

Statement of Environmental Effects (SOEE)

Date: 23 June 2026

The General Manager

Central Coast Council

Via: NSW Planning Portal

RE: Section 4.55(2) Modification Application for: DA49906/2016

Property Address: LOT: 1 DP: 221482 No 12 Mount Ettalong Road UMINA BEACH NSW 2257

Applicant Name(s):

Original Proposal: Integrated development stage 1 - subdivision and stage 2 - dwelling

Proposed Modification: Deletion of Stage 2 (Dwelling) design from the consent scope, amendment to approved civil plans, and the demolition of a redundant detached garage.

1. Introduction & Context

This letter is submitted in support of an application under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (the Act) to modify Development Consent DA49906/2016.

The subject land consists of a generous allotment securely zoned R1 Low Density Residential, boasting a 15m primary street frontage and invaluable, formal rear lane access. Under the Central Coast Local Environmental Plan (LEP), the minimum lot size requirement for subdivision within the R1 zone is is. Both proposed allotments comfortably and substantially exceed this statutory minimum threshold (yielding an average lot size exceeding), representing a highly compliant density outcome.

Crucially, the applicant has fully activated and invested in Stage 1 (Subdivision) of this consent. An active Construction Certificate (CC) has been formally issued exclusively for the Stage 1 subdivision works, and all associated Section 138 road opening fees and Section 307 water/sewer authority compliance fees have been fully paid. Physical commencement has also occurred via the safe and legal removal of the original, dilapidated cottage structure under a separate, completed Complying Development Certificate (CDC) demolition approval. This historic structure was heavily compromised by extensive termite (white ant) damage, contained hazardous asbestos, and sat unliveable across the proposed internal boundary line. Proposed Lot 1 features a structurally sound, 45-year-old brick residential building that is to be retained. Because Lot 2 utilizes the existing rear lane access, there is zero statutory requirement for a battle-axe access corridor or shared driveway crossover.

A comprehensive engineering review of the approved civil scope has determined that the original design was fundamentally un-constructable, structurally hazardous, and flawed. As detailed in the formal correspondence attached as Appendix B, multiple certified civil

contractors explicitly refused to quote or break ground on the mandated deep public road pit. This deep excavation is positioned immediately adjacent to an active public bus stop and directly in front of a highly trafficked two-street intersection. Shoring and executing a deep pit in loose, shifting coastal sand under constant heavy vehicle vibrations introduces an unacceptable risk of structural trench collapse, localized public road failure, major utility damage, and severe traffic disruption. No formal response was received from the Council since April 2026 regarding this critical inquiry, necessitating this formal application to completely delete the Stage 2 dwelling footprint, opting instead for a pure, low-risk, bare land subdivision utilizing a simplified, shallow gravity connection.

The original civil design presented two severe constructability bottlenecks:

1. **Stormwater & Road Collapse Risk:** The original layout mandated an un-constructable deep pit at the main road kerb line. The site sits securely at an elevated position greater than AHD within a completely flood-free zone yet features an unstable coastal sand soil profile (located approximately from the beach). Forcing a deep excavation at a busy intersection and bus stop in shifting sand creates severe structural collapse hazards during construction, posing an immediate, unacceptable risk to public infrastructure and the foundations of the 45-year-old brick building being retained on Lot 1.
2. **Boundary Destabilization:** The original design introduced a highly hazardous retaining wall configuration, requiring cuts up to deep directly adjacent to the boundary fence line. Given the natural cross-fall slope of the land is very gentle—measured at under 5%—deep retaining structures are entirely unwarranted. Forcing a vertical excavation in loose coastal sand immediately adjacent to the boundary poses an imminent risk of undermining and collapsing the existing neighbour's fence underpinnings.

To safeguard public road infrastructure, protect the retained brick home, secure neighbouring boundary assets, and utilize the active CC and infrastructure fee credits, a newly appointed civil engineer has designed a simplified, shallow, gravity-fed standard stormwater connection and minimal site-forming layout perfectly suited to the under-5% slope and sandy soil profile.

To facilitate this safe engineering solution, this modification seeks to delete the approved Stage 2 new dwelling footprint from the scope of this consent. The existing detached garage, which was customized to pair with that now-deleted house layout, is entirely redundant and is proposed for demolition to clear the newly created allotment boundaries. Following the determination of this application, a minor alignment application under Section 144 of the *EP&A Regulation 2021* will be lodged to formally modify the active Stage 1 Construction Certificate civil plans to match this simplified, low-risk layout. This allows a clean, safe, low-risk subdivision to proceed immediately.

2. Assessment under Section 4.55(2) of the Act

Section 4.55(2)(a) of the Act dictates that a consent authority may modify a development consent if it is satisfied that the development to which the consent as modified relates is substantially the same development. A holistic Quantitative and Qualitative Assessment is provided below.

2.1 Quantitative Assessment

Development Component	Originally Approved (DA49906/2016)	Proposed Modified Scheme	Net Change / Environmental Impact
Total Site Area & Zone	within Zone R1	within Zone R1	0% Change. Fundamental site dimensions and high suitability remain unchanged.
Minimum Lot Size Compliance	Exceeds standard per lot	Exceeds standard per lot	0% Change. Both lots strictly comply with the Central Coast LEP development standards.
Number of Allotments	2 Lots	2 Lots	0% Change. Lot yield remains identical. All S138 and S307 authority contributions are paid and active.
Access Infrastructure	Rear lane access utilized for Lot 2.	Rear lane access utilized for Lot 2.	0% Change. Bypasses the need for restrictive, standard battle-axe access driveways.
Retained Structures	45-year-old brick dwelling	45-year-old brick dwelling	0% Change. Primary existing streetscape asset is preserved on Lot 1.
Gross Floor Area (GFA)	[Insert GFA of approved house]	(Built form deleted)	100% Reduction. Built form removed from this application.
Civil & Retaining Infrastructure	Hazardous deep pit next to a bus stop/intersection and deep boundary cuts in loose sand.	Standard, shallow gravity-fed direct connection and minimal site forming matching the < 5% slope.	Highly Positive Impact. Eliminates excavation hazards, removes public road collapse risks at the intersection/bus stop, prevents collapse of boundary fence underpinnings, protects the retained brick home, and lowers

Development Component	Originally Approved (DA49906/2016)	Proposed Modified Scheme	Net Change / Environmental Impact
			Council's infrastructure asset maintenance burden.

2.2 Qualitative Assessment

Qualitatively, the "essence" and character of the approved development are preserved under the modified scheme:

- **Strict Adherence to Statutory Standards:** A parent parcel provides an incredibly generous spatial footprint for a two-lot subdivision under the Central Coast Council LEP rule of minimum per lot. With a wide 15m primary frontage and formal rear lane access servicing Lot 2, the subdivision represents a textbook example of highly compliant, low-impact, orderly urban consolidation that easily exceeds local planning baselines without requiring any development standard variations or battle-axe easements.
- **Mitigation of Significant Public Infrastructure Risks:** Replacing the deep, dangerous road excavation with a standard, shallow civil connection eliminates a major logistical and structural hazard. Executing a deep trench in shifting coastal sand immediately adjacent to an active bus stop and a busy intersection presents severe public safety liabilities, traffic management gridlocks, and a genuine risk of pavement/road collapse under heavy vehicle loads. The modified civil design completely resolves these externalities.
- **Protection of Existing Built Form & Boundary Assets:** The shallow civil layout actively protects the structural integrity of both the 45-year-old brick home on Lot 1 and the neighbouring fence underpinnings. Deleting the house footprint removes the localized earthworks that threatened these structures.
- **Orderly Site Management & History:** The removal of the contaminated, termite-damaged cottage under a separate CDC successfully resolved a major site hazard. Given the gentle natural topography (slope under 5%), the land can be cleanly subdivided with standard, low-impact engineering controls rather than aggressive, high-risk retaining structures.
- **Preservation of Substantial Subdivision Investment:** Because the active Construction Certificate and all upfront Section 138 and Section 307 fees were applied directly to the Stage 1 Subdivision works, the applicant's core financial investment remains entirely valid. This modification preserves those public asset contributions while correcting a severe engineering flaw in the civil layout before it causes physical damage. The parallel alignment of the active CC via Section 144 ensures complete regulatory consistency.

- **The Demolition of the Garage:** The detached garage is completely redundant without the accompanying new house design. Its removal ensures clean, unencumbered allotments ready for standard residential use.

The modified development is entirely and "substantially the same" as the scheme originally granted consent under DA49906/2016.

3. Compliance with Schedule 7 of the EP&A Regulation 2021

The following supporting documentation has been provided via the NSW Planning Portal:

1. **Amended Architectural / Subdivision Plans:** Showing the deletion of the new house footprint, the redundant detached garage marked for demolition, and the 45-year-old brick home to be retained on Lot 1.
2. **Simplified Civil / Stormwater Plan:** Prepared by the project's civil engineer, demonstrating the safe, shallow gravity layout and minimal site forming (to form the basis of the subsequent Section 144 Stage 1 CC modification request).
3. **Original Consent Copy:** A copy of the original DA49906/2016 determination notice.
4. **Appendix A: Original 2016 Statement of Environmental Effects (SOEE)** for historical context.
5. **Appendix B:** Copy of formal historical correspondence sent to Central Coast Council detailing the commercial unviability and civil hazards of the public road pit next to the bus stop and intersection. No formal response was received from the Council since April 2026, serving as the direct justification for deleting the Stage 2 dwelling and pursuing this pure bare land subdivision scheme.

4. Conclusion

The proposed modification accurately addresses Section 4.55(2) of the Act, demonstrating that the development remains substantially the same while correcting a severe engineering flaw, eliminating a structural threat to the public intersection and boundary fence, strictly meeting local minimum lot standards, and protecting existing site assets. We request that Council progress this to formal lodgement and issue the fee invoice.

Yours faithfully,

Appendix A (SOEE)

1. Introduction

This Statement of Environmental Effects (SOEE) is submitted pursuant to **Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*** (EP&A Act) in support of an application to modify the above development consent.

This SOEE demonstrates that the proposed modification is appropriate, results in a development that is **substantially the same** as the originally approved development and is in the public interest.

2. Description of the Proposed Modification

The Applicant seeks to modify the existing consent as follows:

A. Deletion of Stage 2 (Future Dwelling):

- The approved dwelling and all associated site works are **deleted** from the consent entirely.

B. Demolition of Existing Garage:

- The Applicant seeks approval for the **demolition of the existing detached metal garage** currently located on the site.
- **Garage specifications:** 6m (L) x 6m (W) x 2.4m (H), metal frame with ColorBond steel cladding and skillion roof, standing on a concrete slab.
- **Intended outcome:** The Applicant intends to sell the garage for re-use where possible, avoiding demolition and disposal. If a buyer is not found, the garage will be dismantled and recycled.
- **Reasoning:** The existing garage was originally approved as a **feature of the Stage 2 dwelling design** (as the house had no internal garage). With the deletion of the Stage 2 dwelling from the consent, the garage no longer serves any approved purpose and has become a redundant structure. Its removal is necessary to deliver vacant, unencumbered lots.

C. Amendment to Subdivision Infrastructure (Stage 1):

- The approved deep 1.8m kerb pit is **deleted**.
- It is replaced with a basic **Inter-Allotment Drainage (IAD) line** consisting of:
 - Shallow 600mm deep pits

- DN150 pipe
- Discharge to kerb via an approved kerb adaptor

D. End State:

- The consent will thereafter relate only to **Stage 1 – the subdivision of land into vacant, unencumbered lots**, with basic stormwater infrastructure (IAD stub) as required by Central Coast Council DCP 2022.

3. Site Analysis & Justification

3.1 Substantially the Same Test

The modified development remains **substantially the same** as the original consent because the core component—the **subdivision of land into vacant lots**—remains unchanged.

Original Approval	Modified Approval	Substantially the Same?
Subdivision of land into lots	Subdivision of land into lots	✓ Yes
Stage 2 dwelling approved	Stage 2 dwelling deleted	✓ Yes (reduction in scope)
Deep 1.8m kerb pit	Shallow 600mm IAD line	✓ Yes (still provides legal point of discharge)

The removal of the dwelling and the amendment of the stormwater design represent a **reduction in scope**, not a fundamental change. Council retains full control over any future dwelling via a separate Development Application to be lodged by the future owner.

3.2 Site Constraints: Pure Sand Conditions

The original 1.8m deep kerb pit is **un-constructible** due to the site's pure sand composition.

Issue	Impact
Deep excavation in sand	High risk of trench collapse and WHS non-compliance

Issue	Impact
Lack of soil cohesion	Excavation faces cannot stand safely at 1.8m depth at the road side and busy intersection with Calipta Road.

Market rejection	Multiple licensed contractors refused to quote for the original design
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The proposed shallow IAD line (maximum 600mm depth) avoids unsafe trenching while providing the required legal point of discharge for a vacant lot.

3.3 Flood Free Status

The site is **flood-free at 6m+ AHD**. Therefore, the loss of the original deep pit's storage volume is not an environmental concern. No flood planning controls are triggered by this modification.

3.4 Demolition of Existing Garage

The existing detached metal garage is a physical structure that predates the Applicant's ownership. **Critically, this garage was originally approved as an integral feature of the Stage 2 dwelling design.**

Specifically, the approved house design had **no internal garage**. The external detached garage was therefore a necessary component of the Stage 2 approval to provide parking and storage for the dwelling.

Consequence of deleting Stage 2:

Original Approval	Consequence of Deletion
Stage 2 dwelling (no internal garage) approved	Stage 2 dwelling deleted
External garage approved as feature of dwelling	Garage no longer has any approved purpose
Outcome	Garage becomes a redundant structure that must be removed

As the Applicant is seeking to deliver vacant, unencumbered lots, and the garage no longer serves any approved purpose, approval is sought for the **demolition of the existing garage**.

Garage Details:

Specification	Value
Dimensions	6m (L) x 6m (W) x 2.4m (H)
Construction	Metal frame with ColorBond steel cladding and skillion roof
Slab	Concrete slab (approx. 3.6 m ³)
Asbestos	None present

Intended Approach:

- **Preferred outcome:** Sell the garage as a whole structure for re-use, with the buyer responsible for dismantling and removal.
- **Alternative outcome:** If a buyer is not found, dismantle and recycle all metal components (framing, roof sheeting, wall cladding) and crush the concrete slab for recycling.

Demolition Compliance:

- All demolition works will comply with **AS 2601-2001: The Demolition of Structures**.
- A Waste Management Plan has been prepared (attached) estimating approximately 12.8 tonnes of material, with over 90% to be diverted from landfill through recycling or re-use.

3.5 Practical Unworkability of the Original Consent (Key Justification)

The original civil plans have proven to be **commercially unviable and physically unconstructible**:

- **Market Rejection:** Despite extensive efforts, no licensed civil contractor was willing to undertake the works required by the original deep pit design. The risks associated with deep excavation in pure sand resulted in a complete lack of market interest.
- **Safety & Stability:** The original design requires deep excavation in unstable, cohesionless sand, presenting a high risk of trench collapse contrary to safe work practices under the NSW Work Health and Safety Act 2011.

- **Resolution:** The new civil design directly addresses Council's underlying requirement for a legal point of discharge while respecting the physical limitations of the land. It provides a safe, constructible, industry-standard solution for a vacant lot subdivision.

3.6 Future Owner's Responsibilities

The following matters are **deferred** to the future owner when they lodge a Development Application for a dwelling:

Item	Responsibility
On-Site Detention (OSD) system	Design, construction, and ongoing maintenance
Full stormwater calculations	Based on specific house design
Connection to water main	Via licensed plumber under separate Section 307 Certificate
Connection to sewer (rear lane manhole)	Via licensed plumber under separate approval
Electricity and NBN connections	Via Ausgrid and nbn co under separate approvals

4. Environmental Impacts

The proposed modification will have a **positive** environmental impact:

Impact	Assessment
Excavation safety	Eliminates high-risk deep trenching in unstable sand
Site disturbance	Reduces scope of earthworks compared to original design
Waste management	Over 90% of demolition materials to be recycled or re-used

Impact	Assessment
Future flexibility	Allows future owner to design site-specific OSD suitable for sand conditions
Flooding	No impact — site is flood-free at 6m+ AHD
No adverse environmental impacts are anticipated.	

5. Compliance with Relevant Controls

The proposed modification complies with all relevant regulatory requirements:

Control	Compliance
Central Coast Council DCP 2022	Provides legal point of discharge (kerb adaptor) as required for vacant land subdivision
AS3500.3 (Plumbing and Drainage)	IAD line designed to Australian Standards
AS2601-2001 (Demolition)	Demolition works to comply with this standard
Section 68 Local Government Act	Kerb adaptor connection to be approved via Subdivision Works Certificate
Water Management Act 2000	Existing developer charges (paid 2018) to be credited toward Section 307 Certificate
NSW Work Health and Safety Act 2011	Safe excavation and demolition practices

6. Conclusion

The proposed modification is in the **public interest** for the following reasons:

1. **It removes an unbuildable condition** — the original deep kerb pit which the market rejected as unsafe and impractical.
2. **It replaces it with a safe, compliant solution** — a shallow IAD stub that meets Council's requirements for vacant land.
3. **It delivers vacant, unencumbered lots** — with the dwelling approval deleted and the existing garage demolished (or sold for re-use).
4. **It logically links the garage removal to the house deletion** — the garage was a feature of the original house design (which had no internal garage); with the house deleted, the garage has no lawful purpose and must be removed.
5. **It promotes recycling and waste reduction** — over 90% of demolition materials to be diverted from landfill.
6. **It respects future owners' rights** — allowing them to design and build a dwelling suited to the site's sand conditions, including appropriate OSD and, if they choose an internal garage.

The Applicant respectfully requests that Central Coast Council **approve** this Section 4.55(2) modification application.

Dariusz Swiderski

Dariusz Swiderski

Katarzyna Swiderska

Katarzyna Swiderska

Date: 17 June 2026

Appendix B - Copy of formal historical correspondence sent to Central Coast Council detailing the commercial unviability of the public road pit, serving as the direct engineering catalyst for deleting the Stage 2 dwelling and pursuing this pure bare land subdivision scheme. No formal response was received from the Council since the 9th of April 2026.

To: Central Coast Council – Development Engineering / Planning Department

Attention: Duty Planner / Manager Development Engineering

Subject: Urgent pre-lodgement clarification – Modification enquiry – DA 49906/2016, 12 Mount Ettalong Road, Umina Beach NSW 2257

Dear Sir/Madam,

I write to seek formal clarification from Council **before** I incur significant engineering and application costs for a proposed Section 4.55 modification to my DA.

Background

My Development Consent DA 49906/2016 for the subdivision (stage 1) of my property at 12 Mount Ettalong Road, Umina Beach NSW 2257, Umina Beach, includes a civil works condition requiring a **1.8m deep kerb road inlet**.

I have already:

- Secured a **Construction Certificate** with Council as the **Principal Certifier**
- Paid all **water and road development fees** as required by Council

Despite being fully approved and ready to start the Lot subdivision, I have been unable, after years of effort, to find any civil contractor willing to construct this pit. The consistent feedback is that the depth, location on the public road (requiring traffic management), re-asphalting and reconcreting requirements, and risk to underground services make the job unviable. One of the civil contractors told me the job is "too small for their equipment" and the risks outweigh

any potential return. Some claimed that they do not have the required public liability insurance to undertake such a work.

The Proposed Modification

I am seeking Council's in-principle indication as to whether you would be agreeable to a Section 4.55 modification to replace the unbuildable 1.8m road pit with an **infiltration-based stormwater system located entirely within my property**, using the same or similar technology Council recently approved and constructed at **Sydney Avenue, Umina Beach**.

That project, completed in 2023, used:

- HydroCon® permeable concrete pipes for gross pollutant treatment (100% removal)
- ACO StormBrixx® geocellular tanks for infiltration storage (266m³ capacity)
- Zero discharge in a 1-in-5-year storm event

The system was publicly endorsed by **Boris Bolgoff, Director of Infrastructure Services**, and has been submitted for an IPWEA Engineering Excellence Award 2024.

My Specific Concerns

Before I proceed, I need Council's guidance on the following:

1. Would Council consider such a modification favourably?

My property is flood-free with 6m+ house levels on sandy soil 450m from the beach—comparable to the Sydney Avenue site. If Council approved infiltration there, I seek assurance that the same solution will be considered on my property.

2. Will a modification under Section 4.55 cancel my existing DA?

One civil engineer has expressed uncertainty about whether lodging a modification could jeopardise my existing consent. Council's website confirms that post-consent services include modification applications under s4.54 and s4.55 of the *Environmental Planning and Assessment Act 1979*. I need written confirmation that a modification application under s4.55(2) (or s4.55(1A) if applicable) will not result in cancellation of my DA, provided the development remains "substantially the same" as originally approved.

3. Can I obtain written pre-lodgement advice before spending approximately \$6,000 on engineering and modification fees?

Given my circumstances, I request either:

- A formal written advice service confirming Council's position on the proposed infiltration modification; or
- Confirmation that I can proceed with the modification application with reasonable expectation of fair assessment referencing the Sydney Avenue precedent.

My Position

I am not asking the Council to fix my engineer's design. I am asking whether Council will accept a **buildable alternative** that uses technology Council itself has already approved, constructed, and publicly promoted on the same soil type in the same suburb.

Council has already accepted my water and road fees. Council is the Principal Certifier on my subdivision Construction Certificate. I am ready to start the civil works — I simply need a stormwater design that contractors will actually quote on.

If Council indicates that an infiltration modification would be considered favourably, I will engage my original civil engineer from Halcrows and Associates to prepare the workable redesign and lodge a formal Section 4.55 application.

If Council indicates that such a modification would not be supported, I will need to reconsider my options, which may include formally requesting Council to quote and construct the original 1.8m pit—as no private contractor will touch it.

Requested Response

Please provide written clarification on the three matters above within 14 days. I am also available for a paid pre-development meeting if Council requires further information.

I attached the council case study on the Sydney Avenue old skate park project using the ACO StormBrixx technology which I hope may be appropriate for our stormwater design.

I look forward to your response.

Yours faithfully,