purdon Planning claim that the updated Flora and Fauna Assessment review “includes recommendations to protect and ameliorate the effects of the development on the ecology of this site **and the locality in general**” pg.22, our emphasis). It is not at all clear how this development should protect and ameliorate the effects of the development on the locality in general. In fact, as we have outlined above, and in the following, the locality will be highly degraded with this development.

Purdon planning: “As no EECs are likely to be present within the development area, the modified plans proposed by Bulum Group are not likely to impact any EECs” (pg.10). Gang Gang Cockatoos, which were during tree removals attempting to nest in one of the trees due to be retained and

sighted repeatedly in the EPZ and nearby, are now on the Threatened Species Listing, listed as Endangered. The site is clearly a regular nesting habitat of these endangered birds.

b) During construction (e.g. points regarding heavy machinery in APZ and effect on tree roots etc.)

The 2014 Shoalhaven Development Control Plan requires that “No vegetation located on public land is damaged, disturbed or removed” (pg.31 referring to P8.2). As noted previously, no plans are in place to ensure that construction machinery in a crowded site do not approach the fence line to the National Park and thereby disturb the tree roots of older growth trees situated there. Controls including further fencing and detailed site management plans must be in place before a Construction Certificate is granted.

As previously described, within 2 days of starting clearing work on the site serious breaches of approval conditions occurred. These breaches occurred due to disregard of standard procedures with regards the care of nesting Gang Gang Cockatoos and incorrect reading of the vegetation management plan.

As a result, the community has little confidence in the process and due to the complexity of the development we ask that Council ensures better quality controls and monitoring be implemented.

i. Development in the Jervis Bay region, Purdon pp 22-23

Clause 7.20 of the SLEP 2014 states that the objectives of development in the Jervis Bay region are:

a) to protect the natural and cultural values of the Jervis Bay region, and

b) to ensure that development in the region contributes to the natural and cultural values of the region.

As per advice from Council planners, it is the Planners’ responsibility to articulate how they will meet the objectives of the planning regulations. The Planners’ response does not address the objectives of this clause.

The modification with its extra units makes it less likely to protect the natural and cultural values, and definitely will **not** contribute to these very important values.

The provisions of clause 7.20 of the SLEP 2014 states that developments are **not** allowed on a “flat, well-drained area along a major creek line unless the consent authority is satisfied that there will be no significant adverse impact on the natural or cultural values of the area” (Purdon Planning, pg.23).

Purdon Planning claim, however, that the “proposal is NOT located ... on a flat, well-drained area along a major creek line” (pg.23). Instead, they claim that the site has a “gentle slope” towards the creek (pg.6) which KJBU would challenge.

Purdon Planning argues the proposal is NOT tourism. As stated previously and restated here, it is a ridiculous claim that the development will not be used as tourism accommodation. As such, the developer should explain how this development intends to contribute to activities and accommodation and appreciation of natural and cultural values of the region as per Clause 7.20.

8. Shoalhaven DCP 2014, Purdon p 23

a. DCP Ch 2- General and environmental considerations, Purdon p 23

i. Potential Contamination, Purdon p 24

The Planners state there is no contamination on the site. This is an **error** as Council records show that asbestos may be present and therefore must be proved not to be. We trust this will be followed up and the necessary action taken.

ii. Aboriginal heritage, Purdon p 24

The developer took responsible action and indicated that a survey would be undertaken, which would follow the advice of Dam Vey, NSW Office of Environment & Heritage (21 May 2019) (see Attachment 4 – copy of email from Elliot Weston 5 May 2021). There is no evidence to support the Planner's statement that 'there are no known items of Aboriginal heritage' on the site without an archaeological survey. KJBU would like confirmation that the survey was carried out and any appropriate action necessary will be followed.

iii. Crime prevention, Purdon p 24

An important discussion needs to be had with regard to the behaviour of residents of these apartments and increased public use of the public space adjoining /close by the development.

Council has a responsibility to ensure that Moona Moona Creek vegetation and banks are protected from damage caused by people making tracks through the mangroves to fish, swim or lower kayaks / boats, leaving kayaks tied to mangroves into the water OR the pruning or cutting down of trees to get a better view.

The area of creek adjacent to the proposed development is a Marine Park Sanctuary Zone. It is illegal to fish and collect any marine creatures from these areas. A development such as this is sure to encourage fishing and collecting within close proximity; can this be adequately policed; will it create confrontation with those who do the right thing and adhere to Sanctuary Zone regulations?

The Planner has responded to this principle only from the perspective of protecting the residents from the community or each other.

b. DCP Generic Character (sic – this is reference to Generic Chapters in the DCP), Purdon p 25

i. Ch G1 Site Analysis, Site design and building materials, Purdon p 25

The Planner refers to very few of the DCP chapter's concerns in their response.

KJBU has already argued the opinion that this developer may feel his design is appropriate, we disagree entirely that it suits the location and believe that it will have a significant visual impact on surrounds.

ii. Ch G2 Sustainable Stormwater Management and Erosion/Sediment Control,
Purdon p 25

a) Plans in application and potential issues

The Able Ecology report stipulates that “stormwater will be managed through on-site water detention basins” to avoid runoff to DEC land. This requirement is also addressed in the Development Application (DA18b). Stormwater from hard surfaces must be connected to a drainage system and not allowed to run off-site.

In the Civil Drawings, the proposal includes two infiltration tanks. The overflow from the first of these tanks (northeast side) appear (from landscaping plans) to flow into a man-made wetland, however, this is not mentioned or detailed in the Civil Drawings. The overflow from the second tank involves a swale off-site directly under or through the end of Murdoch St aimed towards and close to Moona Moona creek. The Civil Drawings map describes an “Infiltration overflow swale concrete lined through existing access to NPWS Land. Details to be provided at Construction Certificate Stage”.

While the infiltration systems may allow for the removal of larger sediments, it will not ensure the removal of acid sulphates or limit concentrated flows of fresh water. The swale that is described in the plans ends on NPWS land. The overflow water, after leaving the concrete lined swale, will run in concentrated amounts through soils likely to be affected by acid sulphates. The volume of fresh water running through the creek beds is likely to destabilise the banks and destroy the fragile mangrove system at the end of the swale.

Purdon Planning claim that the “comprehensive Stormwater Management Plan ... details how water quality from the site will be treated to ensure that it does not adversely impact water quality of the adjacent Moona Moona Creek” (pg.22). The infiltration tanks may lower the levels of sediments entering the creek, but the direction of the overflows onto NPWS land, and close to the creek banks, will have a direct adverse effect on the banks and the mangroves that need brackish water to survive.

Until these concerns with runoffs and overflows from the infiltration tanks are addressed, a Construction Certificate should not be given. Hydrologists and a marine scientist/water scientist with expertise on mangroves must provide an independent analysis of the impacts of the stormwater plans.

In the SEPP 65 Design report it is claimed that the “The site is not in a known flood area” and that “Flood management systems are integrated into site design”. Purdon Planning, however, state that the site has been identified by Council as being within a “flood prone area” and as “flood liable”. Raising the height of the carpark mitigates flood issues somewhat by reducing depths of excavations for foundations (pg.21). The increase in hard surfaces and the loss of natural land for filtration and water release, however, will lead to increases in flooding in the surrounding area including the Jervis Bay National Park and its public access. Water release from filtration tanks, described above, will focus the runoff from the large building area into minimal areas, including offsite on NPWS land and the creek bank leading to increased flooding there.

Purdon Planning offers “a further hydraulic flood impact report” to be submitted to Council “prior to the issue of a Construction Certificate”. This impact report should address groundwater levels and include a specific analysis/report on the effect of overflows from the filtration tanks – particularly tank 2 which leads directly to Moona Moona Creek. As noted above, however, DA18b requires that stormwater not be allowed to run offsite. This is also a requirement of the State Environmental

Planning Policy- SEPP- (Coastal Management) 2018 regarding the quantity and quality of surface and ground water flows.

b) During construction

Purdon Planning claim that “the earthworks are minor in nature and will not affect adjacent properties, any watercourses or drainage, soil stability, or heritage items” (pg.22). The earthworks are not “minor in nature” and involve a total of 1200 m3. Furthermore they will affect both drainage and watercourses eg Moona Moona Creek.

Insufficiently addressed, for example, is how dewatering will occur during construction. After a heavy rain the cuts/excavations will fill with water in part as the groundwater levels are already high. This water is likely to have become contaminated by sediments and/or acid sulphate and must be removed following Shoalhaven Builders Guide pp.34-35 and DA16.

The Shoalhaven Builder’s Guide (pg 34) specifically states the need for a dewatering plan as part of the SWMP or ESCP. “Generally, the water contained in a sediment basin or waterlogged excavation will not meet the required Total Suspended Solid (TSS) concentration of 50mg/L or less for the water to be discharged into the environment” (pg 34). Water from the construction site should also be “tested by ^{SEP} a suitably qualified environmental consultant before any water is discharged offsite” (pg 35).

While runoffs and sediments are addressed (though insufficiently) as part of the ongoing water management, it is not addressed as part of the construction period and must be before the construction certificate is given. The Shoalhaven Development Control Plan of 2014 specifically states that measures must be utilized both **during** and after construction, to “control erosion and sedimentation of local water courses and drainage systems” (P10.3 noted in Purdon Planning pg.32).

Furthermore, “all stormwater quality controls are to be contained within the development site, and **discharge is not to be concentrated onto adjoining lands**” (A10.3 p.32). As noted, the overflow from the second infiltration tank is planned to discharge onto NPWS lands close to Moona Moona Creek despite claims by Purdon Planning that “discharge is not to be concentrated onto adjoining lands” (pg.32).

There is clearly a lack of clarity as to how discharge/dewatering/water sedimentation is to be dealt with during construction as well as discharge into NPWS and Moona Moona Creek after construction.

A Mayoral Response on May 14 2021 states that “General Terms of Approval were issued by Water NSW on 10 August 2018. WaterNSW determined that the development will encounter groundwater during the excavation process and therefore is subject to a Water Supply Work Approval under the *Water Management Act 2000* for dewatering during the construction phase.”

Purdon Planning (pgs. 11-12) also notes that the modification will need to refer to the following agencies for approval:

Rural Fire Service

Natural Resources Access Regulator

Water NSW

Neither the 2018 response from Water NSW nor any more recent contact and approvals from Water NSW have been provided. The Water Supply Work Approval has not been made available amongst the documents provided in the modification application.

c) Ongoing – as noted in concerns regarding plans, there are expected ongoing issues with water management that include flood management and release of water into surrounding areas/adjoining land.

Any runoff from a site with large volumes of fresh water and likely high levels of acid sulphates into the fragile ecosystem of Moona Moona Creek is of grave concern and must be considered by an appropriate marine expert prior to the granting of Construction Certificate.

Until these concerns with the volume and quality of runoffs and overflows from the infiltration tanks are addressed a Construction Certificate should not be given. Hydrologists and a marine scientist/water scientist with expertise on mangroves must provide an independent analysis of the impacts of the stormwater plans to this sensitive estuarine ecosystem.

iii. Ch G3 Landscaping, Purdon p 25

See Section 6 d (v)

iv. Ch G4 Trees and Vegetation, Purdon p 26

KJBU would like to make it clear that the tree where the Gang Gangs tried to nest was always a tree to be retained as stated in the very first ecological study undertaken by Abel Ecology. The contractors wrongly identified it as a tree to be removed. The contractor had no need whatsoever to climb the tree and photograph the hollow while the birds were there. The outcome was a significant disturbance to the nesting birds.

Whilst the developer states that it is on his recommendation that the tree remains, in fact the tree was mapped to be retained in the original vegetation management plan. After reviewing with the Council Environmental Planner, it was thought other trees were likely to have been removed that should have been retained. The marking of the trees and the supervision of what was to be retained or removed was inadequate. Whilst speaking with two contractors involved in the initial on-site clearing they admitted to us they thought all the trees were to be removed.

There is still uncertainty as to which trees will be removed and which are to be retained. The Purdon report offers a view of 'hollow bearing trees'. We point out this is NOT the plan which maps the trees to be retained, and the trees to be removed (See Abel Ecology Vegetation Management Plan June 2021).

We congratulate Council staff who stopped the clearing and reviewed the plans with the contractors, ensuring the contractors were correctly interpreting the plans. However, given the lack of consequences for error and impetus to get jobs done as quickly as possible, it is clear that work on the site needs close supervision.

It is the Developer's responsibility to ensure that his contractors comply with the DA conditions that Council imposes on his Development. It is Council's role to monitor the Development and to ensure compliance of the Developer to the DA Conditions that Council imposes. Stating the obvious – but one that seems to be increasingly ignored or taken advantage of.

v. Ch G5 Biodiversity Impact Assessment, Purdon p 28

The health of the natural environment and the biodiversity of the Shoalhaven have suffered greatly in the last 10 years due to wild fires and major floods. The Planners present studies conducted as long ago as 2009. It is well known that birds and other native animals have moved locations, on this site the Glossy Black Cockatoo, the Osprey, and the Gang Gang cockatoo have all been recorded more often since the 2019/2020 fire. Decisions about this development should have been based on up to date ecology data, not data that is 13 years old. The review by Ecoplaning undertaken for this amendment did not review fauna use of the land since the fires.

The lot is 12,134sqm which is over 1 ha. More than half the block is being cleared – that is, more than 0.5ha will be cleared. It is clear from observations that the trees being removed were used for nesting, and contained hollows. This form of habitat is crucial to the survival of many birds and mammals and offsets should be required. It is erroneous to argue that the site was already disturbed. Vulnerable and threatened species were still using the vegetation that remained, which included hollow bearing trees.

vi. Ch G6 Coastal Management, Purdon pp 28-31

Response to **Building Envelope and Siting** provides no details that relate height, bulk, angles, tree canopy, how it won't be visually prominent from the foreshore - especially with the change to a white façade. Purdon Planners argue that the trees on the Murdoch reserve will hide the apartments from a distance, specifically from pedestrians and traffic driving from Vincentia to Moona Moona Creek. The benefit of the trees, however, rely completely on them being retained and looked after. As argued elsewhere, the mandated road works alongside Murdoch Reserve (as well as increased parking and traffic) could seriously damage this stand of 25-30m Eucalyptus pilularis (Blackbutt) leaving the new development on full view. It is also well known that this species of eucalypt drops limbs – this is how wildlife habitat hollows are formed, and they are therefore highly valued for their contribution as 'habitat trees'. However, will these trees be considered a 'safety' hazard and removed if increased parking and pedestrian activity occurs along the Reserve verge? We recommend signage is installed in this area indicating No Parking, due to the potential of falling limbs.

Regarding **building materials**, the DCP specifically states that 'in locations with a high-quality natural landscape value (which this site is), structures should not strongly contrast with the background, whether by location, colour or choice of materials.

Clearly the new, white, contemporary design, does the opposite. It couldn't contrast more with the background of a Blackbutt forest, and the mangroves of Moona Moona Creek.

With regard to **Trees and vegetation**, trees on public land have already been damaged (Performance criteria P8.2) and if roadworks as described in the Consolidated Consent Approval go ahead then there will be the likelihood of much more serious damage occurring.

The Planner indicates they will use measures such as fencing to protect the vegetation, but again we point out trees that were marked to be retained have already been harmed. Additionally, the map provided in the Purdon document fails to place the protective fence as per the Vegetation Management Plan June 2021 p.7 and the fencing put up during clearing contravened DA requirements.

Having read this section of the Purdon Planning document, many of the responses given repeat assertions made earlier in the report which KJBU has either challenged or argued.

Site Stability, Excavation Soil Water Management, please see our previous comments where we have questioned the developer's ability to meet this performance criteria, section 7g.

vii. [Ch G7 Waste, Purdon p 33](#)

The proponents claim they will create minimal amounts of construction waste. There are numerous requirements for the handling of waste in the original DA all of which will require dedicated space. Filling (e.g. soil from excavation) must not encroach onto adjoining land (DA36) or cause the diversion of natural overland water runoff. Excavation materials must be checked and managed for acid sulphates (DA16). There must be a dedicated site for storage of excavated materials (DA29f) which must then be removed to an approved landfill site (DA48). The Shoalhaven Builders Guide requires that concrete wastewater, which is highly toxic, must be contained and pumped into a container and hauled to an approved disposal facility (SBG42-43). Paint wash water must be contained and taken to an approved facility (SBG44). Stockpiles of materials must be onsite only. They must be away from any surface water (SBG18). Storage of hazardous materials (chemicals etc.) must be on an impermeable surface (e.g. concrete), inside a bunded (e.g. heaped or fenced) area, under cover (SBG40-41).

This application does not provide sufficient detail of how waste is to be dealt with onsite, during or after construction. A private contractor is being suggested to manage the routine rubbish and recycling and proposes a bin sharing scheme for occupants. KJBU will assume the Council will determine its merits.

viii. [Ch G9 Development of Flood Prone Land](#),
see section 6e.

ix. [Ch G13 Medium Density Housing, Purdon p 33](#)

Again, we strongly contest the assertion that 'the visual appearance and articulation of the new design will contribute to the existing streetscape and character of the local area'. The development does not consider the local character/context of the area and streetscape. Please see Section 5ei.

In terms of solar access please see comment on ADG (Attachment 3).

The building materials are required to 'complement' the existing landscape value – see section 7f.

The Planner makes no reference to promoting ageing in place, and the dwellings meeting the whole of life needs of the community.

x. [Ch G21 Car Parking and Traffic, Purdon pp 38-39](#)

[Traffic](#)

The Planner does not offer any information here about the already existing traffic issues of Burrill Street which is relevant to Objective viii – minimise any adverse traffic and road safety impacts of development. Traffic volume on Burrill Street must be considered. This modified application will add the occupants of 38 extra units and their visitors to the occupants and visitors of the neighbouring 14 units all having to turn into Burrill Street either left or right. Being tourists they are likely to turn in either direction to the cafes in Huskisson or any of the amenities of the rest of Jervis Bay. **They will come and go much more often than permanent residents would.** They will undoubtedly add significantly to the busiest street in Jervis Bay, regardless of being work days or weekends. **New data** should be used to determine the road improvements necessary before these modifications are assessed and the roadwork plans should be required earlier than a Construction Certificate.

Since there are no plans available for the intended roadworks, KJBU would like to reserve judgement on this principle. However, if for any reason roadwork plans are going to be made public, then KJBU would strenuously argue that the Council must consider this modification in terms of the additional pressure of traffic movements in and out of the building, as well as the car parking on both the minor and major roads it will affect. No reasonable judgement can be made without undertaking an update on the 10-year traffic prediction for Burrill Street.

[Parking, Purdon pp 39-40](#)

The development is required to ensure that off street parking is provided of sufficiency to discourage use of on street parking.

Our experience as residents of Huskisson and the Bay and Basin area generally is that often units or houses will be rented by tourists who may arrive in more than one car per bedroom. Couples, for example, sometimes arrive in separate cars.

For a development of this size, Council requires 61 car park spaces. The Planners request to reduce the car parking spaces to 45 car spaces and 36 bicycle spaces and 2 motorbike space. Such an option might suit Canberra where people are more likely to use bicycles as transport. This plan will not be adequate for Huskisson in a building that will likely have 90% of the units rented to tourists which will mean it is possible that there will be 84 cars requiring a carpark space. In addition, the Planner has ignored the ADG guide that apartments in locations such as this should consider boat and trailer spaces. Already in Murdoch Street a large boat and trailer is regularly parked on the road. At weekends there are regularly more.

KJBU argues that insufficient parking will result in on street parking. Residents will be forced to park on the un-kerbed side of the road encroaching on the public reserve. Providing bike spaces (as advocated by the proponent) for tourists is fine but a cycle will not be the mode of transport from their home to their holiday rental. Holiday rentals such as this attract guests travelling with jet skis, boats, off road motor bikes, even caravans. KJBU would support some fewer spaces if permanent residents were the intended future owners but they are **not** going to be the people residing here.

Inadequate car parking spaces will have a negative impact on the street and the public reserve opposite. It is crucial that this development does not harm the vegetation outside of the development, as this is what is holding Moona Moona Creek banks together. As mentioned previously, removal of old growth Blackbutts subsequently deemed a safety hazard due to increased parking / pedestrian traffic is unacceptable.

We would like to query the Planners' statement "The basement car park is situated slightly above ground level to enable the floor level of the residential apartments to satisfy Council's flood planning levels for the site." In other sections they indicate that the carpark will be excavated to at least 1m depth. Can this please be clarified?

[xi. Ch G26 Acid Sulphate, Purdon p. 40](#)

See section 6f. One of our concerns is the ability for acid sulphate soils to be managed safely during construction considering the compounding problem of flooding and high ground water levels. Any mismanagement will have serious consequences for Moona Moona Creek's water quality and the Marine Park "fish habitat" and Sanctuary zone in front of the site, less than 33m away.

Shoalhaven DCP Chapter N19: Huskisson Mixed Use Zones

The Planners did not respond to this chapter of the DCP.

Design of development – the apartment needs to comply with the apartment design guide – see Sections 6d and 6e, and Attachment 3 for our comments.

Lot amalgamation:

- c. Ensure that amalgamated sites do not result in large, bulky buildings.
- d. Ensure that desirable streetscapes are achieved

Our comments above address this point.

Density - See 6d iii) above.

Streetscape – We feel the response that ‘the building envelope is shown on the elevations’ is inadequate. They do not address setback, or street entries, or tree planting.

Orientation and separation – addressed in part in response to ADG. See our comment in Sections 6d and 6e, and Attachment 3 for our comments.

Landscaping and deep soil area – KJBU were unable to find details of deep soil area and trust Council to cross check this.

Fences and Walls – no response given by developer. Plans do not indicate the site will be fenced. This is a concern if dogs or cats are not prohibited due to it's bordering the National Park. Obviously this is putting native wildlife at risk.

Urban design principles – no response given by developer

Land use – complies with land use acceptable solutions **except** adherence to the precinct's urban design principles

Flooding – see our comment in section 7e

Building height – addressed in 7b

Setbacks and alignments – the Planners' response is: "The solution is not applicable to the proposal as it does not apply to foreshore blocks that are located on the landward side of a road that is opposite a waterfront reserve." This requirement was specifically written for Precinct 4. The Council authors were well aware of the nature of this site before they included the site setback. The response is inadequate.

Car parking, vehicle access and vehicle movement – see section 8b x.

One performance criteria under the Shoalhaven Development Control Plan 2014 is that "the site layout integrates with the surrounding environment through buildings, streetscape and landscape design relating to topography and to the surrounding neighbourhood character" (Purdon Planning pg.29 referring to P4.1 Site planning and layout). Furthermore, the same plan requires that "in locations with a high quality natural landscape value, structures should not strongly contrast with the background by location, colour or choice of materials" (Purdon Planning pg.30 referring to A7.2 of the 2014 Plan).

The buildings are nestled amongst the natural environment of Jervis Bay National Park on two sides and Moona Moona Creek on a third. The fourth side is a mix of native forest and the development

Aquamist. The proposed development is made of predominantly **white** concrete which will stand in stark contrast to the National Park and Creek. The green walls that are proposed will soften the starkness in a limited way, however, this all depends on how well these are maintained. The buildings will be highly visible for visitors in the National Park and significantly lower amenity and pleasure.

Before a Construction Certificate is granted, a review of the colour choice and its alignment with the requirements is needed. Purdon Planning argue that “the selected materials and colours are considered appropriate to the local landscape and not contrast with the background” (pg.31). This would be the case if the building was by a white sands beach but is **not** the case in amongst the National Park.

KJBU Conclusion

KJBU endorses and supports some of the proposed modifications around making the building more energy efficient, and hopefully liveable. However, we have concerns about the following:

- The modification selection of external façade is in extreme contrast to the site and character of the area, contrary to the first principle and objective 4M-1 of the ADG.
- The apartment, according to our calculations, will be over 12.5m in height, contrary to the SLEP.
- There is some confusion around the depth of the excavation, and therefore the amount of acid-sulphate soil, and soil to be removed.
- We ask that the contradictions in the planning documents be clarified and be presented to a professional standard.
- We submit that the design does not meet the objectives of Clause 7.20 of the SLEP 2014 because of the façade and bulk of the dwelling; it will not contribute to the natural and cultural values of the region. This also contravenes DCP Ch N19.
- Given the location of the apartments in Huskisson, it is highly likely the dwellings will be purchased to be rented out to tourists. This situation gives the site the current high value and it is deceptive of the developer to argue otherwise. As such there is an obligation of the developer to provide adequate on-site parking, including for boats and trailers. If this isn't done then irreparable damage is likely to the Moona Creek vegetation and creek bank.
- A review of the site Flood mapping should be undertaken due to the impacts of higher intensity rain events.

It is the feeling of Keep Jervis Bay Unspoilt that, despite some improvement to the sustainability of the building and construction details, there are serious concerns that must be considered in this proposal. The assertions put forward that this is NOT tourist accommodation belittles the intelligence of the community. It offends all those locals who are desperately seeking accommodation to rent or buy. If this is indeed true, a caveat in perpetuity should be imposed on the Development that the Units are for permanent residential use ONLY.

In addition, to argue the building suits and contributes to the natural environment surrounding Moona Moona Creek, demonstrates a lack of understanding of the values and culture of Jervis Bay.

It very much looks as if this building was designed for Canberra (or Bondi) and development requirements massaged to fit this site.

Many people in the community have expressed a lack of confidence that this developer (indeed any developer) can safely carry out the construction in a manner that adheres to the compliance conditions required; and yet not to do so risks serious harm to Moona Moona Creek, its sensitive estuarine habitat and riparian trees and vegetation which sustains Jervis Bay Marine Park.

KJBU can only reiterate our concerns that this development and now it's amendment can't possibly be guaranteed to protect Jervis Bay's natural values. It most definitely **will not** contribute to them.

We point out that SCC and our Community will foot the bills for repair to mangroves, the Reserve road used for parking, and surveillance to Moona Moona Creek to prevent illegal access.

Record breaking floods as a result of high intensity rain events have recently occurred in NSW, suggesting the flood predictions currently in use may be erroneous. Surely the Council has a duty of care to offer factual evidence of this flood event to the owners/developers who could be said to be proceeding under a false sense of security.

We point out that by approving this original development Council has not fulfilled its responsibility in preventing an adverse impact on the habitat and survival of native fauna, evidenced by the attempted removal of a Gang Gang nesting tree. Council should show more diligence in monitoring the progress and compliance to all Development Applications.

We also point out that since this development is approved, it will be highly likely that a development will be approved on the north side of Aquamist which will remove the connectivity to a significant proportion of tree canopy between the public reserve and the national park. Council **MUST** consider the full picture in its zoning, and its full obligations and responsibilities.

It needs to be acknowledged that Aquamist has experienced many dilemmas in its short life, and has caused much local controversy over alleged irregular construction methods. Since its occupancy there have been higher than normal changes in ownership. Aquamist has a total of 14 units, between 10-12 are investor owned rented as tourist accommodation averages \$350 per night (\$2450 per week) **non** peak period. The units recently saw another owner-occupier sell because of the overwhelming number of short-term renters and no real neighbours.

Such development destroys the connectivity and sense of 'Community'.

KJBU disagrees with the assertion this is intended to be Housing and not a tourism development, we disagree with all the responses about it being sympathetic and compatible with the existing character of the local area.

In conclusion, Keep Jervis Bay Unspoilt urges Council to consider the points outlined above in their assessment of the proposed modification.

Attachments

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Attachment 1 – Copy of emails to Council CEO

Our Future Shoalhaven <ourfutureshoalhaven@gmail.com>

Thu, Nov 4,
2021, 3:52 PM

to council, amanda.findley

I would like to follow up this email ,it was sent 7 days ago and as yet I have not had a reply from the CEO or on behalf of the CEO. Please could this matter be treated with some urgency. Yours sincerely Sue Tolley

----- Forwarded message -----

From: **Our Future Shoalhaven** <ourfutureshoalhaven@gmail.com>

Date: Thu, Oct 28, 2021 at 5:40 AM

Subject: Formal Complaint

To: <council@shoalhaven.nsw.gov.au>

Please pass this email to the Council CEO and the Mayor Amanda Findley.

Attention: The CEO of Shoalhaven City Council

Cc The Mayor of Shoalhaven City Council

Formal Complaint: Lack of compliance - Tree clearing work carried out on 4 Murdoch St Huskisson DA 10/1377.

Our Future Shoalhaven - Keep Jervis bay Unspoilt wish to formalize a complaint against the responsible companies who commenced clearing trees and vegetation at 4 Murdoch Street Huskisson on Wednesday 20th October 2021.

The location has a DA Consent 10/1377 and an approved Vegetation Plan and Hollow Management Guidelines (HMG) by Abel Ecology Pty Ltd 28th June 2021

The Complaint is that the approved Vegetation Plan and Hollow Management Guidelines by Abel Ecology and the DA itself was seriously breached in respect to 1) incorrect site preparation, 2) incorrect tree clearing and tree hollow management and 3) incorrect management of vulnerable species.

A description of what transpired on Wednesday October 20th October 2021 and Thursday 21st is as follows:

A&D Tree Services drove several pieces of heavy machinery onto the development site 4 Murdoch Street. An Ecologist from Eco Planning was present. No soil and sediment control fence had been erected around any part of the site. (Photos are attached). No trees determined in the Vegetation Management Plan to be retained had guards around them at their drip lines to prevent tree and root disturbance or soil build-up.

Three 30m tall (approx) Black-butt Trees (*Eucalyptus Pilularis*) were pushed out of the ground by a workman with the large excavator, 1 of these trees fell onto the security metal fence crushing it, falling beyond the site onto the public land beyond the fence and knocking a large branch of a tree outside of the site.

Another workman used a smaller bulldozer to knock down/push over smaller trees and shrubs. The Ecologist attempted but appeared to have difficulty keeping up with tree and vegetation clearing in order to check for fauna that might have been disturbed. It appeared only Hollow bearing trees were left standing but without protection against the operations under way. Several observers were told by various workmen that all the trees within the security fence around the construction area

were scheduled to be removed. This was contrary to the Abel Ecology Report approved in DA Consolidated Consent document dated 2018.

Within a few hours, the site had been significantly cleared and the soil over the entire area disturbed.

In an attempt to determine whether the tree clearing was approved by Council telephone calls to Council's Planning Dept. by Sue Tolley were made and several urgent messages were left for the Senior Planner responsible for this DA. The first was made at 10.40am. The Council Officer was in meetings all day and did not return the calls until after 5pm that day (20th Oct 2021). Sue Tolley was advised that clearing could begin so long as the procedures followed the guidelines and if we had concerns we needed to report to the Council Compliance Team.

Penny Davidson an observer also rang Council on the 20th Oct to make a complaint and express her concerns of possible illegal procedures of tree clearing. As a result of her report Sinead Flanigan, Environment Health Officer came to inspect the site later that day. She took photos and said she would report back to the appropriate people in Council.

The workmen stopped work at approx. 12md and told observers who had been watching for over an hour they would not be back the next day.

On Thursday 21st October at around 7am, despite telling onlookers they would not be working that day, A&D and the Ecologist from Ecoplanning arrived at the site. A Cherry Picker, mulching truck, tree climbing equipment and chain saw/s were all brought to the site location. (This list may not be complete but illustrates the scale of operation intended). Some equipment was brought on site, some was parked on Murdoch street.

The A&D tree climber proceeded to climb a 30m Black-butt (*Eucalyptus Pilularis*) marked 14 "H" close to the security fence where Gang Gangs had been sighted displaying nesting behaviour. The Ecologist was observing and allowed this to occur. A pair of Gang Gangs were at a hollow in the tree and made distressed calls, this behaviour went on for approx 30 mins. but the birds eventually left the site not returning until later in the afternoon when the work-site had been vacated. (Photographs attached).

Several observers watching the operation attempted to speak to the staff from outside the fence and asked them to stop the operation. They were ignored by the Ecologist. The tree climber did not speak to the observers until he had successfully secured himself at a hollow. He said he was planning to inspect the hollows of the tree and if empty block them. He said he would speak more fully when he was back on the ground. He continued to take photographs and inspect the tree.

This was all occurring prior to 9am when Council would be open. Sue Tolley (myself) had been rung by the observers at the site and I rang and reported the incident as an emergency to the Council Out of Hours service at around 7.15am. A detailed account was taken and I was informed it would be emailed to the Council offices and that an attempt to get a ranger to go to the site asap would be made. Penny Davidson, after no ranger arrived, also rang the out of hours number and was told nothing more could be done until 9am. By approximately 8am, after failing to get a Council ranger to attend, Rob Dunn (President of Shoalhaven Birdlife) rang The Environmental Planning Assessment Team Leader, Ben Coddington on his mobile telephone who agreed to come immediately from his home in Kiama. Ben called Ecoplanning and agreed with them that work on site should stop. He arrived approximately two hours later and took charge of the situation, he stopped work on

the site for that day to investigate the situation and check the approved reports and plans further.

It transpired that the tree being climbed was one which according to the approved Vegetation Plan had been determined not to be removed and therefore the hollows did not have to be examined. The fact that Gang Gangs were present and exhibiting nesting behaviour was significant and for that reason alone the tree should not have been climbed and all clearing work should have ceased. Council should have been informed by the Development Project Manager, or a delegate, of the Vulnerable Species needing to be managed, so that an acceptable plan of action could be determined and agreed.

Numerous other compliance conditions had not been followed which we understand Ben Coddington is investigating in detail and intending to have rectified before work resumes at the site.

Kate Goodnow, one of the observers present on both Wednesday and Thursday, documented the breaches she witnessed and they have been sent to Council and added as an appendix to this document. We ask that you consider this document as part of this complaint.

Summary of Concerns

Our major concerns are that the professionals on the ground did not know which trees were to be removed and which were to be retained. Legible plans were not accessible at the site. A question remains as to whether the trees were incorrectly marked or did the various personnel on site not understand the markings (or codes) used.

Site preparation was woefully inadequate, in particular trees and their root systems which were intended to be retained had not been protected. This would have helped to prevent the wrong trees being identified. As stated above the site had not been fenced correctly before heavy machinery was brought on and clearing work started. Very importantly the correct procedures for protecting vulnerable species were not followed.

We are not aware whether the site was inspected in the two days prior to start of clearing, as specified in the Hollow Management plan 3.2.1, for nesting fauna. We point out also that the Hollow Management Plan indicates that small trees are to be removed prior to the removal of hollows (see 6. Schedule of Work), and then presumably the larger trees at a later stage.

Finally we'd like to point out that by the time the Environmental Officer came to the site it was impossible to determine whether all the trees cleared were indeed the correct ones. The bulldozers having knocked down so many trees dragging and pushing them around had rendered them unrecognisable.

Presumably the trees remaining can now be audited and if not all trees that should have been saved are found undisturbed, then penalties should be laid against the person/company at fault.

Mishandling a Vulnerable Species must be addressed.

We would like some assurance that no further mistakes are made in regards to the environmental protection responsibilities associated with this development. Following this incident the work on the site should be intensely monitored, any further breaches dealt with using the strictest measures.

In conclusion

We urge that this complaint be investigated in its entirety and dealt with as a matter of urgency. We also request a more efficient and effective system of reporting illegal action on building sites which (we are told) commonly occur before council offices

are open and staff are available. We urge that Council consider new procedures being put in place so that a rapid response to such incidents is possible increasing the chance that situations such as these can be stopped before irreversible damage is done.

On behalf of all the observers at the site, I would like to complement Ben Coddington on his handling of the situation last Thursday.

I look forward to receiving your response

Yours sincerely

Sue Tolley

Co-ordinator Keep Jervis Bay Unspoilt

Our Future Shoalhaven.

Appendix 1

4 Murdoch st. Development application breaches during clearing

There have been numerous breaches to DA 10/1377 during the ongoing clearing of site that must be addressed immediately due to ongoing environmental damage on site and adjacent national park, private and public land.

These include breaches of conditions:

1) Sediment control. DA#76 k: Sediment controls are not in place as clearing commences. DA requires them to be in place **before or on same day as clearing**. Not in place on 20/10/2021. See photo #1.

DA 48 also requires “sediment erosion controls ... must be in place **prior to any clearing works commencing on site**”.

The Abel Ecology report that underlies the DA also makes it clear that this fence must be in place **before** clearing. See Abel Ecology report page 15#h. Here the requirement is for a sediment fence on the northern, eastern and southern boundaries as well as the western edge of the APZ.

As we have experienced heavy rain, sediments are already leaving the site particularly at the access point – see following point.

2) Vehicle access and disturbance of adjacent public land.

Runoff has taken place in part as the Shoalhaven Council’s Builders Guide from June 2020 page 12 has been breached. Site access has **not** been lined with geotech and topped with aggregate to form a bump to contain runoff. Very heavy machinery has crossed at this point allowing runoff from the site into adjacent land towards the creek. See photos # 2, 3 and 4.

No further vehicular access should be allowed before this is corrected as further heavy rain and runoff is expected.

Breach of DA #76 g and j: All vehicles to be parked onsite. Large vehicle parked in public area in front of Aqua Mist. See photo # 5.

DA 29e: All loading and unloading of machinery is to take place on site. Heavy machinery has been unloaded off site and allowed to crush small trees on public land. See photo #6.

Heavy machinery has been driven on public land on the side of the site- the creek side. This is environmentally sensitive land. The ruts from this machine on public access have

led to the build up of water pooling and access has been cut due to a large tree crossing the public access road. This is in breach of DA 76h See photos # 7, 8, 9.

3) Protection of adjacent trees on private and public land including National Park. According to DA # 42: **Prior to clearing** (emphasis in original) trees selected for retainment must to protected to the **drip line**. Heavy machinery is, and has been, driven up against the fence line over the roots of mature trees in the National Park, on AquaMist land and on public land adjacent to the site. No temporary fencing has been put up to the drip line to protect these trees.

In fact, the trees to be retained were not marked at all before clearing and at least one tree that was to be retained was climbed by AandD tree services in preparation for removal.

This is also in breach of DA#44: **"Prior to commencement of any clearing works on the property, trees to be retained must be clearly identified and protected around the outer edge of the leaf canopy to prevent mechanical damage of the tree trunk, mechanical disturbance to roots, or soil build-up around the base of the tree during and after clearing works** (our emphasis).

This did not occur the first day of clearing (see photos #10, 11, 12) and was only partly rectified after our repeated complaints and onsite visit from Council. The soil around trees to be retained in the construction site was seriously affected with potential root damage.

4) Hollow trees and trees in the APZ.

APZ:

Breaches to DA#46 and 47: **Prior to any clearing works on site** (emphasis in original) "trees to be retained in the APZ must be clearly identified and protected with temporary barrier fencing to prevent mechanical damage of the tree trunk, mechanical disturbance of the roots, or soil build-up around the base of the tree during and after clearing works". No identification by marking of trees in the APZ has occurred nor barrier fencing.

This **must** occur before any further clearing.

Hollow trees:

With the insensitive clearing carried out so far there are also concerns about the potential breach of DA76f: The requirement to use a cherry-picker or crane to carefully remove trees with hollows. So far many large trees have been knocked over with a large excavator and inspected once they are on the ground (see photo# 13 and 14). A cherry picker was brought on site but was not utilised presumably because of the work stop by Council.

Our Future Shoalhaven

13 Photographs were attached we are happy to forward these again if necessary.

Our Future Shoalhaven <ourfutureshoalhaven@gmail.com>

Tue, Nov 30,
2021, 6:18 AM

to Federal Dept AWE

Dear Myra,

Thank you for your advice (sent 19/11/2021) on making a report to the Department of Agriculture, Water and the Environment (Department). On behalf of Our Future Shoalhaven Inc., I would like to report serious concerns regarding environmental harm being caused by land clearing and future building construction within the proximity of Moona Moona Creek and Jervis Bay National Park, Huskisson NSW.

A search of the EPBC Act – Public Notices page has been done. As far as I am aware, this action has not been referred for assessment under the EPBC Act. However, having regard to the information provided - I ask that if this action has previously been referred and a decision made under the EPBC Act, that the information here be considered as a request for reconsideration pursuant to section 78A of the EPBC Act, noting in particular the information on the history of this development in section 3 .

Below are the relevant details regarding the impacts of this action, to the best of our knowledge and understanding:

1. Where is the action/impact?

4 Murdoch St, Huskisson, Jervis Bay NSW

2. Who is taking the action/impact?

The Bulum Group is the Owner/Developer based in Canberra.

The proponent's email address is Nik@bulumgroup.com.au

3. When is the action/impact proposed, or when did it occur or is likely to occur?

Major tree clearing for the project began on the 20th Oct 2021 and on the 21st Oct 2021 the tree where a pair of Gang Gang Cockatoos (*Callocephalon fimbriatum*) were observed was climbed and consequently the birds were disturbed and took flight. Although further tree clearing has been temporarily stopped by the Shoalhaven Council (discussed further below), other engineering and surveying is scheduled between now and January 2022 including drilling to test for Acid Sulphate soil which will involve a heavy vehicle and noise on the site. Tree clearing and tree hollow management could resume sooner than January if the Gang Gangs are determined not to be nesting on the site unless stricter measures are taken by an appropriate authority.

4. What is the action/impact?

The action of concern is land clearing on a development site. Land Clearing is a **Key Threatening Process** under the EPBC Act.

We believe the correct preparation of the site prior to clearing was not carried out. Care and protection from harm, of trees to be retained, was not undertaken. Some trees to be

retained were removed, other trees to be retained were in the process of being removed when the clearing was halted. There was mishandling of hollows for nesting birds (further detail provided below). The management of clearing the trees was done using a bulldozer resulting in damage to trees to be retained, damage to trees adjacent to the site. Clearing caused noise and disturbance generally to nesting species.

[Information on the history of the Development Application for 4 Murdoch Street.](#)

The conditions of consent of 4 Murdoch Street (DA 10/1377) was originally determined in 2012 and later modified in 2018, as such it is based on ecological and other reports undertaken over a decade ago - Abel Ecology Report 2009.

The approved development is for 2 x 3 storey buildings comprising, 32 units and 64 car space underground garage. Despite the development proposal being approved in 2012, no clearing or construction commenced before the land was resold in 2019. Engineering reports were accepted as evidence of the approval being “commenced”.

Despite intense lobbying by the community to have the approval reassessed on the grounds of the increased vulnerability of the natural environment and the area’s present day biodiversity importance to the area, the Shoalhaven Council took no action on this matter. The close proximity (33m) of the block to Jervis Bay Marine Park Sanctuary Zone and the Jervis Bay National Park were the community’s issues of major concern.

We believe that in the 12 years since ecological reports were undertaken for this development application, there has been a great deal of change to the natural environment of this particular site and the surrounding land and waterways.

Native species populations have decreased, some newly listed by the State and Commonwealth Governments eg. To name just a few species identified in the Protected Matters Search Tool generated report, the Regent Honeyeater listed as **Critically Endangered** in 2015, the Eastern Bristlebird listed as **Endangered** in 2020, the Gang Gang Cockatoo listed as Vulnerable in NSW and currently on the **Finalised Priority Assessment List** for considered listing under the EPBC Act.

On the other hand some new bird and animal species have moved to the area since the bushfires of 2019/20 which destroyed vast areas of wildlife habitat along the South East Coast of NSW and Victoria. The Glossy Black Cockatoos (listed as **Endangered** under the EPBC Act) is just one example of a change in species seen in greater numbers here but known to be decreasing in numbers overall. Jervis Bay and Booderee National Park was largely spared from this fire and became a refuge for many bird and other animal species.

[MNES that may occur in, or may relate to, the site of the proposed impact – identified through Protected Matters Search Tool](#)

A search of the Department’s Protected Matters Search Tool has identified **3 threatened ecological communities, 77 listed threatened species and 54 listed migratory species** that may occur in, or may relate to, the site of the proposed impact (4 Murdoch St, Huskisson NSW) where this Key Threatening Process is to occur. The generated report from the Protected Matters Search Tool is attached for your reference.

Of particular concern is the proximity of the action to the EPBC-listed:

- ☐ **critically endangered** Illawarra and south coast lowland forest and woodland ecological community
- ☐ **critically endangered** River-flat eucalypt forest on coastal floodplains of southern New South Wales and eastern Victoria ecological community
- ☐ **endangered** Coastal Swamp Oak (*Casuarina glauca*) Forest of New South Wales and South East Queensland ecological community
- ☐ **critically endangered, endangered and vulnerable** species or species with habitat likely to occur within the area of the proposed impact, or that are likely to display foraging, feeding or related behaviour within the area (in addition to other listed species – refer to attached report):
 - Regent Honeyeater
 - Australasian Bittern
 - Red Knot, Knot
 - Curlew Sandpiper
 - Eastern Bristlebird
 - Northern Royal Albatross
 - Swift Parrot
 - Southern Giant-Petrel
 - Orange-bellied Parrot
 - Eastern Curlew
 - Gould's Petrel
 - Australian Painted Snipe
 - Shy Albatross
 - Chatham Albatross
 - Hooded Plovers

It is also important to highlight the findings of the Threatened Species Scientific Committee (TSSC) in relation to its listing of Land Clearance as a Key Threatening Process. The TSSC noted that the threatening process **could cause unlisted species to become listed** ie. the process is threatening a wide range of listed and unlisted species/communities. Of particular relevance to note here is the Gang Gang Cockatoo (*Callocephalon fimbriatum*) which is on the **Finalised Priority Assessment List** (FPAL) due for assessment and a decision on whether to list this species as threatened in one of the categories under the EPBC Act. A decision is due by 30 April 2022.

While not currently listed under the EPBC, the impact of this action on the Gang Gang Cockatoo has already been observed, and the Council has temporarily suspended the action as a result. Further details on this are provided below.

Evidence and observations of other MNES in the area

Glossy Black –Cockatoo (*Calyptorhynchus lathami*) listed as **Endangered**

- ☐ A pair of Glossy Black-Cockatoos feeding 1 young bird was sighted Oct 30th 2021 200m from 4 Murdoch Street. The tree they were in was on western boundary inside the Jervis Bay National Park. Images are attached, if details of co-ordinates are available we will forward them if requested.
- ☐ CSIRO does not have Glossy Black-Cockatoo listed historically within a kilometre of the site, however since the fires 2019/2020 this cockatoo has been observed, in

larger numbers in several locations in the Shoalhaven, including sightings in Jervis Bay.

- 15 sightings have been recorded on Bird Life Australia's Birdata in the Shoalhaven some within 1-5kms of the site.

The Eastern Curlew (*Numenius madagascariensis*) (**Critically endangered** EPBC)has been sighted at Moona Moona Creek and at Minola Spit and Currambene Creek Huskisson in recent weeks.

Hooded Plovers (*Thinornis rubricollis*) (**Vulnerable** under the EPBC Act) are known to breed on various beaches in Jervis Bay, different locations have been observed each year since the introduction of the Shorebird Recovery Program and regular monitoring began. They have been sighted on rare occasions at Moona, the closest nesting site this year to Moona Moona Creek is Greenpatch Beach.

Evidence of species listed under State legislation

Gang Gang Cockatoo (*Callocephalon fimbriatum*) (Vulnerable NSW and on the **Finalised Priority Assessment List** (FPAL) due for assessment and a decision on whether to list this species as threatened in one of the categories under the EPBC Act. A decision is due by 30 April 2022.)

- Community members observed land clearing activity at the site on 20th and 21st October. Photographs were taken on both days and are attached.
 - The action caused a pair of Gang Gang Cockatoos to leave their nesting site in the hollow of 30m Eucalyptus pilularis.
- A report was made to Council firstly on the 20th of alleged breaches of the conditions for clearing (attached is the written list of breaches).
 - Shoalhaven Council commenced investigative action only at this stage.
- As a result of the sighting the Ecologist organised, the following morning, for a contracted arborist to climb the tree where the Gang Gangs were seen with the intention of blocking the hollow if the birds had not actually prepared a nest or laid eggs.
 - Numerous trees were cleared before Gang Gangs were observed by the supervising Ecologist.
 - This plan was in preparation for the tree to be felled. The birds were at the tree, the activity causing them much stress evidenced by their distress calls and eventually they took flight.
- A second report by phone by observers was made to council on the 21st when the attempts were made to inspect hollows which the Gang Gangs were thought to be occupying.
- Both the incidents of illegal clearing and inspection of a possible Gang Gang Cockatoo nest were reported to Shoalhaven Council and as a result all work was halted while the incidents were investigated.
- The investigation by Council determined:

- The tree where the Gang Gang Cockatoos were habiting was not a tree that was marked on the Vegetation Management Plan to be removed. In fact the Plan showed that other trees had been bulldozed that should have been retained.
- It was determined that inadequate preparation had occurred prior to clearing, incorrect tree removal had occurred, incorrect protection strategies of the Gang Gangs nesting attempts had occurred and the tree the Gang Gangs were in was one of the trees stated on the Vegetation Management Plan to be retained.
 - The tree was clearly marked as nos 14 and had H (Hollow) painted on it. There was infact no need to inspect the hollows of this tree under any circumstance, let alone when there was evidence of a vulnerable species nesting in it.
 - The Approved Council DA required that the tree and its root system should have been protected before any clearing on the block commenced.
- Council then determined that **No Further Clearing should occur** until mid-January 2022, or until there is no further evidence of the Gang Gangs breeding on the site this season.
- Regular monitoring for the return of the Gang Gangs since the incident has been conducted by local volunteers. Several Gang Gang Cockatoos have been observed to fly across and around the site but not at the hollow they were previously attempting to nest.
- The volunteer monitors have reported seeing Glossy Black Cockatoos, a pair of Eastern Osprey with a fledgling, and several pairs of nesting Musk Lorikeets, all in or within close vicinity to the proposed construction site.
- Many other more common birds such as Crimson Rosella, Rainbow Lorikeets, King Parrots, Sulphur Crested Cockatoos all are known to use the tree hollows on this site.
- Further evidence of Gang Gangs present in the vicinity is as follows:
 - CSIRO Database for listing species in a particular location shows 168 bird species on the Atlas of Living Australia database within a 1km radius of the proposed development at 4 Murdoch Street Huskisson includes Gang Gang Cockatoo.
 - Bird Life Australia, Birdata survey records show 5 sightings in the last 21 days within 500m of 4 Murdoch St. Some of these sightings have been recorded by local volunteer monitors since the Gang Gang Cockatoo event on 21st Oct.
 - Local bird watchers have given verbal evidence of seeing Gang Gangs groups of up to 6 in Moona Moona Creek Reserve during early spring, dissipating presumably to nest as spring progressed. There is also some evidence, conveyed via social media, supporting this but is not included as reliable evidence for this report.

Pied Oystercatchers (*Haematopus longirostris*) (Endangered in NSW)

A pair of Pied Oystercatchers have nested successfully for the last 3 years at the entrance of Moona Moona Creek. 2 chicks of the Pair of Pied Oystercatchers were observed to have fledged this week.

Eastern Osprey (*Pandion cristatus*) Listed (Vulnerable NSW)

- ☐ Above mentioned CSIRO Database listing also includes Eastern Osprey
- ☐ Bird Life Australia. Birddata survey records show 5 sightings in the last 21 days within 500m of 4 Murdoch St.
- ☐ Sighting on 31/10/21 was of 2 Adult Osprey with 1 fledgling perched on a high branch of a 30m Eucalyptus pilularis. The tree was approximately 25 m from the western boundary of 4 Murdoch Street, just inside Jervis Bay National Park, and only 15m from the banks of Moona Moona Creek in Jervis Bay Marine Park.

Powerful Owl (*Ninox strenua*) (Vulnerable NSW)

- Reports by local bird watchers of Hearing the Power Owl night in vicinity of site quite common, most recently heard September 2021

Eastern Pygmy Possum (*Cercartetus nanus*) (Vulnerable NSW) and the White-footed Dunnart (*Sminthopsis leucopus*) (Vulnerable NSW)

- ☐ Ecological reports were submitted to Council concerning a block of land that borders this site, namely 3 Moona Street (DA withdrawn, but likely to be resubmitted).
- ☐ The report was assessed by Council and the land owner was asked to provide further detailed surveys exploring the presence of the Eastern Pygmy Possum and the White-footed Dunnart.
- ☐ It would be logical that the same requirements are set for this development site considering the evidence that these species may be within a kilometre radius and since no surveying has been conducted since 2009 (more details below).

Sensitivity of this particular block of land.

As outlined above, a search of the Protected Matters Search Tool identified the following EPBC-listed ecological communities within the vicinity of the action:

- ☐ **critically endangered** Illawarra and south coast lowland forest and woodland ecological community
- ☐ **critically endangered** River-flat eucalypt forest on coastal floodplains of southern New South Wales and eastern Victoria ecological community
- ☐ **endangered** Coastal Swamp Oak (*Casuarina glauca*) Forest of New South Wales and South East Queensland ecological community

Further details about the particular impacts of the action to these ecological communities and general sensitivity of the area surrounding the site of the action is outlined below.

Proximity to Protected waterways

The environmental sensitivity of this block of land is exceptional being only 33 m from Moona Moona Creek which is classified as TYPE 1 – Highly Sensitive Key Fish Habitat and CLASS 1 – Major Fish Habitat.

CLASS 1 habitats are marine or estuarine waterway or permanently flowing or flooded freshwater waterway (e.g. river or major creek), habitat of a threatened or protected fish species or 'critical habitat'. According to the Directory of Important Wetlands of Australia (DIWA), Moona Moona Creek to the south and west of the subject land has been mapped as an important estuarine wetland which may support suitable habitat for migratory waders. This wetland is also mapped on the Australian Wetlands (2006) layer (BIOSIS, 2.17. pp.10). A large proportion of the 4 Murdoch St. development lies directly within a Proximity Area for Coastal Wetlands.

Important Mangrove habitat exists along Moona Moona Creek bed immediately adjacent to the block and extending the entire width of the site. This highly sensitive vegetation must be protected from the possible damage and harm that a large scale development in such close proximity could cause.

Various shorebirds are known to be present and feed at Moona Moona Creek, notably Pied Oystercatchers (*Haematopus longirostris*) (Endangered in NSW), Hooded Plovers (*Thinornis rubricollis*) (**Vulnerable** under the EPBC Act), the Eastern Curlew (*Numenius madagascariensis*) (**Critically endangered** EPBC). Raptors are common visitors eg. Sea Eagles, Osprey, Kites, Goshawks

Risk of Acid Sulphate Soil contamination

Acid Sulphate soil management will be necessary particularly with approval given for a 64 car space underground garage at the front of the block and an in ground swimming pool.

The adjacent development of 2 Murdoch Street, comprising of a multistorey apartment block, was developed in 2014 and Acid Sulphate Soil was found to be present. Technical and engineering issues are known to have ensued. Details are not readily available to the general public but we believe should be thoroughly investigated if only to ensure they are not repeated in other development such as this and those in the future eg. 3 Moona Street.

We request that consideration be given as to whether Acid Sulphate removal could affect MNES in this particular situation.

Road improvement conditions of the DA10/1377 consent.

The Council has included in their consent conditions (2018) that a bitumen road and turning circle (principally for garbage collection purposes) be constructed between the full length of Murdoch Street and the creek. The distance of the proposed road and Moona Moona Creek being only 15-20m in some parts. This area is currently vegetated with 61 healthy and well established trees many with hollows ranging in height from 20-30m. *Eucalyptus Pilularis*, *Banksia serrata* and *integrifolia*, *Angophora floribunda*, *Corymbia gummifera*, *Ceratopetalum*. In addition there are a number of *Acacia* and *Allo Casuarina* trees. This area is likely to form part of the **Threatened ecological communities** identified above. (A recent Tree Audit done by experienced volunteers is attached)

It would be seemingly impossible to construct a bitumen road in this space without harming the trees, bird habitat, creek banks, mangrove habitat, and/or the TYPE 1 – Highly Sensitive Key Fish Habitat and CLASS 1 – Major Fish Habitat mentioned above. Currently a single dirt track allows access into the National Park Fire tracks and walking trails. It has a locked gate to prevent unauthorised vehicles entering. Any new road construction would be likely to encourage more traffic necessitating it to be built to the standard the Council has specified. However, leaving it as a single dirt track for authorised vehicles would best safe guard the fauna and flora.

It is our understanding that the required detailed reports and plans for this road improvement have yet to be presented to Council by the developer. We would like to request the Department of Agriculture, Water and the Environment intervene to recondition the risk of harm the proposed road construction could cause to MNES, protected under the EPBC Act.

List of Attachments

Attached to this email is a tree audit undertaken by experienced volunteers in our organisation of the reserve in front of the block subject to road improvements.

Also attached is the list of breaches that were reported to the Shoalhaven to accompany our phone call reports made at the time.

Separate emails will follow with images taken of the tree clearing activity, the Gang Gang Cockatoo event, and of the Glossy Black Cockatoos seen since these incidents.

I trust we have provided sufficient information to support this report but please don't hesitate to ask for further clarification as necessary.

We look forward to hearing of your deliberations and determinations.

Yours sincerely

Evan Christen

President

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Our Future Shoalhaven

There were 2 attachments if they are of importance, we are happy to send them

Attachment 3 – Detailed comment on Architects response to ADG

ADG objective	Developer response	Our comment
<p>3A-1</p> <p>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context</p>		<p>Need to look at the Appendix of ADG and Architectural submission and Statement of Environmental Effects</p>
<p>3C-2</p> <p>Amenity of the public domain is retained and enhanced</p>	<p>The proposal includes new paving and landscaping to connect to the footpath from Murdoch Street.</p>	<p>This response ignores the purpose of this objective which is to consider how the building impacts on the public amenity – looking at the building. The response also ignores the fact that the building sits next to a national park, and a very significant creek which has banks protected from use, and which need to retain vegetation.</p>
<p>3D-1</p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</p> <p>Design criteria</p> <ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space 	<p>The site area comprises of communal space, located at the podium level adjoining the deep soil zone at the rear of the buildings.</p>	<p>A disappointing response when the design is highly likely to achieve the design criteria.</p> <p>The response does not specifically address the design criteria.</p> <p>The response indicative of poor awareness of the attributes of the site.</p>

for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)		
<p>3D-2</p> <p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</p>	<p>The communal space comprises of a space with soft and hard landscaping, seating pool and pergola. The space is designed to encourage a variety of active and passive and recreational uses</p>	<p>Response avoids commenting on the attractiveness of the site,</p>
<p>3D-4</p> <p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood</p>	<p>n/a The proposal does not adjoin public spaces or footpaths or roads.</p>	<p>It looks as if whoever completed this response has never been to the sight to see the road, the national park (public space??), the Moona Moona creek reserve. At the very least this should be a meaningful response.</p> <p>The site is adjacent to RE1 and C1 – this includes is a road which is a fire trail and public access to the national park. The response given is incorrect.</p> <p>The response indicative of poor awareness of the attributes of the site.</p>
<p>3F-2</p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space</p>		<p>No answer provided</p>
3G-1		<p>No existing footpath</p>

<p>3H-1</p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>The vehicular access point was selected and coordinated with the consulting traffic engineer with two way entry and egress.</p>	<p>Response omits concern regarding the streetscape – this is part of the objective and should be considered.</p>
<p>3J-1</p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p>	<p>Car parking spaces to Council's requirements</p>	<p>The DCP states re multi-dwelling housing – 61 spaces</p> <p>The DCP also states:</p> <p>Refer to Part 3J-1 of the Apartment Design Guide in relation to car parking requirements for development subject to State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development in the Nowra CBD on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core and B4 Mixed Use.</p> <p>The ADG states:</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</p> <p>The car parking needs for a development must be provided off street.</p>
<p>3J-2</p>	<p>Motor bike and bicycle parking are provided.</p>	<p>A truly future looking building would include EV charging, especially as our petroleum prices are</p>

Parking and facilities are provided for other modes of transport		likely to sky rocket and more people will take up EVs.
<p>3J-4</p> <p>Visual and environmental impacts of underground car parking are minimised</p>	The carparking is on ground with negligible impact to the site and excavation.	Our understanding is that the car parking will be partly dug into the ground (approx. 1 m) and this will be in acid sulphate soil – it is erroneous to say there is negligible impact – especially environmentally.
<p>3J-6</p> <p>Visual and environmental impacts of above ground enclosed car parking are minimised</p>	No parking is visible from the public domain	Is there any above ground car parking??
<p>4A-1</p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</p> <p>Design criteria</p> <p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</p> <p>1. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter</p>	71% of apartments receive more than the minimum 3 hours of sun between 9am and 3pm mid-winter. Also refer Section 4 – Compliance Summary Table for more information.	The ground floor units of the West wing on the southern side of this wing face very close to south. It isn't clear if there will be glass on the northern edges of these apartments, but especially at the ground floor level these will be overshadowed by the row of units to the north of them, and the east wing.

1.	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter		
4A-2	Daylight access is maximised where sunlight is limited.	No apartments face due south.	As above – some apartments will have the equivalent of southern sun only , along with shaded north sun (that is, no direct sunlight)
4A-3	Design incorporates shading and glare control, particularly for warmer months	Overhangs are provided	There is inadequate explanation as to where the overhangs are, and how they will ameliorate glare / provide shading from the eastern and western sun during summer. Especially for the eastern side of the east wing and western side of the west wing.
4B-1	All habitable rooms are naturally ventilated	All habitable rooms are cross ventilating	Unless we have mis-read the compliance summary table there is a contradiction between table and statement here. Table says that 79% have cross ventilation.
4B-3	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents</p> <p>Design criteria</p> <p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p>	100% of apartments achieve natural cross ventilation	As above – Compliance table says that 79% of apartments have cross ventilation

<p>1. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>																	
<p>4D- 1</p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</p> <p>Design Criteria</p> <p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="206 564 797 874"> <thead> <tr> <th>Apartment type</th><th>Minimum internal area</th><th></th></tr> </thead> <tbody> <tr> <td>Studio</td><td>35m₂</td><td></td></tr> <tr> <td>1 bedroom</td><td>50m₂</td><td></td></tr> <tr> <td>2 bedroom</td><td>70m₂</td><td></td></tr> <tr> <td>3 bedroom</td><td>90m₂</td><td></td></tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m₂ each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m₂ each</p> <p>2.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	Apartment type	Minimum internal area		Studio	35m ₂		1 bedroom	50m ₂		2 bedroom	70m ₂		3 bedroom	90m ₂		<p>The smallest 2 bedroom apartment is 86sq/m with the largest 137sq/m. The smallest 3 bedroom apartment is 138sq/m with the largest 166sq/m. all apartment sizes cater for great amenity and livability due to their size.</p>	<p>The response refers only to size – does not refer to level of functionality, organisation or amenity.</p> <p>Whilst size is one of the design criteria and the design is above the <u>minimum</u> required sizing the response ignores the second design criteria.</p> <p>It is likely that every habitable room has a window – but this isn't explained in the Response.</p>
Apartment type	Minimum internal area																
Studio	35m ₂																
1 bedroom	50m ₂																
2 bedroom	70m ₂																
3 bedroom	90m ₂																

<p>4D-2</p> <p>Environmental performance of the apartment is maximised</p> <p>Design Criteria</p> <ol style="list-style-type: none"> 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window 	<p>All living areas and bedrooms are located on the external face of the building.</p>	<p>This response provides no information related to the two design criteria, and no useful information regarding the objective. Living areas and bedrooms facing due west or east will NOT maximise environmental performance.</p> <p>In addition it needs to be explicit where the windows are, to ensure that the living rooms that are over 14m and 17 m in depth have window at both ends. Arguably the 17m rooms would still be inadequate given that the maximum depth should be 8m.</p>
<p>4D-3</p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs</p> <p>Design criteria</p> <ol style="list-style-type: none"> 1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space) 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space) 3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments 	<p>Access to bedroom, bathrooms and laundries is separated from living rooms to minimise direct openings between living and service areas. Apartment layouts provide room dimensions which facilitate a variety of furniture arrangements and spaces for a range of activities and privacy levels between them</p>	<p>Again the response does not acknowledge the design criteria.</p> <p>Dimensions of bedrooms is not given.</p> <p>Estimate from the architectural plan is that some units have an internal width of less than 4m e.g. Type C1.</p> <p>These matters need to be clarified, and addressed if need be.</p>

4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts												
4F-2 Common circulation spaces promote safety and provide for social interaction between residents	The communal circulation is naturally ventilated and provide natural lighting with generous landscaping	The response has omitted the words ‘promote safety and social’ from their guideline requirement. Consequently they do not address safety, and do not explain how these spaces provide for social interaction.										
4G-1 Adequate, well designed storage is provided in each apartment Design Criteria: In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><td>Dwelling type</td><td>Storage size volume</td></tr><tr><td>Studio apartments</td><td>4m₃</td></tr><tr><td>1 bedroom apartments</td><td>6m₃</td></tr><tr><td>2 bedroom apartments</td><td>8m₃</td></tr><tr><td>3+ bedroom apartments</td><td>10m₃</td></tr></table> At least 50% of the required storage is to be located within the apartment	Dwelling type	Storage size volume	Studio apartments	4m ₃	1 bedroom apartments	6m ₃	2 bedroom apartments	8m ₃	3+ bedroom apartments	10m ₃	Storage is provided within the apartment and the carpark area for each apartment.	The amount of storage is not indicated and nor is it verified that at least 50% of that storage is within the apartment
Dwelling type	Storage size volume											
Studio apartments	4m ₃											
1 bedroom apartments	6m ₃											
2 bedroom apartments	8m ₃											
3+ bedroom apartments	10m ₃											

<p>4J-1</p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings</p>	<p>The design responds both to solar and noise requirements.</p>	<p>Fails to acknowledge the environment of national park, creek, reserve and road.</p> <p>Noise is likely to come from the road, or residents themselves e.g. permanent residents have left Aquamist because of the noise late at night on weekends from residents.</p>
<p>4J-2</p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission</p>	<p>All shared tanneries walls are kept to a minim and comply with the BCA</p>	<p>Fails to acknowledge that the glass in the windows will need to comply with bushfire regulations and likely be thicker and block more sound than normal glazing.</p>
<p>4K-1</p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future</p>	<p>There are multiple apartment types and configurations of 2 and 3 bedroom apartments</p>	<p>What is the rationale for not including 1 bedroom apartments?</p>
<p>4L-1</p> <p>Street frontage activity is maximised where ground floor apartments are located</p>	<p>N/A</p>	<p>That this item is not relevant demonstrates the inappropriate zoning for this area – it is not a town centre or active street where you would expect an apartment of this size and nature to be built</p>
<p>4M-1</p> <p>Building facades provide visual interest along the street while respecting the character of the local area</p>	<p>The façade includes a composition of varied building elements, textures and forms.</p>	<p>Again, the response provides no explanation as to how the façade respects the character of the local area. It may be an interesting design and have varied elements, textures and forms but this explains nothing about how it fits in next to a national park, and marine park – that is, how it</p>

		respects the character of protected natural areas.
<p>4O-2</p> <p>Landscape design contributes to the streetscape and amenity</p>	<p>Landscaping is proposed between the building line and the street boundary at the level change.</p>	<p>Inadequate information; The architectural drawings depict planting that are an anathema(?) to the site and area character. In addition the viability of plantings on the balconies for what will be a mostly holiday rental needs to be considered.</p> <p>This building has clearly been designed for somewhere like Canberra. There is a huge contrast between images of planting and the environment of the build – the landscaping is not sympathetic or makes a positive contribution.</p>
<p>4P-2</p> <p>Plant growth is optimised with appropriate selection and maintenance</p>	<p>Refer landscape plan</p>	
<p>4P-3</p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces</p>	<p>The proposal incorporates a number of communal spaces on ground floor and on the podium including public seating, pool, pool seating and green spaces. Refer landscape plan.</p>	<p>Landscape plan not provided.</p> <p>Response does not address how the planting contributes to the quality and amenity of public open spaces. Murdoch St is used as a public</p>

		thoroughfare into/from the national park, as such it is an important public space.
<p>4U-1</p> <p>Development incorporates passive environmental design</p>	<p>There are many large windows to all the apartments (sic) for natural light is provided to habitable rooms and also cross ventilation. All the apartments get their light and ventilation from (sic) both sides of the apartment.</p>	<p>The response fails to acknowledge that the east side of the east wing, and west side of west wing will have considerable sunlight streaming into the apartments in summer. This will result in considerable cooling requirements for the units.</p> <p>The west wing effect may be reduced by shading from national park trees, and east wing effect may be reduced by shading from existing trees alongside creek. There is no explanation or interpretation of this.</p>
<p>4U-2</p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer</p>	<p>The design response provides for overhangs and shading devices such as awnings, screens and balconies. Green walls and landscaping provide shading. Roofs and floors are concrete, providing thermal mass to the building. Walls are insulated and all openings will be thermally sealed</p>	<p>Very few apartments will benefit from solar light in winter (Level 1: 8 out of 15). The remainder don't have north facing glazing, or for those units on level 1, and possibly level 2 their glazing facing in a north westerly direction will likely be shaded by the west wing.</p>
<p>4V-3</p> <p>Flood management systems are integrated into site design</p>	N/A	<p>According to Council maps this property is in the flood planning area, and will get flooded with a 1 in 100 year flood.</p>

		Flooding is predicted to be worse in 2050, and given the expected life of the building should be considered.
<p>4X-1</p> <p>Building design detail provides protection from weathering</p>	<p>Roof overhangs protect walls, windows and openings. Architectural detailing will ensure horizontal edges will not cause drip or staining of wall surfaces. In addition, large planter boxes along the perimeter and communal areas provide additional shading.</p>	Where will the water from the planter boxes go?

Elliott Weston <Elliott.Weston@shoalhaven.nsw.gov.au>

Wed, May 5,
2021, 10:35 AM

to me

Hi Sue,

I refer to your earlier emails concerning the above matter and note the following further questions concerning the above development consent (as modified by DS12/1101 and DS18/1142):

- 1) Can you please inform us of the costings for the building proposed by the developer and where we can view them?*
 - 2) What obligation does the developer have to submit a cultural heritage assessment and if so, is their assessment viewable.*
 - 3) Was a referral made to the National park and if so what was the response?*
 - 4) A referral was made to Marine Parks, however I cannot see a response, can you advise?*
 - 5) with changes in Government structures and names can you advise if the equivalent to DPI were referred this Da for assessment and if so can you advise of their response.*
- Additional question - What conditions were amended as a result of the letter 21 March 2012 Cowman Stoddart? i.e what roadworks are still a condition of the approval?*

The following is provided as a response to the above questions:

1. The development was valued at \$8 million at the time that the development was lodged with Council. Should you wish to obtain a copy of any quantity surveyors report (QS report) lodged with DA10/1377 you may apply through Council in accordance with the GIPA Act process to request a copy of any report that Council may hold. The relevant link to the process is provided
- <https://www.shoalhaven.nsw.gov.au/Council/About-Shoalhaven-City-Council/Apply-for-Access-to-Council-Documents>
2. On 21 May 2019, Dam Vey, Senior Team Leader, Office of Environment & Heritage (now Heritage NSW) notified Council that, whilst the consent for the DA10/1377 had been issued, the site is within proximity of a known Aboriginal object (shell midden) listed on the Aboriginal Heritage Information Management System (AHIMS) as #58-2-0435. As an Aboriginal Heritage Impact Permit (AHIP) will be required to undertake any works where an Aboriginal object will be harmed, OEH has written to the landholder to provide them with this advice.

As part of the AHIP application, the person applying for the AHIP is required (amongst other things) to, provide one hard and one electronic copy of the Aboriginal Cultural Heritage Assessment Report prepared in accordance with OEH's *Guide to investigating, assessing, and reporting on Aboriginal Cultural Heritage in NSW*. **For further information on any Aboriginal Cultural Heritage Assessment Report lodged by the developer, you are recommended to consult with Heritage NSW.**

1. At the time that the application was lodged with Council (1 April 2010), there were no known items of Aboriginal archaeological heritage located on the site and the site was not mapped as an "Aboriginal place of heritage significance" i.e. an area of land, the general location of which is identified in an Aboriginal heritage study adopted by the Council after the public exhibition and that may be shown on the Heritage Map.

It is noted that in March 2013, Council wrote to the then owner of 4 Murdoch St to advised them that Council, the Jerrinja Local Aboriginal Land Council (JLALC) and the Office of Environment and Heritage (OEH) have been made aware of potential Aboriginal objects (midden) being disturbed during the current excavation works for the eastern adjoining site (No.2 Murdoch Street, Huskisson, Lot 102 DP 755928 (Por 102)). As such, due to proximity, there is potential that your site may also contain items of Aboriginal cultural heritage.

A referral of DA10/1377 was not required under the National Parks and Wildlife Act 1974 (NPW Act) at the time of lodgement of the application and accordingly the application was not referred to National Parks and Wildlife.

1. A copy of the Marine Parks Authority dated 13 May 2010 (D10/106178) is attached.
2. The development was referred to the NSW Office of Water (now Natural Resource Access Regulator). On 3 June 2010, the NSW Office of Water provided their General Terms of Approval to the application. The NSW Office of Water response requires that a Controlled Activity Approval (CAA) and Water Licence be obtained for works within 40m of waterfront land and dewatering activity at the site. A copy is attached.
3. Modification Application No. DS12/1101 was approved on 4 September 2012 and modified DA10/1377 as outlined below. All other conditions (including road work conditions) remained unchanged through the approval of DS12/1101:

Deleting condition No.24 a) (i) and inserting instead:

"The existing road, from the intersection of Murdoch Street and Burrill Street shall be upgraded to a minimum 6m road and minimum 1m shoulder 2- coat bitumen sealed for the full length of Murdoch Street and must include a full turnaround facility for garbage trucks at the south end of Murdoch St. The road must be upgraded to a 1x 10⁵ standard in accordance with DCP 100 – Subdivision Code and having a minimum pavement thickness of 200mm, subject to soil testing."

Deleting condition No.24 e) (i) and inserting instead:

"Concrete kerb and gutter and associated drainage must be constructed in accordance with the following requirements:

(i) Continuous kerb and gutter must be provided on the development's side of Murdoch Street which terminates where the southern boundary of No.2 (Lot 102 DP 755928) Murdoch Street, Huskisson, intersects with the adjoining road reserve."

Insertion of new condition 24 e) (vi):

"Kerb returns into Burrill Street must be constructed in order to effect the BAL requirements at the intersection with Burrill Street and for the turnaround at the southern end of Murdoch Street".

I hope that the above response has answered the questions that you have requested Council to respond to and remain open to discussing the matter further, as required.

Regards,

Elliott Weston

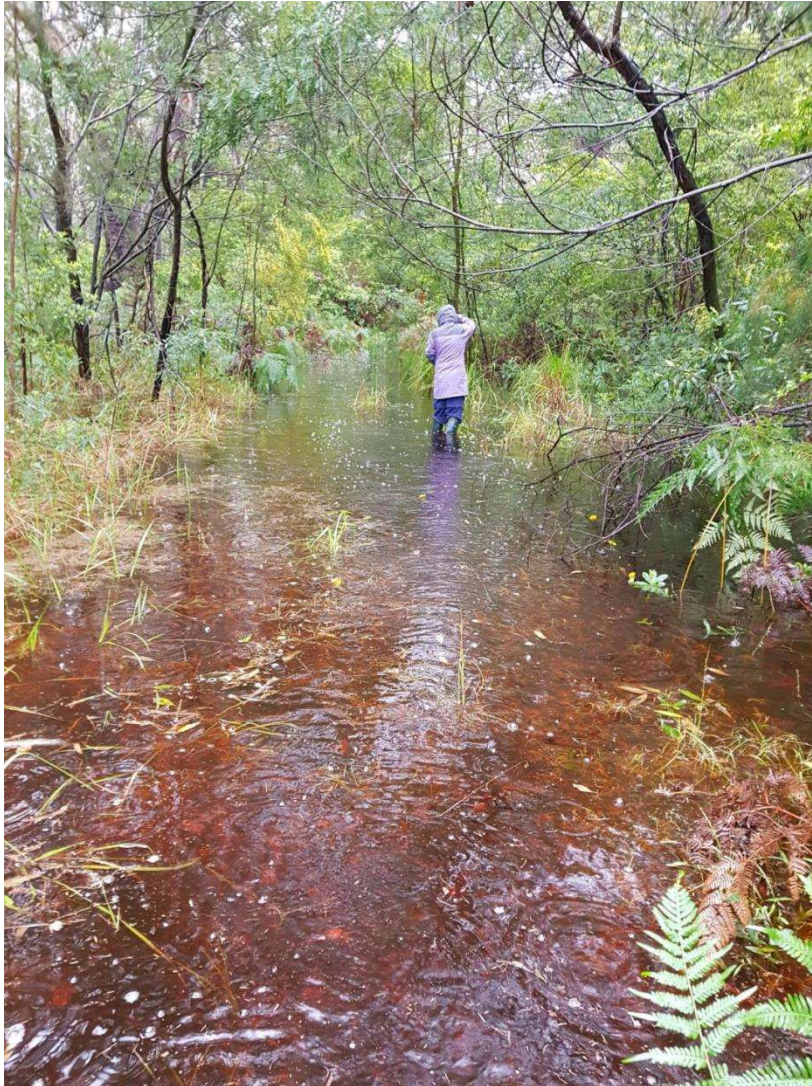
Senior Development Planner, City Development

Shoalhaven City Council

02 4429 3659

council@shoalhaven.nsw.gov.au

Attachment 5 – Images of flooding at 4 Murdoch St



4 Murdoch St, 2020 flooding



4 Murdoch St, 2020 flooding

Photographs of flood events March 2022

These photographs indicate the extent of water retention and runoff from the block across the Public reserve and into Moona Moona Creek. Water run down Murdoch Street and into the National Park, at low points into the creek.



