

GTH RESORTS NO 20 PTY LTD (GEMPLIFE) MODIFICATION APPLICATION

Town Planning Report



PR 150509

2

18 February 2025

REPORT

Document status					
Version	Purpose of document	Authored by	Reviewed by	Approved by	Review date
1	Modification Report	Emma L	Simon P	Simon P	30/01/25
2	Modification Report	Emma L	Simon P	Simon P	17/02/25

Approval for issue		
Simon Pollock		18 February 2025

This report was prepared by RPS within the terms of RPS' engagement with its client and in direct response to a scope of services. This report is supplied for the sole and specific purpose for use by RPS' client. The report does not account for any changes relating the subject matter of the report, or any legislative or regulatory changes that have occurred since the report was produced and that may affect the report. RPS does not accept any responsibility or liability for loss whatsoever to any third party caused by, related to or arising out of any use or reliance on the report.

Prepared by:	Prepared for:
RPS	GTH Resorts No 20 Pty Ltd (Gemlife)
Simon Pollock Technical Director	Brandon Yates
Level 8, 31 Duncan Street Fortitude Valley QLD 4006	Level 2, 120 Siganto Drive Helensvale QLD 4212
T +61 7 3539 9500 E simon.pollock@rpsconsulting.com	E brandon@yeatsdevelopmentconsulting.com.au

Contents

GLOSSARY	1
1 INTRODUCTION	2
1.1 Site details and land ownership	2
1.2 Existing approvals summary	4
1.2.1 Development Consent MP08_0234	4
1.2.2 Modification 1	5
1.2.3 Modification 2	5
1.2.4 Modification 3	5
2 STRATEGIC CONTEXT	6
2.1 North Coast Regional Plan 2041	6
2.2 Tweed Shire Council's Growth Management and Housing Strategy	7
3 DESCRIPTION OF MODIFICATION	8
3.1 Overview of modification	8
3.1.1 Precinct plan	8
3.1.2 Dwelling density	10
3.1.3 Building height	10
3.1.4 Connectivity	11
3.1.5 Tenure	11
3.1.6 Precinct Boundary	12
3.1.7 Subdivision plan	12
3.1.8 Staging	12
3.1.9 Landscape and open space	12
3.1.10 Utilities	13
4 STATUTORY CONTEXT	14
4.1 Modification pathway	14
4.1.1 Environmental Planning and Assessment (Savings, Transitional and other Provisions) Regulation 2017	14
4.1.2 State Environmental Planning Policy (Precincts – Regional) 2021	15
4.2 Environmental planning instruments	16
4.2.1 Tweed Shire Local Environment Plan 2014	16
5 ENGAGEMENT	17
5.1 Previous Preferred Project Report	17
5.1.1 Revised response to submissions and revised Statement of Commitments	17
6 ASSESSMENT OF IMPACTS	18
6.1 Impacts of the proposed modification	18
6.1.1 Built form	19
6.1.2 Open space and landscaping	19
6.1.3 Ecology	20
6.1.4 Traffic	21
6.1.5 Cultural heritage	21
6.1.6 Bushfire	21
6.1.7 Preliminary Engineering Report	22
6.1.8 Stormwater quality and quantity	22
6.1.9 Conceptual erosion and sediment control	22
6.1.10 Contaminated Land	23
6.1.11 Geotechnical/landslip assessment	23
7 JUSTIFICATION OF MODIFIED PROJECT	24
8 CONCLUSION	26

Tables

Table 1: Site details	2
Table 2: Statutory Assessment.....	14
Table 3: Summary of Supporting Reports	18
Table 4: Landscape and Open Space Provisions	20

Figures

Figure 1 Site Aerial	3
Figure 2 Concept Plan Site Area	4
Figure 3 Extract of Tweed Regional City Vision Map	6
Figure 4 Approved Precinct B - Retirement Living (enlarged).....	9
Figure 5 Updated Precinct Plan (enlarged)	9
Figure 6 Concept Plan Approval Building Heights Plan (enlarged).....	10
Figure 7 Updated Building Height Plan (enlarged)	11
Figure 8 SEPP Zone Mapping	16
Figure 9 Tweed LEP 2014 Zoning	16
Figure 10 Cross Section Insert	25

Appendices

Appendix A Application Form	
Appendix B Existing Approval – Modification 2	
Appendix C Updated Major Project Plans (Lot 32)	
Appendix D Updated Response to Submissions	
Appendix E Revised Statement of Commitments	
Appendix F Ecological Assessment	
Appendix G Traffic Assessment	
Appendix H Cultural Heritage Advice	
Appendix I Bushfire Report	
Appendix J Preliminary Engineering Report	
Appendix K Integrated Stormwater Quality and Quantity Assessment	
Appendix L Conceptual Erosion and Sediment Control Plan	
Appendix M Contaminated Land Advice	
Appendix N Geotechnical Advice	

GLOSSARY

Term	Meaning
BC Act	Biodiversity Conservation Act 2016
Concept Plan Approval	Major Concept Plan Approval No.MP 08/0234
DA	Development application
DCP	Tweed Development Control Plan 2008
DPHI or The Department	Department of Planning, Housing and Infrastructure (formerly NSW Department of Planning and Environment)
EEC	Endangered Ecological Communities
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
ESCP	Erosion and Sediment Control Plan
GMHS	Tweed Growth Management and Housing Strategy
LGA	Local Government Area
MOD 3	Modification 3 (this application)
SSD	State significant development
SEPP (Precincts)	State Environmental Planning Policy (Precincts - Regional) 2021
Transitional Regulation	Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017
Tweed LEP	Tweed Local Environmental Plan 2014
Tweed RCAP	Tweed Regional City Action Plan
VPD	Vehicles per day

1 INTRODUCTION

A Concept Plan approval for the development of a mixed residential development known as 'Rise' was granted over land located at Marana Street, Bilambil Heights, the former Terranora Golf Club. The Concept Plan (MP08_0234), as approved, facilitated a mixed residential development comprising residential dwellings, retirement living, village centre, conservation lands, community facilities, open space and ancillary infrastructure.

This modification report (Mod 4) has been prepared by RPS on behalf of GTH Resorts No 20 Pty Ltd, (GemLife) seeking to modify the approved Concept Plan as applying to Precinct B – Retirement Living on Lot 32 in DP1085109. The current approval specifies a specific development format and footprint that was relevant at the time of the approval. The format and elements of a retirement living development has evolved since the approval. The purpose of this modification application is to amend the approved plans to facilitate flexibility in the layout of the future retirement living development on the site. The primary change is the replacement of the building footprints with a building height and setback plan. The changes proposed still reflect the development outcomes (i.e. building height and setbacks) currently permitted on the site, with the final design of the development to be assessed as part of a subsequent application lodged with Tweed Shire Council. There are no changes proposed to the balance of the Concept Plan, which is the subject of a separate modification application.

The Concept Plan was originally made pursuant to the repealed Part 3A of the *Environmental Planning and Assessment Act 1979*. This Modification Report has been prepared to accompany an application seeking to modify Concept Plan 08_0234 under section 3BA(5) of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (Transitional Regulation).

This application is submitted to the Department of Planning, Housing and Infrastructure (DPHI) for consideration and is accompanied by relevant plans and technical reports that have been updated where required to address current regulatory requirements.

1.1 Site details and land ownership

The site is located in the Bilambil Heights Urban Growth Area within the Tweed Local Government Area. The site comprises approximately 6.96ha, forming part of a broader 187ha that make up the total Concept Plan area. The site is currently vacant and accessed via McAllisters Road to the east and Marana Street to the south. The highest point of the land is approximately 160m AHD towards the southern boundary to approximately 150m AHD on the northern boundary.

The site details for Lot 32 in DP1085109 [in *Italics*] are provided below, as well as the balance of the land included in the Concept Plan.

Table 1: Site details

Site Details				
Site Address		Marana Street, Bilambil Heights NSW 2486		
Real Property Description, Ownership and Site Area	Lot and Plan	Ownership	Site area (ha)	Comment
	<i>Lot 32 DP1085109</i>	<i>GTH Resorts No 20 Pty Ltd</i>	6.96	<i>Precinct B – Retirement Living</i>
	Lot 33 DP1085109	Greenland Development Pty Ltd	62.28	Not part of this application
	Lot 31 DP850230	Greenland Development Pty Ltd	0.1480	Closed road – not part of this application
	Lot 2 DP867486	Greenland Development Pty Ltd	115.1	Not part of this application
	Lot 4 DP822786	Greenland Development Pty Ltd	0.0102	Closed road – not part of this application
	Lot 1 DP1033807	Tweed Shire Council	0.3579	Closed road – not part of this application
	Lot 1 DP595529	Tweed Shire Council	0.0771	Reservoir – not part of this application

Site Details				
	Lot 1 DP1033810	Tweed Shire Council	2.025	Closed road – not part of this application
	Approximate total		186.9582 ha	
Road Frontage	McAllisters Road: 66.7m Marana Street: 104.86m			
Local Authority	Tweed Shire Council			

Landowner consent has been provided by GTH Resorts No 20 Pty Ltd and Greenland Development Pty Ltd in support of this modification.

The subject site (Lot 32) is shown in **Figure 1** and in context with the balance of the Concept Plan Approval land in **Figure 2** that follows.



Figure 1 Site Aerial

Source: NearMap, 2024

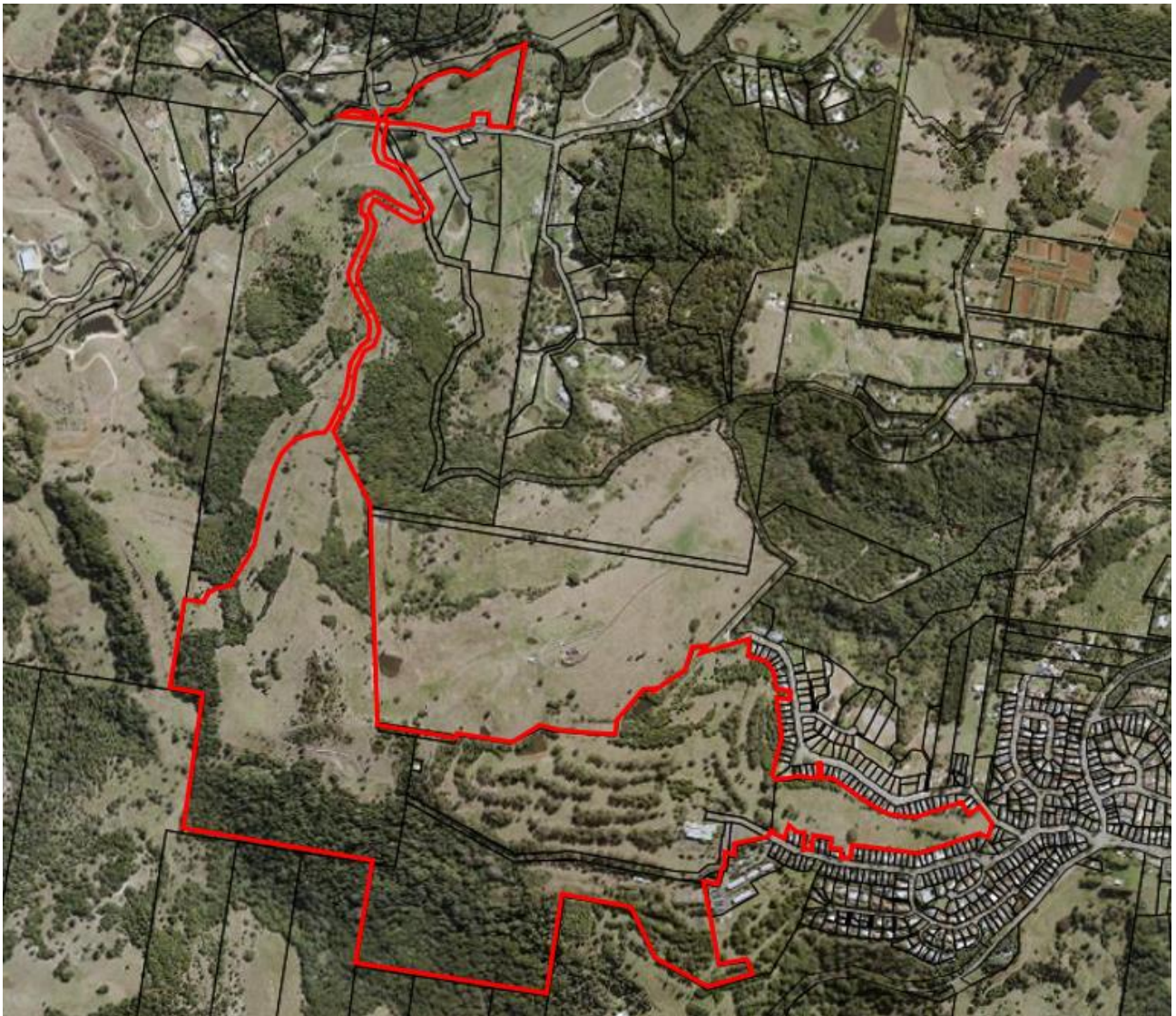


Figure 2 Concept Plan Site Area

Source: Tweed Shire Council Interactive Mapping

1.2 Existing approvals summary

1.2.1 Development Consent MP08_0234

The Concept Plan Approval No. MP 08_0234 was originally approved on 29 June 2010, with two subsequent modifications approved on 4 April 2018 (Mod 1) and 31 October 2022 (Mod 2). Refer to **Appendix B** for a copy of the existing approvals.

The original approval applied to the majority of the overall land holding, as illustrated above. The instrument of approval summarises the approval as being for:

“Concept Plan for the development of a mixed residential development including 1,604 residential dwellings, 4,447m² gross floor area of retail space, 5,300m² gross floor area of commercial space, and associated infrastructure and landscaping.”

1.2.2 Modification 1

A modification application was made following receipt of the original Concept Plan Approval. This modification was made to correct administrative errors. The approval incorrectly referenced Lot 31 in DP108519, which was corrected to read as Lot 32 in DP108519.

1.2.3 Modification 2

A subsequent modification application was made in relation to the super lot subdivision component of the Concept Plan Approval. The subdivision sought to:

- amalgamate all lots with the Concept Plan area.
- create a balance parcel in the northern portion of Lot 2 in DP8967486.
- create two (2) lots that catered for an existing Council reservoir and a separate proposed reservoir parcel; and
- create a parcel for the land located on the northern side of Cobaki Road.

The purpose of this modification was to realign the western boundary to Lot 32 in DP1075109 to increase the overall size of Lot 32 from 6.96 ha up to 18.73 ha.

While this aspect of development (realignment of the western boundary of Lot 32 in DP1075109) was approved, there is no intention to act on this aspect of the approval.

1.2.4 Modification 3

A separate modification application has recently been submitted to the DPHI, referred to as the Bilambil Heights Concept Plan Modification 3. This application seeks changes to all land included in the Concept Plan, excluding Lot 32 in DP1085109. The proposed changes generally include the following:

- Consolidation and updating of land uses and precincts
- Change of residential product type and density
- Overall reduction in the yield of the development
- Deletion of precincts for a private school and nursing home
- Increase in open space overall, including additional land for conservation
- Reduced village centre precinct area
- Reduction in the number of precincts allocated for retirement living
- Realignment of major spine road and internal roads
- Relocation and consolidation of the reservoirs
- Change in tenure from Community title scheme/ Body corporate to Freehold

Modification 3 was lodged in November 2024 and as of the date of this report is under assessment with the DPHI. The outcome of Modification 3 will be consequential amendments to the approved Concept Plan and conditions. This will include an updated Development Description and references to plans and documents.

Modification 3 does not seek any changes to the area (Lot 32) that is the subject of this modification application.

2 STRATEGIC CONTEXT

2.1 North Coast Regional Plan 2041

The *North Coast Regional Plan 2041 (Regional Plan)* applies to the northern local government areas of New South Wales, including the Tweed Shire Council. The Regional Plan sets out the strategic land use planning framework for a 20-year period to guide planning and decision making to accommodate growth. One of the deliverables under the Regional Plan to facilitate this is the implementation of Regional City Action Plans. The *Tweed Regional City Action Plan 2036* was created to support the growth of the Tweed and is relevant to consider for the strategic context of the proposed modification.

The Tweed Regional City Action Plan identifies the site as an existing urban release area, as shown in **Figure 3** below. This aligns with the Regional Plan that identifies the site as an urban growth area. Urban growth areas are used to guide the location of infill development and balance urban expansion, protect environmental assets, help maintain the distinctive character of the region, and direct growth away from important farmland, sensitive ecosystems, cultural heritage, natural hazards and steep land.

The proposed Modification 4 aligns with the vision of both the *North Coast Regional Plan 2041* and the *Tweed Regional City Action Plan 2036* by facilitating infill development for urban purposes that support aging in place.

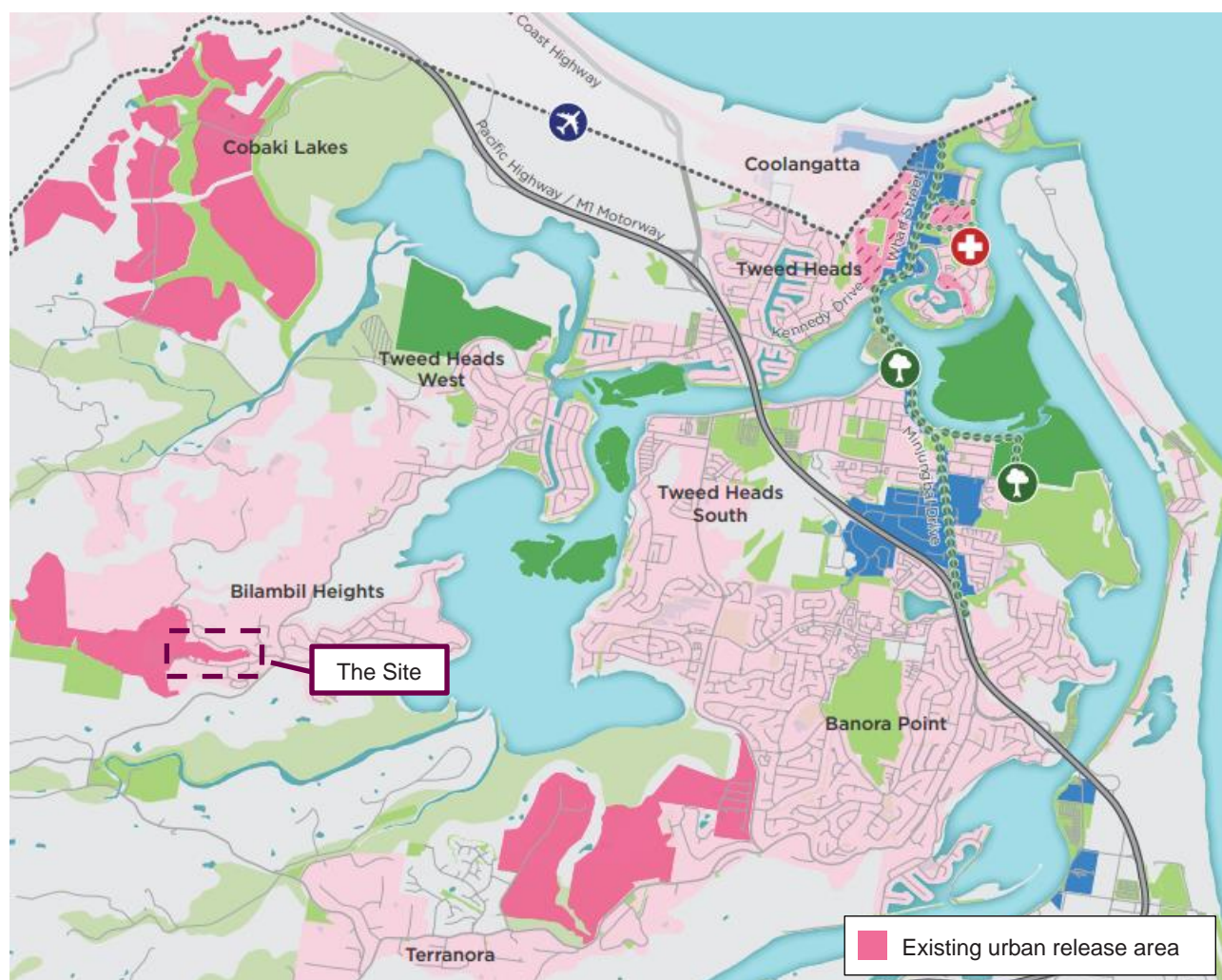


Figure 3 Extract of Tweed Regional City Vision Map

Source: Tweed Regional City Action Plan 2026

2.2 Tweed Shire Council's Growth Management and Housing Strategy

The Tweed Shire Council has set out to establish a framework for sustainable development. The framework proposed is the Growth Management and Housing Strategy, currently being prepared and expected for adoption in 2025. The strategy will have a 20-year horizon focusing on housing and employment opportunities.

The Tweed region is home to an aging population that is predicted to increase. An aging population drives a need housing diversity to see the delivery of retirement villages, manufactured home parks and residential aged care facilities. The provision of alternative housing typologies reduces the pressure on detached dwelling houses. The proposed Modification 4 seeks to continue the intent of the original Concept Approval that facilitates housing choice for an aging population.

3 DESCRIPTION OF MODIFICATION

3.1 Overview of modification

This report outlines the modifications proposed to the Concept Plan Approval that seek to remove the building footprint and layout but retain the approved 'Retirement Living' land use. The proposed removal of the building footprints is intended to provide flexibility in the final design of the development to be assessed as part of a subsequent application to Council.

The proposed modification will not change the approved density of development. The application will introduce development requirements that will inform future building footprints to ensure a similar built form outcome and protect amenity established in the Concept Plan Approval.

In summary, the proposed modified development provides for an outcome that:

- Retains the approved density of development at no more than 195 dwellings, plus community facilities.
- Amends the approved building height to 13.6m and 4 storeys to provide opportunities for mid-rise buildings.
- Introduce design parameters on the site that will facilitate a similar built form and building setbacks.
- Continue to facilitate the development of the site for a retirement living/seniors housing land use.
- Maintain access to the site from Marana Street.
- Provide an option for access off McAllisters Road.

The proposed changes to Precinct B will not impact on the current description of the approval. It is acknowledged that a separate modification application (Bilambil Heights Concept Plan Modification 3) is currently with the DPHI for approval. That application acknowledges the site will continue to be for the purpose of Retirement Living with a density of 195 dwellings. This modification application does not conflict or depart from the outcomes sought in the Bilambil Heights Concept Plan Modification 3.

This modification includes updated proposal plans (**Appendix C**) to ultimately be adopted and approved as part of the amended Concept Plan Approval. It is anticipated that additional plans and documents submitted as part of this modification will form part of the plans and documentation listed under condition A2 in the Concept Plan Approval. Similarly, existing plans and documents currently referenced in the approval may be removed as they will no longer apply, for example, *Annexure 9 Architectural and Urban Planning Report, ML Design, July 2009*.

Significant changes to the Concept Plan Approval consent terms and conditions are otherwise not anticipated as a result of this modification. Changes may occur to the consent terms and conditions where influenced by the outcomes of Modification 3. It is otherwise expected that the consent terms and conditions will remain where relevant to Lot 32.

The components of this modification are discussed in further details herein.

3.1.1 Precinct plan

The original Concept Plan Approval included a detailed layout on the Precinct Plan of the building footprint and internal road connection. The layout anticipates three-storey apartment buildings, single storey cottages and communal facilities. This is shown in **Figure 4**.

There is a small encroachment of dwellings from approved Precinct D on the western portion of the site (pink colour). This encroachment is being addressed as part of Modification 3.

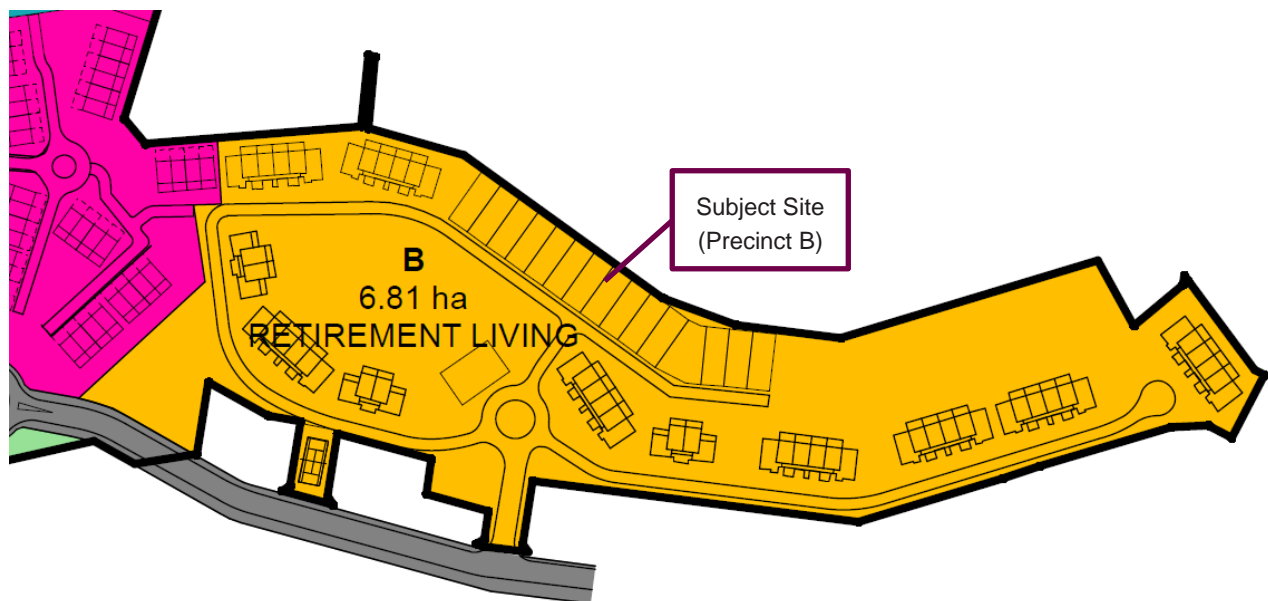


Figure 4 Approved Precinct B - Retirement Living (enlarged)

Source: Concept Plan Approval

This layout requires that development applications made to Council are consistent with the Precinct Plan. A departure from this layout would require subsequent modification applications to be made to the DPHI, prior to the lodgement of a development application. To provide flexibility for the ultimate design and remove the requirement for additional modification applications through the DPHI, the updated plans do not include a specific layout but include development parameters based on the above footprint and relevant provisions of the Tweed Shire Council's LEP and other relevant SEPPs. For retirement living, Part 5 of SEPP (Housing) would be relevant as it relates to Housing for seniors. An insert of the modified precinct plan is shown in **Figure 5** below.

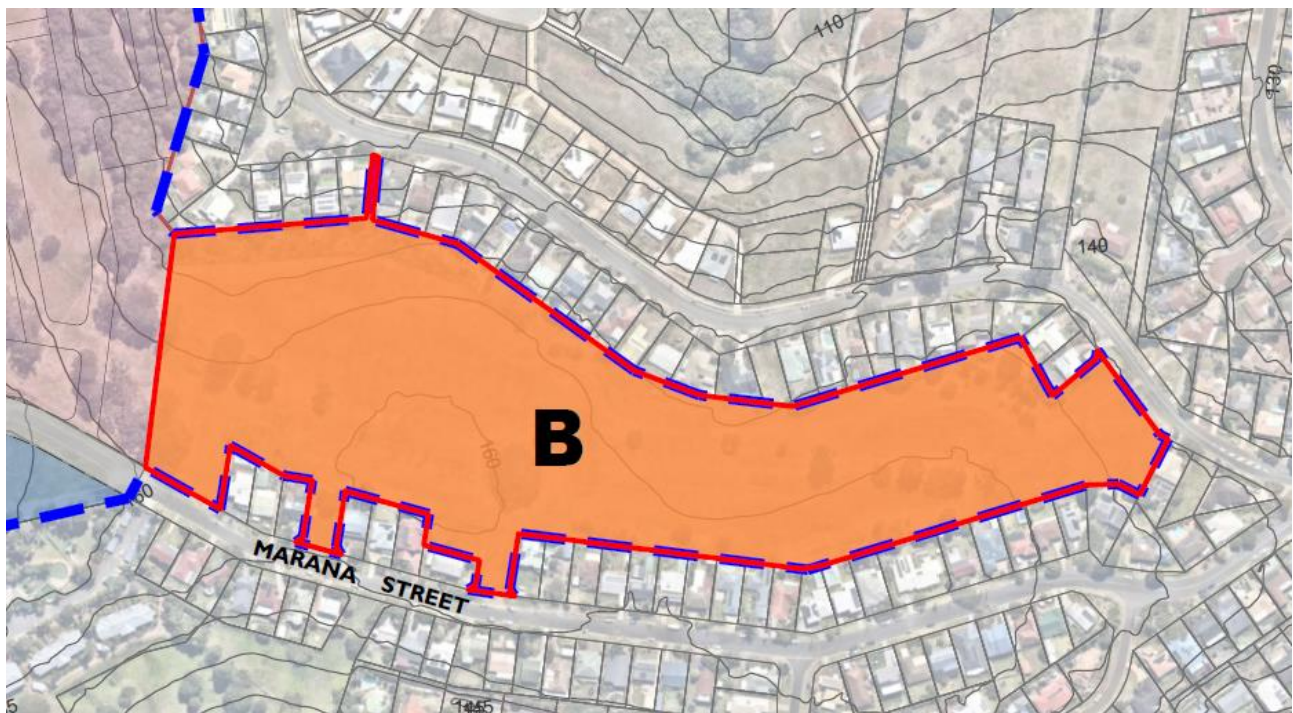


Figure 5 Updated Precinct Plan (enlarged)

Source: RPS Urban Design

In the absence of a layout, this modification seeks to inform the siting of future development with built form provisions included on the proposal plans. Provisions include setback requirements based on building height, maximum dwelling density and access location requirements. The plan proposed to guide these outcomes is the Setback Plan.

The complete set of amended proposal plans are included at **Appendix D**.

3.1.2 Dwelling density

The site has an approved density of 195 dwellings for the purpose of retirement living. This is currently shown on the product summary plan for the entire Concept Plan Approval area. The proposed modification does not seek changes to the density of 195 dwellings. To carry this through for the modification, an updated product summary plan has been prepared that solely states the dwelling density. The updated product summary plan does not include a breakdown of dwelling type, such as the number of apartment and cottages to be provided.

3.1.3 Building height

The current Concept Plan Approval allows for a mix of both 2 and 3 storey building heights within the site, as shown in Figure 6 below.

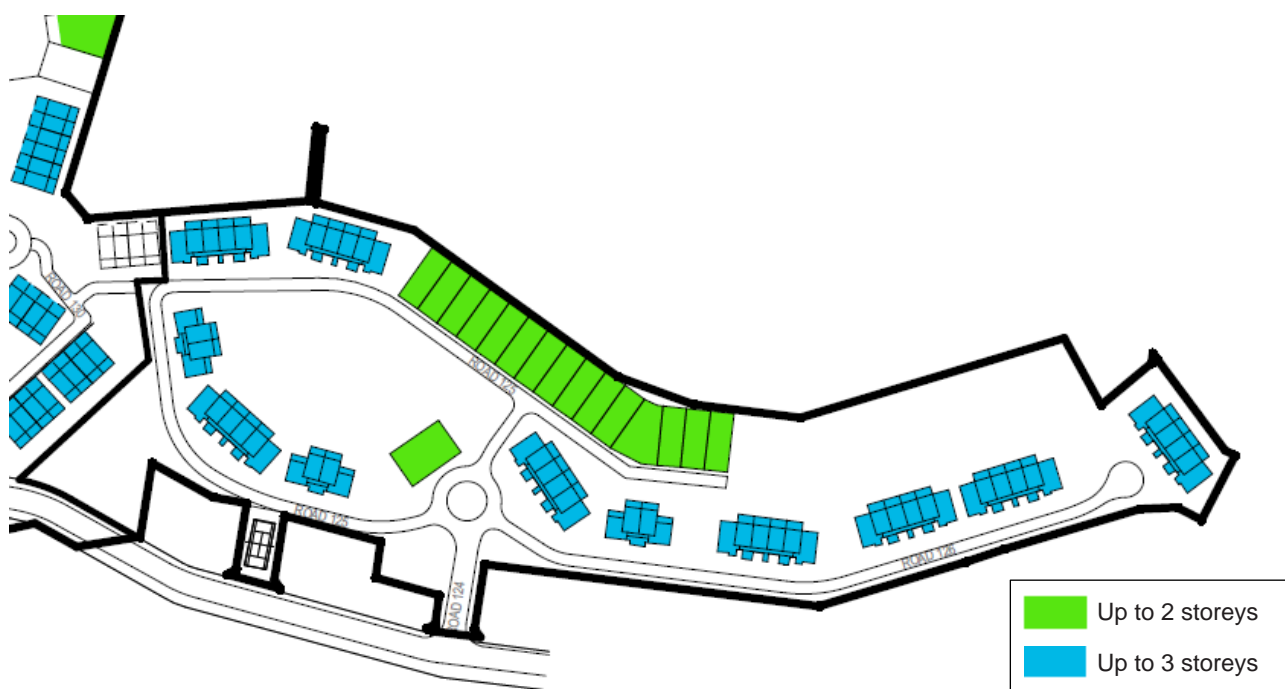


Figure 6 Concept Plan Approval Building Heights Plan (enlarged)

Source: Concept Plan Approval

This modification proposes to amend the maximum building height allowed onsite, to up to 4 storeys and 13.6m. This height streamlines with the balance of the land included in the Concept Plan Approval, subject to the Modification 3 application.

The amended building heights plan is shown in **Figure 7** below.

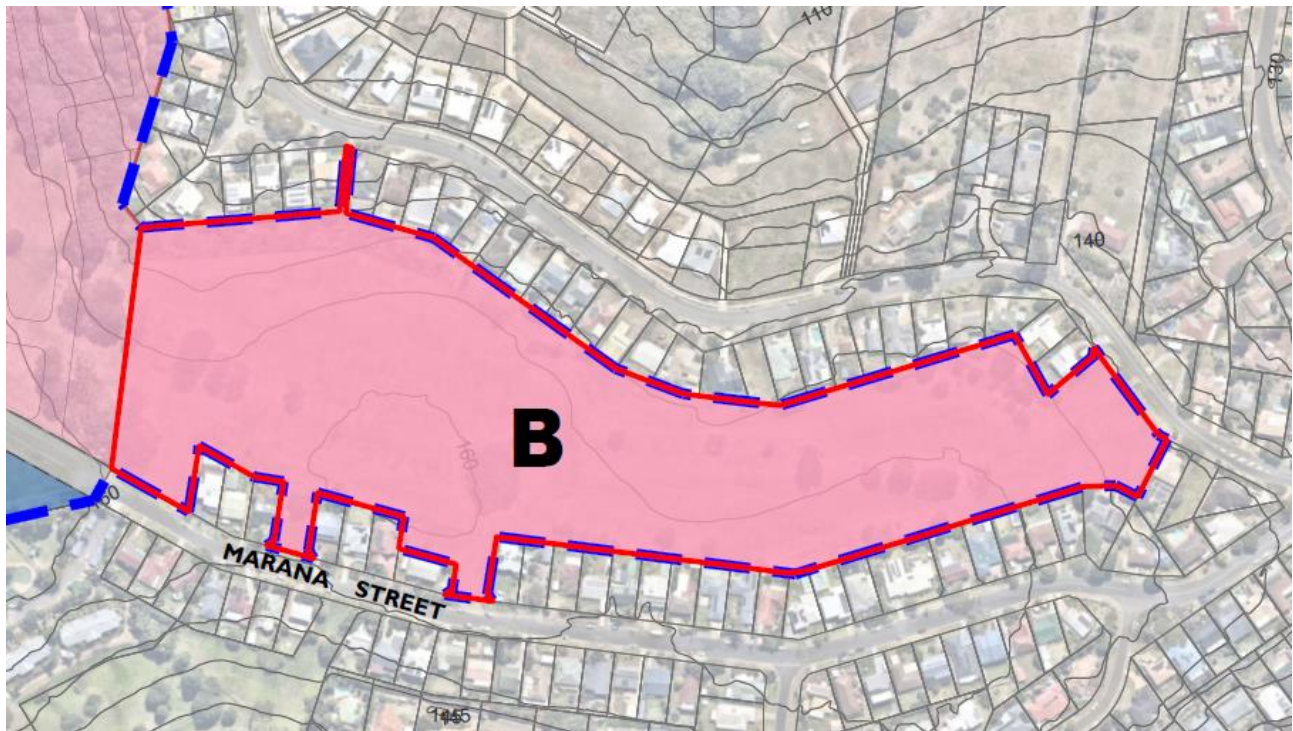


Figure 7 Updated Building Height Plan (enlarged)

Source: RPS Urban Design

Due to the repeal of the Part 3A process under the *Environmental Planning and Assessment Act 1979*, the project was also reflected in the *State Environmental Planning Policy (Precincts - Regional) 2021* (SEPP Precincts). Under this SEPP the building height for the site is a maximum 13.6m, except where the Minister has given approval in a Concept Plan for the building height to be exceeded.

Therefore, the proposed change to the building height under the Concept Plan Approval is consistent with the SEPP.

3.1.4 Connectivity

The modification retains the primary road connection from Marana Street, that is shown on the precinct plan. The former layout did not identify alternative access locations but did include an internal road layout. The removal of the layout by this modification will provide flexibility for the future design and internal alignment requirements.

An access and connectivity plan has been prepared to illustrate road and pedestrian connection opportunities from Marana Street and McAllisters Road. The plans are provided in **Appendix C**.

3.1.5 Tenure

The current Major Project consent for 'Rise' currently facilitates a body corporate tenure structure across the entirety of the approved concept plan area. A separate modification application (modification 3) is seeking to amend the tenure structure to Torrens title. Modification 3 does include the subject site and the proposed tenure change will have no material impact on this parcel given it is already a standalone lot. In addition, any future retirement living development will operate under a separate operational tenure structure specific to this land use and will be contained to the boundaries of the precinct and Lot 32. Consequently, the change in overall tenure for the broader project will not impact on this site and its ability to accommodate a retirement living development.

3.1.6 Precinct Boundary

The current precinct boundary between Precinct B (retirement living) and approved Precinct D does not align with the western boundary of Lot 32. As part of Modification 3, an amended precinct boundary has been proposed to align with the cadastral boundary between Lot 32 and Lot 33.

This amended precinct boundary is also reflected in the amended package of plans included in this application.

3.1.7 Subdivision plan

A proposed plan of subdivision was included in the Concept Plan Approval that sought to create 5 super lots and recognises a series of existing and proposed easements. One of the proposed easements traverses the subject site for the purpose of right of carriage, providing connection from Marana Street to a proposed reservoir in Lot 33 in DP1085109 (currently referred to as proposed Lot 934).

The separate Modification 3 application includes an amended plan of subdivision that addresses resulting changes, including the co-location of the existing and proposed reservoirs. The co-location of the proposed reservoir removes the requirement for a right of carriage easement through the subject site (Lot 32).

The removal of the easement will benefit the design of the future retirement living development and will not have any impact on the operation of the site or the broader concept plan area. It will simplify the easement and access requirements to the ultimate reservoir servicing the site and the locality.

3.1.8 Staging

The site is currently nominated as the first stage to be delivered under the Concept Plan Approval. Due to the independence of Precinct B that has now been established, the development of the site is not required to form part of the overall staging strategy and sequenced with the balance of the land. The removal of the site from the staging of the balance land does not prejudice the development and delivery of necessary services and infrastructure. As discussed further below, it is acknowledged the servicing of the subject site requires the provision of water and sewer connections through the balance land and this will determine the staging of this project.

An amended staging and sequencing plan is provided at **Appendix C**. The purpose of this plan is to illustrate the independent nature of the site, and its exclusion from the staging of the balance land.

3.1.9 Landscape and open space

The provision of landscaping and open space is maintained as part of the proposed modification by virtue of the retirement living land use for the precinct and the siting requirements for future built form.

Under the Concept Plan Approval, landscaping and open space was generally provisioned by the Landscape Open Space Concept Plan Report. This identified areas of the site, that were not subject to building footprints, as area for private community space if the retirement living development. This is reflective of the nature of the retirement living use.

A review of the background documentation informing the Concept Plan approved does not provide specific reason for the open space strategy that is currently approved.

It is acknowledged the amount of open space provided to the development of Precinct B will change as a result of the final design of the development. As per the current configuration, a vertical built form does mean that more land is available to the development for the purpose of open space. More specifically, vertical development (such as the one shown) means that apartments will rely on balconies as the primary form of private open space. This therefore warrants provision of larger communal open space areas to complement the smaller private open space provided for apartments.

Conversely, should the final form of development take the form of a 1-2 storey built form, this scale of development typically include larger private open space areas in the form of front yards and backyards. Where there is larger private open space areas provided to each dwelling, there is not requirement for large areas of communal open spaces to be provided.

Whether the future built form is vertical or single storey, private and communal open space will be incorporated for the needs of residents. The proposed setbacks will ensure sufficient space for landscaping to naturally occur in the layout design.

In addition to the communal open space, the modification will retain the approved 800m² GBA for community facilities which is stated on the product summary plan included in **Appendix C**. The ultimate form of this will be responsive to the type of retirement living product developed.

3.1.10 Utilities

This modification application maintains the servicing strategy that has been adopted for the Concept Plan Approval. An updated preliminary engineering assessment has been carried out and accompanies this application to confirm the relevance of previous servicing findings. Whilst this modification focuses on the site as standalone, future development on this site is still intended to be serviced via water and sewer infrastructure provided through the balance of the development (Modification 3).

However, the ability of this site to be developed via existing sewer infrastructure will be assessed as part of a future detailed network analysis for a subsequent development application on Lot 32 for a retirement living outcome.

Similarly, the supply of water to the site is also subject to a future detailed network analysis. This analysis will look at the existing water reservoir capacity available to service development on the site, noting an additional water reservoir is approved on the balance of the concept plan site to service the overall development and the McAllister Road area.

Dependent on the outcome of these assessments, consideration would be given to the staged delivery of development to facilitate its commencement, with the ultimate development to be provided as additional services become available.

Please refer to **Appendix J** Preliminary Engineering Report.

4 STATUTORY CONTEXT

Below is a summary of the Commonwealth and State legislation relevant to the development and indicates the implications, if any, for the proposed modification.

4.1 Modification pathway

4.1.1 Environmental Planning and Assessment (Savings, Transitional and other Provisions) Regulation 2017

The applicant is seeking to modify Concept Approval MP08_0234 under Section 3BA of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*. For the purpose of assessing this modification application, consideration is given to the requirements of Section 4.55(2) and 3BA(5)(C) *Environmental Planning and Assessment Act 1979* (EP&A Act). The table below lists the statutory requirements and details how each is addressed by the proposal.

Table 2: Statutory Assessment

Section 4.55(2)	Proposed Modification 4
Other modifications: <i>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if –</i>	
a. <i>it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</i>	<p>The purpose of Modification 4 is to implement an updated Concept Plan that removes the internal layout and building footprints. The changes retain the approved density and land use for the precinct.</p> <p>The term “substantially the same development” has been interpreted by the NSW Land and Environment Court and have applied the following principles:</p> <ul style="list-style-type: none"> • ‘substantially’ means essentially or materially or having the same essence. This involves a comparison of the before and after. Differences may involve differences of process (which have environmental implications) or differences in outcomes. • the qualitative and quantitative differences between the two developments should be considered in context. <p>With the above in mind, the changes proposed in this modification 4 application will:</p> <ul style="list-style-type: none"> • maintain the precinct for Retirement Living land uses. • maintain the approved density of 195 dwellings plus community facilities. • amend the building height to be 13.6m and 4 storeys. • maintain access from Marana Street. • remove internal layouts and building footprint locations. • introduce design parameters to facilitate a similar built form and building setbacks to the current approval. <p>The project will continue to provide for a Retirement Living outcome on Precinct B. Whilst the modification seeks to remove approved layouts from the plan, the application seeks to introduce design parameters that reflect to guide the siting and form of future development that is consistent with the current approved precinct plan.</p> <p>Therefore, the project if modified will result in a project that can be considered ‘substantially the same’ as it will continue to deliver a retirement living precinct, associated infrastructure and landscaping and will result in a project</p>

Section 4.55(2)	Proposed Modification 4
	that is substantially the same as the project the subject of the modified Concept Plan Approval.
<p><i>b. it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</i></p>	<p>Consultation with the approval body has been undertaken with the DPHI and there has been no objection to the lodgement of this modification application.</p>
<p><i>c. it has notified the application in accordance with—</i></p> <p><i>(i) the regulations, if the regulations so require, or</i></p> <p><i>(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i></p>	<p>The proposed modification will be notified, and we understand that DPHI will refer the modification to Tweed Shire Council for comment.</p>
<p><i>d. it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i></p>	<p>There has been consideration of the submissions received during the formal consultation, which was undertaken as part of the original Concept plan application in 2009. A review and revised response to the submissions indicates that the proposed modification adequately addresses previous issues that were raised by submitters in 2009. Any new submissions will be considered by DPHI.</p>

Based on the above, a modification under section 3BA of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* is an appropriate approval pathway for Modification 4. This Modification Report demonstrates:

- the proposed modifications maintain Precinct B for the purpose of retirement living, with a maximum density of 195 dwellings and a building height of 13.6m and 4 storeys.
- the removal of building layouts from the relevant plans is replaced with design parameters to guide future layout and built form outcomes for retirement living.
- the Development, as proposed to be modified, will be substantially the same development for which consent was originally granted.

4.1.2 State Environmental Planning Policy (Precincts – Regional) 2021

State Environmental Planning Policy (Precincts – Regional) 2021 was created as a transitional framework following the repeal of Part 3A of the EP&A. Appendix 4 of this SEPP applies to the subject site, referred to as ‘*State Significant Precinct – Rise Bilambil Heights*’. The SEPP provides guidance on the development outcomes for the land by establishing zones, permissibly for land uses, building height limits and some controls regarding miscellaneous land uses. The zoning identified by the SEPP for the site is the R1 general residential – refer to **Figure 8**.

The provisions outlined in the SEPP reflect the broad development outcomes for the site that were established by the Concept Plan approval. The proposed modifications maintain consistency with the provisions under the SEPP, as relevant to the subject site.

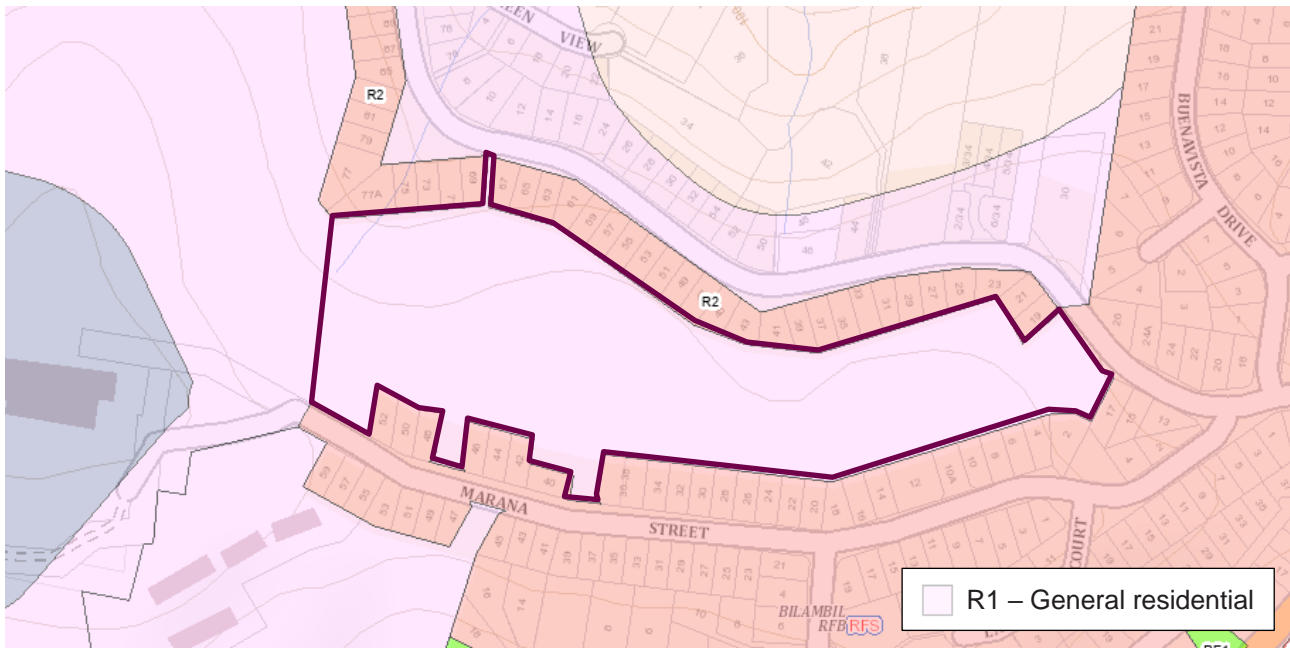


Figure 8 SEPP Zone Mapping

Source: NSW Planning Portal – Spatial Viewer

4.2 Environmental planning instruments

4.2.1 Tweed Shire Local Environment Plan 2014

The area subject to the Concept Plan sits outside of the Tweed Shire Council's Local Environment Plan (Tweed LEP). This is shown in **Figure 9** below. Accordingly, the development of the site is regulated by either the Concept Plan or the *State Environmental Planning Policy (Precincts – Regional) 2021*, depending on which instrument the development application is lodged under.

For subsequent development applications made under the modified Concept Plan, Tweed Shire Council will be the assessing authority.



Figure 9 Tweed LEP 2014 Zoning

Source: Tweed Shire Council Interactive Mapping

5 ENGAGEMENT

Formal or statutory consultation regarding the proposed modification has not been carried out prior to the lodgement of this application. Pre-lodgement discussions were held with the Department of Planning Housing and Infrastructure providing a briefing on the proposed changes.

This application will be exhibited by DPHI, and adjoining property owners will be notified in writing of the modification.

5.1 Previous Preferred Project Report

5.1.1 Revised response to submissions and revised Statement of Commitments

Formal consultation was undertaken as part of the original Concept Plan application. The Environmental Assessment was publicly exhibited from 19 August 2009 until 18 September 2009. Seventeen (17) public submissions and twelve (12) submissions from Public Authorities were received during the exhibition period. On 22 October 2009 the Department of Planning raised an additional seven key issues.

Annexure 2 of the Concept Plan approval (MP 08_0234) included a Preferred Project Report prepared by Darryl Anderson Consulting dated February 2010. The report provided a response to submissions received from the Department of Planning, State Agencies and the community during the exhibition of the Major Project Application.

The primary purpose of the Preferred Project Report was to outline any changes to the project plans in response to the submissions received and provide a direct response. For the purpose of the modification application, updated comments have been included that compares and further justifies the changes proposed via Mod 4. A revised response to those submissions is included in **Appendix D**.

Accompanying the report was a revised Statement of Commitments for the project. For the purpose of the modification application (Mod 4), we have reviewed and amended the Statement of Commitments in response to the changes proposed. The additions are in bold and those aspects to be deleted have been struck through. The revised response Statement of Commitments is included in the **Appendix E**.

6 ASSESSMENT OF IMPACTS

This section provides a detailed summary of the findings of a further assessment of the impacts of the proposed modifications, including details about the impacts of the modifications and the impacts of the modified project.

This section considers strategic issues, statutory requirements, government plans, policies and guidelines governing the assessment of key matters, and findings of specialist studies and investigations.

Given the nature of the changes proposed, some reports have been redrafted, and others have been updated, as outlined in the table below.

6.1 Impacts of the proposed modification

The following specialist studies and investigations support this modification request. The status of the reports and the key findings are summarised in **Table 3** below.

Table 3: Summary of Supporting Reports

Document	Author	Purpose	Appendix
Updated Concept Plans Package	RPS	The suite of plans associated with the Concept Approval have been updated to reflect the revised development layout.	D
Ecological Assessment	JWA	An Ecological Assessment has been prepared by JWA to provide an updated desktop review and analysis of field surveys to determine the likelihood of flora, fauna and habitat onsite.	G
Traffic Assessment	Bitzios	A Traffic Impact Statement has been prepared to assess the changes to traffic and transport as a result of the proposed modification.	H
Cultural Heritage Assessment	Everick Heritage	An Aboriginal Heritage Due Diligence Letter of advice has been prepared to assess the modification against current requirements and carry out up to date desktop searches.	I
Bushfire Report	Bushfire Certifiers	An updated bushfire risk assessment has been completed. The report confirms the site continues to be capable of being developed for residential purpose and appropriate bushfire risk mitigation measures can be adopted through the inclusion of asset protection zones, esplanade roads and bushfire trails.	J
Preliminary Engineering Report	Mortons – Urban Solutions	An amended report has been prepared to demonstrate the site continues to be capable of being developed in a manner that is substantially the same with the original consent.	K
Integrated Stormwater Quality and Quantity Assessment	Gilbert & Sutherland	An Integrated Stormwater Quality and Quantity Assessment has been carried out that recommends future requirements for the management of on-site detention, stormwater runoff and treatment strategies.	L
Conceptual Erosion and Sediment Control Plan	Gilbert & Sutherland	A Concept Erosion and Sediment Control Plan has been prepared to address mitigation requirements during various construction phases and provide recommendations that will be considered in detail as part of future development applications.	M
Geotechnical Advice	Douglas Partners		N

6.1.1 Built form

The proposal plans prepared by RPS will replace the Architecture & Urban Planning report from the Concept Plan Approval. The primary change that is notable to the Architecture & Urban Planning Report is the removal of the building footprint layout from the site. The layout accommodated a retirement living development product comprising both cottages and 3 storey apartments.

Given the scale of the development is limited to this single parcel, it is not considered necessary to provide an updated Architecture & Urban Planning Report.

In lieu of a layout and updated Architecture & Urban Planning Report, the modification seeks to adopt alternative design measures illustrated on the amended plans to establish layout and built form siting requirements that is cognisant of the built form and associated setback currently shown. These requirements are established in the updated proposal plans and include:

- Confirmation of maximum potential dwelling density (195) and provision of community facilities (800m² GBA) on the Product Summary Plan.
- Siting requirements including 3m setback for 2 storeys and 9.5m height, 6m setback for 3 storeys and 12m height and 20m setback for 4 storeys and 13.6m height, as shown on the Setback Plan. These setbacks are consistent with the provision of the Tweed Shire Council's DCP and reflective of the
- Potential pedestrian pathway connection points to external network on Marana Street and McAllisters Road, as demonstrated on Connectivity Plan.
- Potential vehicle access locations on Marana Street and McAllisters Road as demonstrated on the site access plan.
- An updated building heights plan that shows a maximum height limit of up to 4 storeys and 13.6m for the entire site.

The proposal plans will provide the necessary guidance for appropriate development across the site. The plans have considered and adopted the current Tweed Shire Council DCP, the LEP and the Precincts SEPP provisions and varied where appropriate.

The Proposal Plans are provided in **Appendix C**.

6.1.2 Open space and landscaping

The Concept Plan Approval includes a Landscape Open Space Concept Plan Report that detailed the intent and direction of all landscape elements and was to be used as a guide in developing future detailed works. A review of this report confirms there are no specific provisions for the landscape and open space outcomes sought of the subject site. An updated landscape and open space report has not been provided given the scale of development for this parcel.

The absence of detailed provisions in the concept plan approval, it is suggested the ultimate landscape and open space design would be subject to the assessment of a subsequent development application to Council against the *State Environmental Planning Policy (Housing) 2021*. Cues may also be taken from the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021* should an alternative retirement living product be pursued where a land lease community model is adopted for the site. An example of the future landscape and open space assessment controls taken from the *State Environmental Planning Policy (Housing) 2021* at Chapter 3, Part 5 (Housing for Seniors), are included below in **Table 4**.

.

Table 4: Landscape and Open Space Provisions

Development Standard	State Environmental Planning Policy (Housing) – Housing for seniors and people with a disability
Landscaped Area	35m ² /dwelling, or 30% of site area (35m ² x 195 dwellings = 6,825m ² , or 30% of 6.69ha = 20,070m ²)
Deep soil zone	15% of the site area (min dimension of 3m), if practicable, at least 65% of the deep soil zone is located at the rear of the site,
Private Open Space	Single storey dwelling or a dwelling located, wholly or in part, on the ground floor of a multi-storey building— (i) at least 15m ² of private open space per dwelling, and (ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor multi-storey building dwelling not located on the ground floor - a balcony accessible from a living area with minimum dimensions of 2m; and - an area of at least 10m ²

Excluding an updated Landscape Open Space Concept Plan Report does not undermine the intent of the Concept Plan Approval and general landscape and open space outcomes identified for the site. The ultimate retirement living product is guaranteed to incorporate private open space and communal open space, whether in a vertical or single storey product. The siting of future development will be guided by the setbacks introduced, where landscaping and other features can be established within.

This approach for the proposed modification ensures a substantially consistent development outcome for the provision of open space and landscaping. Future open space and landscaping will be designed to meet the requirements of residents and the retirement living building typology. This includes private open space and communal open space.

6.1.3 Ecology

An Ecological Assessment has been prepared by JWA Pty Ltd to provide an updated desktop review and analysis of field surveys to determine the likelihood of flora, fauna and habitat onsite. The desktop review found:

- There is no presence of World or National heritage properties as listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on or within 10km of the site.
- There are no wetlands of international significance on or within 10km of the site.
- There are 8 threatened ecological communities that may occur within 10km of the site.
- The site is not included in the mapping for the Coastal Wetlands SEPP or the Littoral Rainforest SEPP.
- The site is included in several environmental maps under the Tweed Shire Council Environmental and Vegetation online mapping, including highly modified and disturbed vegetation community, subregional fauna corridor and drainage line.
- The site is included in the Tweed Heads Koala Management Area, but a Koala Activity Precinct, Koala Linkage Precinct or Preferred Koala Habitat are not identified onsite.

The most recent field assessment was carried out 28 March 2023 and found the following:

- Threatened flora species listed under the EPBC Act were not identified on site.
- The site is predominantly cleared of vegetation, with a small number of native trees throughout.
- Threatened and migratory fauna species were not identified on site.

The findings from the onsite field assessments determined that whilst the site was not identified to contain threatened and protected species, it does provide limited habitat. This limited habitat can attract threatened species such as grey-headed flying fox, koala, and masked owl.

To facilitate the future development, it is anticipated that the site will be cleared of all existing vegetation, except for the centrally located fig tree. The removal of existing vegetation may result in impact to habitat, that can be avoided with appropriate measures, such as landscape planting of endemic native species.

Overall, the proposed modification does not introduce or change potential impact to the existing native vegetation onsite. The Ecological Assessment Report is provided in **Appendix F**. A revised Site Rehabilitation and Pest Management Plan is not required for the proposed modification as the previously approved rehabilitation areas do not occur within the site.

6.1.4 Traffic

A Traffic Impact Statement has been prepared by Bitzios Consulting and is included at **Appendix G**. The statement provides an assessment on traffic and transport impacts as a result of the proposed modifications. This includes a review of the historical context and network implications, assessment of changes and review of site access locations.

The outcomes of the assessment determine:

- The development site is subject to an existing Council Resolution from 2015 that limits traffic volumes on Kennedy Drive. This resolution has not been updated and the traffic assessment assumes no changes for the purpose of assessing the modification. There have been no major changes to the external road network and minimal delivery of approved developments.
- The resolution included an allocation of 5,452 vehicles per day (vpd) to approved development at the time, with a maximum of 3,221 vpd accounted for the Concept Plan Approval.
- The proposed modification maintains the approved yield for 195 seniors living dwellings, which was previously calculated to generate 466 vpd. As there are no changes to yield, the traffic generation and impact to surrounding network remains the same. 466 vpd is included in the 3,221 vpd accounted for the Concept Plan Approval.
- The proposed modification maintains the existing access location from Marana Street, as well as proposing an additional secondary access from Marana Street and McAllisters Road. These locations can achieve safe sightlines and achieve design standards in accordance with Australian Standards and Council's DCP.

Overall, the proposed modification does not introduce significant traffic or transport impacts to the site or surrounding networks and developments. An updated impact assessment will be prepared as part of a future development application that will address the development specifics.

6.1.5 Cultural heritage

An Aboriginal Heritage Due Diligence Letter of advice has been prepared by Everick Heritage and is provided in **Appendix H**. The purpose of the due diligence advice is to provide an updated assessment of the modification against current requirements and carry out up to date desktop searches.

Additional cultural heritage constraints on the land were not identified during the desktop assessment. The updated assessment provides recommendations that have been carried from the original reporting, as they continue to have relevance for the development of the site. These recommendations include:

- Aboriginal object find procedure
- Aboriginal human remains
- Notifying heritage NSW
- Conservation principles

6.1.6 Bushfire

An updated Bushfire Assessment Report has been prepared to assess the proposed modification against current regulations, including the intent of Planning for Bushfire Protection 2019. The bushfire assessment considers the future retirement living use and associated buildings and mitigation measures that will need to be considered in future applications. The assessment has confirmed the ultimate retirement living use can occur through the implementation of suitable asset protection zones and or use of esplanade roads to

separate dwellings for potential bushfire hazards. A future development application will need to address water supply for the provision of fire hydrants.

The updated Bushfire Assessment Report is included in **Appendix I**.

6.1.7 Preliminary Engineering Report

A preliminary overview of the engineering considerations has been provided in an updated Preliminary Engineering Report, prepared by Mortons Urban Solutions. The report addresses several considerations including earthworks, water reticulation and sewer reticulation and finds the following:

- Earthwork contouring of the site is required to ensure stormwater runoff on the site will be directed to the legal points of discharge with the use of Stormwater quality and quantity devices to ensure no offsite impact.
- Water infrastructure is available to the site; however, further modelling of the overall networks is required to determine if proposed additional reservoir is required for the subject site as a now standalone site.
- The site is dependent on sewer infrastructure external to the site being constructed in order to have a sewer discharge point.
- For future development applications, engagement with Tweed Shire Council to determine if a staged approach to the development can assist with both water and sewer servicing, and if the existing systems have any capacity for a portion of the site only. This would allow commencement of the development without the need for the works on the adjacent Elysian Development (Modification 3).
- The site is reliant on the adjoining Elysian Project (Modification 3) to the west having to construct multiple pump stations and rising mains both internal and external to the site as the ultimate servicing solution.

Based on the preliminary overview provided, the development will be constructed substantially the same for which the consent was originally granted. The Preliminary Engineering Report is included in **Appendix J**.

6.1.8 Stormwater quality and quantity

An Integrated Stormwater Quality and Quantity Assessment has been prepared by Gilbert & Sutherland in accordance with relevant standards. The assessment considers the future requirements to manage the discharge of peak flows and the treatment of stormwater.

Future development can maintain the existing lawful point of discharge that exists at the north, south and eastern perimeters. Initial assessments confirm that there is sufficient capacity downstream to receive the flows from each lawful point of discharge. This will be confirmed in future development applications and detail designed phases.

To manage the quality of stormwater, several treatment devices can be adopted including bioretention systems, rainwater tanks, and proprietary devices (Atlan System). A combination of treatment devices can ensure the site's stormwater runoff is managed to satisfy current standards for pollutant load reduction. The final selection and location of the treatment devices will be demonstrated in a future development application and refined for detailed development.

The Integrated Stormwater Quality and Quantity Assessment is included in **Appendix K**.

6.1.9 Conceptual erosion and sediment control

A Conceptual Erosion and Sediment Control Plan (ESCP) has been prepared to demonstrate that the site can adopt current requirements to mitigate potential impacts during the future construction phases. The mitigation measures will form the basis of future development applications made to Council and are split under the following construction phases:

- Vegetation clearing/soil disturbance
- Dust management
- Erosion controls

- Sediment control
- Sediment basin monitoring
- Rehabilitation and landscaping
- Contract management

The proposed modifications do introduce new impacts from an erosion and sediment control perspective. The Conceptual Erosion and Sediment Control Plan is provided in **Appendix L**.

6.1.10 Contaminated Land

No changes are required to the previous Contamination Report by Gilbert and Sutherland, as the original assessment is still valid.

Refer to the contamination cover letter in **Appendix M**.

6.1.11 Geotechnical/landslip assessment

A review of the previous geotechnical assessments that accompanied the Concept Plan Approval has been carried out and is provided in **Appendix N**. The review includes desktop assessment and notes the following with regard to ground conditions since the previous assessments:

- Aerial imagery indicates the site has not been subject to landslide activity.
- Subsurface conditions are likely to be as previously investigated.

The desktop assessment determines that the site is not likely subject to geotechnical constraints that would impact the development of retirement living uses. The modified concept plan will continue to use the previous geotechnical investigations.

7 JUSTIFICATION OF MODIFIED PROJECT

Bilambil Heights has seen continued growth since the original date of the original Concept Plan Approval. This growth sides with an evolving housing market that demands a variety of product, particularly for an aging population. In response, the site is being considered for different retirement models but is restricted to the current provisions in the Concept Plan Approval. This has prompted a modification to seek flexibility for future development typologies.

The changes proposed seek to remove the ultimate layout for building placement onsite but retain land use intent and built form provisions to inform future development and protect amenity established in the Concept Plan Approval. This is supported by updated specialist reporting. The modification remains substantially the same with the original Concept Plan Approval which is further demonstrated as follows.

Layout and Built Form

The primary change to the Concept Plan Approval is the removal of a building footprint/layout from Precinct B. The layout illustrates an indicative retirement living development product comprising both low-rise cottages and 3 storey apartments. This layout, access locations and internal road layouts did not include connections or access reliance to the adjoining land that also forms part of the Concept Plan Approval.

In lieu of a layout, the modification seeks to adopt alternative measures to establish layout and built form siting requirements. These requirements are established in the updated proposal plans and include:

- Confirmation of maximum potential dwelling density (195) and provision of community facilities (800m² GBA) on the Product Summary Plan.
- Siting requirements including 3m setback for 2 storeys and 9.5m height, 6m setback for 3 storeys and 12m height and 20m setback for 4 storeys and 13.6m height, as shown on the proposed Setback Plan.
- Potential pedestrian pathway connection points to external network on Marana Street and McAllisters Road, as demonstrated on Connectivity Plan.
- Potential vehicle access locations on Marana Street and McAllisters Road as demonstrated on the site access plan.
- An updated building heights plan that shows a maximum height limit of up to 4 storeys and 13.6m for the entire site.
- Given the form of development aligns with Seniors Housing product, it is expected the open space provisions for the site will align with the relevant open space provisions under the SEPP (Housing).

These provisions collectively ensure the protection of adjoining residents' amenity and their expectation of development outcomes on the site. Furthermore, the placement of taller buildings (as currently illustrated) remains the same. Only buildings with a lower building height would occur closer to the property boundary.

Visual impact is managed by the tiered setback requirements that protect the encroachment of 3 and 4 storey buildings close to the boundary. Section plans are included in the proposal plan set that demonstrate these setback outcomes. For example, **Figure 10** below shows the interface for development setback at 3m and 20m within the site. Additional section plans are included in the proposal plan set that periodically demonstrate the built form interface at the boundaries of the site.



Figure 10 Cross Section Insert

Source: RPS Urban Design

8 CONCLUSION

This report outlines the applicant's proposed modifications to the Concept Plan MP 08_0234 relative to Lot 32 in DP1085109, also referred to as Precinct B in the approval. The modifications are considered appropriate for the development to both progress and make a positive contribution to Tweed Shire and provide housing needs to accommodate the anticipated aging population growth in the region.

The appropriate approvals pathway for Modification 4 is pursuant to Section 3BA of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, given the Concept Plan was originally approved under the repealed Part 3A of the EP&A Act.

The assessment included in this report seeks to demonstrate that the resulting development is substantially the same as the current Concept Plan Approval. The modifications proposed continue the development outcome to be for retirement living, with a density of 195 dwellings and 800GBA for community facilities.

While the intention is to develop the site in accordance with the modified Concept Plan, when having consideration to the SEPP (Regional – Precincts), the proposed changes remain generally consistent with the SEPP and therefore demonstrates the proposed changes will continue to achieve the outcomes originally intended for the site.

Therefore, the proposed modifications are not expected to result in a significant material change or generate new impacts that cannot be reasonably mitigated. The updated reports accompanying the project demonstrate the modifications will not negatively impact on matters such as traffic generation, ecology or engineering design.

The development of the site is important to the provision of much needed housing diversity in the area and as an area identified for urban growth in the North Coast Regional Plan, its development will assist with achieving the intentions of the Regional Plan and Council's draft Growth Management and Housing Strategy.

Therefore, support for the proposed modification is an important step to successfully delivering this development.