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DEVELOPMENT CONSULTANTS

SURVEYORS • PLANNERS • ECOLOGISTS • BUSHFIRE CONSULTANTS

Statement of Environmental Effects

Multi-dwelling housing – pursuant to s.8.2 Review – EPA&Act 1979

Lot 604 DP 10570

16 Warrah Street, Ettalong Beach

Our Ref: 19785



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1.0 Introduction

This Statement of Environmental Effects is part of a development application (DA) submitted to Central Coast Council for the demolition of a dwelling-house and the erection of a multi-dwelling development consisting of 3 dwellings at 16 Warrah Street, Ettalong Beach. This overarching report assesses and addresses the amended multi-dwelling development in light of the reasons of refusal under the original application under DA/61592/2021. Subsequently this application is pursuant to s.8.2 Review of the EPA Act 1979. This s.8.2 application has been prepared on behalf of the owners of the land and has been based on the plans and information provided by *Knight Mapleton Design Partners*. An on-site inspection has been undertaken and a photographic record of the inspection is provided in this document.

2.0 Site Location and Description

The regular shaped allotment is legally described as Lot 604 in DP 10570 and known as No.16 Warrah Street, Ettalong Beach. The flat 727.2m² site is 15.24 metres in width, 48 metres in length and obtains direct vehicular access to the public road reserve. The site contains single dwelling-house and ancillary structures with the surrounding residential development being characterised by primarily medium density housing and an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to dwelling-houses of a contemporary appearance.



Figure 1. Aerial photograph of the site

Source: Nearmap (March 2023)





Figure 2. Photograph of the site

CDA (March 2023)



Figure 3. Photograph of 20 Warrah Street

CDA (March 2023)



2.1 Metropolitan Context

The site is located within the Local Government Area of Central Coast and is within the proximity of the Ettalong and Umina Town Centres, located on the southern end of the Central Coast. The area is characterised by a mixture of residential of development and small scale commercial, retail, medical and educational establishments of varying height, bulk and scale. The site is located near public bus transport, recreational facilities, retail facilities, medical centers / hospitals and sporting grounds. It is considered that the proposal is in keeping with the existing and likely future development of the surrounding area.

3.0 Description of Proposal

The application seeks consent for the demolition of the existing dwelling house, importation of fill and the erection of a RFB development comprising 3 dwellings with front courtyard fencing as illustrated within the architectural plans prepared by *Knight Mapleton Design Partners*. Each dwelling would include 3 bedrooms, living areas with vehicular access is proposed via central driveway to separate garages provided for each dwelling. The proposed dwellings provide ground floor private open space areas with courtyards, internal storage and a space to locate waste collection bins away from the street and clothes drying areas that would be screened from other dwellings and the public domain. The lightweight appearance with a mixture of weatherboard cladding rather than the more extensive masonry is a prominent feature of the design, all elements identified within the Council's desired Character elements for the Ettalong Beach – Medium Density precinct.

4.0 Planning Considerations

The following Environmental Planning Instruments are subject to the subject land and have been duly considered in the preparation of this development proposal and application.

- *The Environmental Planning and Assessment Act 1979*
- *State Environmental Planning Policy (SEPP) Coastal Management*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Gosford Local Environmental Plan 2014*
- *Gosford Development Control Plan 2013*



4.1 Clause 8.3 EPA Act 1979 – Substantially the Same Test

8.3 Application for and conduct of review

(1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.

(2) A determination or decision cannot be reviewed under this Division—

(a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or

(b) after the Court has disposed of an appeal against the determination or decision.

(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

In terms of ascertaining whether a proposal meets s.8.3 of the EPA Act as being considered substantially the same as approved such a statutory framework for assessment of a proposal as meeting the s.4.55(2) parameters has recently been established in the LEC judgement; *Horseshoe Properties Pty Ltd v Tweed Shire Council [2021]*. The principles of determining whether or not a proposal could be assessed and power grant as a modification was set out in the judgment that referenced the case of *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999)* as a starting point which established the first test of clarifying the meaning of “substantially”.

In the Moto judgement “substantially” means essentially or materially or having the same essence. To put that meaning in context then, the test in subs that I must be satisfied that the development to which the consent as modified relates is substantially, essentially or materially the same development or having the same essence as the development for which consent was originally granted. Horseshoe takes

on board the Moto approach as starting point and outlines four key parameters for to determining the question posed by s 4.15(2)(a):

- The Moto approach - to identify the material and essential features of the originally approved and modified developments - is not a mandatory approach but may well be the most useful approach;
- Comparing the consequences such as environmental impacts of the original and modified developments is a legitimate approach, though again not a mandatory approach;
- It is not mandatory to consider the circumstances in which the original consent was granted, although not necessarily must be eschewed, but if it is appropriate to consider the material and essential features of a development then that task is done by comparing the original and modified developments themselves and not the circumstances in which the original consent was granted;
- Reference may be had to the applicable environmental planning instruments (and associated planning documents) although it is not mandatory so to do.

Consideration

Quantitative Comparison

As outlined within the plans the building form is substantially same with the replacement of the cabin with a replacement cabin of similar dimensions, bulk and scale (and subsequent impacts). The proposed includes some amendments to lessen the external impacts, including:

- **Increased the rear setback to be greater than 18 and 20 Warrah Street approved setbacks**
- **Lowered the roof pitch to lessen the building height.**
- **Slight change in the external finishes from brick work to light weight cladding to maintain a coastal style in appearance which is in keeping with the recent approvals in Warrah Street.**



Qualitative Comparison

In Commissioner Clay's judgment (Horseshoe) it was the qualitative differences that influenced the decision that the application failed the 'substantially the same' test as the consequences of the modification were vastly different when compared to the approved development. In the Horseshoe case it was the relocation of a Public Open Space within a residential subdivision that has different topography and characteristics that led to the applications undoing. In this instance there is no qualitative difference, greater environmental impact or consequence when compared to the approved development. There will be no greater amenity or environmental in terms of visual

(bulk and scale) impacts, solar access, and views without inflicting any greater external impacts when compared to the original design. In terms of the main elements that are taken into consideration for the assessment of development with a mixed use setting – including:

- Visual impacts
- Privacy
- Solar Access
- Views
- Traffic & Parking
- Character

The proposal to slightly modify the approved development entails no greater impacts than the approved development in terms of the built form that exists and the use / intensification. Subsequently the amendment sought is consistent with the original consent in accordance with section 4.55(2) of the EPA Act 1979 and Council has the ability assess the DA as a modification to the original development. I am of the opinion that the proposed modification is considered to minor and will retain the essence of the development as approved by the original consent. The physical change to the appearance of the original multi-dwelling housing development application is not sufficient to radically alter or transform the development approved in the original consent. As a consequence, it would be readily open to the Council to conclude that the proposed modification is "substantially the same development" as that originally sought in the original application and therefore, the proposed modification may be approved pursuant to division 8.2 Review of the EP & A Act 1979.



4.1 State Environmental Planning Policy (SEPP) – Resilience and Hazards

Chapter 2 Coastal Management

Under the SEPP the site is identified as being located within a Coastal Environment Area (CEA) and is also located within the coastal use area. Any development on land identified as a CEA is required to be in accordance with Clause 2.11 Development on land within the coastal environment area of the above SEPP. The proposal will incorporate appropriate nutrient control in regards to stormwater and thus will not have an impact upon the coastal environment and is therefore consistent with the requirements of the SEPP.

Chapter 4 Remediation of Land

The objective of this chapter within the SEPP is to provide a state-wide planning approach to the remediation of contaminated land for the purpose of reducing risks to human health and the environment. The use of the area of the land to be utilised for residential purposes has been for residential use and there are no known previous uses that would lead to the site being contaminated or unsuitable for the proposed use for residential purposes.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 aims to ensure consistency in the implementation of the BASIX scheme throughout the State. A BASIX certificate is required for all new dwellings and has been considered in this application as a BASIX certificate has been submitted as part of this application.

4.3 Central Coast Local Environmental Plan 2022

The Central Coast Local Environmental Plan (CCLEP 2022) is Council's primary planning control for development in the Central Coast Municipality and establishes the requirements for the use and development of within the Central Coast City Local Government Area. The CCLEP 2022 provides objectives, zones and principal development standards including minimum lot sizes, floor space ratios and height of buildings.

4.3.1 Land Use

The zoning maps provided by Council's website indicate the subject site is currently zoned Residential R1 – General Residential. The proposed development is defined as 'multi-dwelling housing' under Gosford LEP 2022 and is permissible in the zone with Council's consent.



4.3.2 Objectives of the Land Use Zone

The proposed residential flat building design is consistent with the zone objectives and is permissible subject to Council consent.

The objectives of the R1 – General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure development is compatible with the desired future character of the areas covered by this zone.*
- *To promote best practice in the design of multi-unit housing or similar development.*
- *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi-unit housing or similar development.*

Comment:

- The proposal would cater for the smaller housing needs for the local population within the Central Coast LGA.
- The proposal would be compatible with the surrounding land uses and allows the construction of additional dwellings in line with the needs of the community.
- The proposal would allow the continuation of residential development that would facilitate the incorporation of landscaping that is compatible with the medium density residential zone.

The proposal is consistent with the objectives of the LEP and the objectives of the zone.



4.3.3 LEP Development Standards

Below is a compliance table outlining a summary of the relevant development standards within the CCLEP 2022. The proposal complies with the relevant development standards of GLEP.

Gosford LEP 2014			
Development Standard	Requirement	Proposal	Compliance
Cl. 4.1B Minimum Lot Size	750m ²	727.1m ²	No – refer to clause 4.6 variation
Cl 4.3 Height	8.5m	7.75m	Yes
Cl 4.4 FSR	0.5:1	0.48:1	Yes

4.3.4 – GLEP 2014 - Clause 7.1 Acid sulfate soils

The site is within the class 4 acid sulphate zone in accordance with Council's Acid Sulphate Soils Map. Generally Acid Sulphate Soils are found lower than 1 metre Australian Height Datum (AHD) and often 0-0.3 metre AHD. The site is approximately 4 metres AHD with minimal excavation required for the establishment of footings and therefore significant acid sulphate soils would be not likely to be encountered.

5.3 Central Coast Local Environmental Plan 2022

The Central Coast Local Environmental Plan 2022 (CCLEP 2022) came into force in August 2022 and is now Council's primary planning control for development in the Gosford Municipality and establishes the requirements for the use and development of within the Central Coast Local Government Area. The CCLEP 2022 provides objectives, zones and principal development standards including minimum lot sizes, floor space ratios and height of buildings.

The zoning maps provided by Council's website indicate the subject site is currently zoned Residential R1 – General Residential. The proposed development is defined as 'multi-dwelling housing' under CCLEP 2022 and is permissible in the zone with Council's consent.

The proposed residential flat building design is consistent with the zone objectives and is permissible subject to Council consent.

The objectives of the R1 – General Residential zone are:

- To provide for the housing needs of the community.



- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To promote best practice in the design of multi dwelling housing and other similar types of development.
- To ensure that non-residential uses do not adversely affect residential amenity or place unreasonable demands on services.

Comment:

- The proposal would cater for the housing needs for the local population within the Central Coast LGA.
- The proposal would be compatible with the surrounding land uses and allows the construction of additional dwellings in line with the needs of the community.
- The proposal would allow the continuation of residential development that would facilitate the incorporation of landscaping that is compatible with the medium density residential zone.

The proposal is consistent with the objectives of the LEP and the objectives of the zone.

Below is a compliance table outlining a summary of the relevant development standards within the CCLEP 2022. The proposal complies with the relevant development standards of CCLEP.

Central Coast LEP 2022			
Development Standard	Requirement	Proposal	Compliance
CI 4.3(2) Height	8.5m	7.58m	Yes
CI 4.4(2)FSR	0.5:1	0.48:1	Yes

5.0 Gosford Development Control Plan 2013 (GDCP 2013)

Along with the Gosford LEP 2014, Council's Development Control Plan 2013 outlines overarching objectives and prescriptive measures in relation to development standards and the use of land within the Central Coast LGA. In this instance the proposed development is assessed as having regard to the relevant performance and prescriptive design standards outlined within the relevant chapters, including;



- Chapter 2.1 – Character
- Chapter 3.3 –Residential Flat Buildings
- Chapter 6.3 - Erosion Sedimentation Control
- Chapter 6.7 - Water Cycle Management
- Chapter 7.2 - Waste Management

5.1 GDCP 2013 – Chapter 2 Scenic Quality & Character Statement

The subject allotment is located in the suburb of Ettalong Beach and is classified as being located within Place 3: *Sandplain Medium Density* within the Character Statement map.

The desired character for development within this precinct is to *"remain medium-density residential neighbourhoods where improved standards of amenity and urban design quality are achieved by new low-rise multi-unit developments that reflect features of the traditional mid-Twentieth Century bungalows which remain distinctive elements of the Woy Woy Peninsula's identity. Surround each multi-unit development with leafy gardens that conserve existing visually-prominent trees, particularly along back fences and street frontages or verges, as well as providing space for new shady trees and shrubs planted as backdrops to new buildings.*

Maintain the informal qualities of existing wide grassy street verges and conserve existing shady street trees. Plant a combination of trees and shrubs around courtyards as well as along all property boundaries, and use hedges or fences that are low or see-through rather than tall and opaque in order to complement the informal character of existing garden frontages."

Comment:

The proposed development includes a multi-unit development that will entail the upgrading of older housing stock and would be commensurate with the evolving style and density of multi-unit development within the medium density zone within the Peninsula (generally east of Ocean Beach Road and towards Woy Woy town centre) to assist with catering for the housing targets required for the growing Central Coast region in a suitable location as urban infill development with a low rise medium density zone. The proposal maintains reasonable levels of visual amenity for neighbouring properties, and the built form divides up the units to break up bulk and provide visual relief. The proposal utilises various materials and building articulation to achieve a light weight appearance, and is generally consistent with the desired future character of the locality, being a similar scale and bulk to other multi dwelling housing in the street and Woy Woy Peninsula area in general.



Careful design and material choice provides sufficient boundary setbacks to provide building separation and landscaping opportunities to alleviate the bulk and scale of the built form from the neighbouring properties and public domain. Courtyards are located around the perimeter of the town houses that would provide sufficient deep soil planting to incorporate small to medium street trees, allowing the appropriate landscaping transition from the built form when viewed from the street and neighboring lots.

5.2 Central Coast DCP 2013 – Chapter 3.3 - Multi Dwelling Housing & Residential Flat Buildings

Along with the Central Coast Local Environment Plan 2014, Council's Development Control Plan 2013 outlines overarching objectives and prescriptive measures in relation to development standards and the use of land within the Central Coast LGA.

In this instance the proposed multi-unit development is assessed as having regard to the relevant performance and prescriptive design standards within relevant chapters within the GDCP 2013. The proposal is assessed against the major provisions of GDCP Chapter 3.3 Multi Dwelling Housing & Residential Flat Buildings as follows:

Development Standard	Required	Proposed	Compliance
3.3.2.1-Character	<ul style="list-style-type: none"> • Consistent with existing development pattern • Height & scale consistent with neighbourhood. • Appropriate form & Design • Garden design compatible with streetscape • Street verges conserve prominent landscape features 	Compliance with desired character	Yes
3.3.3.1-Height	<ul style="list-style-type: none"> • Max height - GLEP – 8.5m • Max 2 storeys • Max height exterior wall 7.5m • Ceiling height of habitable room minimum – 2.7m 	<ul style="list-style-type: none"> • 7.58m • two storeys • 5.45m • 2.45m 	Yes Yes No*
3.3.3.2-Setbacks	<ul style="list-style-type: none"> • Deep soil 6m front/rear, 2m side • Front Setback 6m • Side boundaries min 3.5m • Rear Setback 6m 	<ul style="list-style-type: none"> • 6m – 8.05m • 6m • 1.3m – 6.25m (west) • 1.1m – 3.74m (east) • 3.38m GF • 4.42m FF 	Yes Yes No* No* No*

3.3.3.3-Car Parking	<ul style="list-style-type: none"> • Not located facing street/lane. • Not located in front setback setback • 1.5 sp/unit + 0.2 sp/unit 5 resident + 1 visitor <4 dwellings or unlimited parking within 60m for visitor	<ul style="list-style-type: none"> • Not located facing street/lane. • Not located in front setback • 5 residential spaces Unlimited parking available on-street	Yes Yes Yes Yes
3.3.3.3.5-Driveway Design	• 3m width/passing bays each 30m	• Min 3m width	Yes
3.3.3.4.2-Articulation	<ul style="list-style-type: none"> • Max width and depth of building 25m • Unarticulated length of external wall max 8m 	<ul style="list-style-type: none"> • 40m • generally articulated 	No* Yes
3.3.3.5-Solar Access	<ul style="list-style-type: none"> • Sunlight min 3 hrs/day in living , dining, family rooms and 50% of principle Open Space areas • Received by 70% of dwellings. • Min sunlight retained to existing neighbours. 	<ul style="list-style-type: none"> • Sunlight min 3 hrs/day in living , dining and open space areas • Received by 70% of dwellings. • Min sunlight retained to existing neighbours 	Yes Yes
3.3.3.5.3-Privacy	Site Planning to provide for reasonable privacy for existing & proposed dwellings.	Privacy is acceptable and no impacts on adjoining properties.	Yes
3.3.3.5.4-Natural cross ventilation	Min 60% of dwellings must have suitable floor plans	adequate cross ventilation provided	Yes
3.3.3.5.5-Open Space	Min area 50m ² Min width 3.5m	Unit 2 -40m ²	No*
3.3.4.1-Housing Choice	Provide variety of dwelling types	All 3 bedrooms – other than unit 1 – 4 bedrooms on ground floor allowing aging in place	Acceptable - given scale of development
3.3.4.2-Residential Address	Front doors, windows, patios etc facing street	Traditional frontage provided	Yes
3.3.4.2.6-Front Fencing	Solid fencing taller than 1.2m should have 1/3 open materials such as pickets, palings, battens, lattice	1.8m brick fencing with 0.3m decorative slat infills proposed	No – refer to discussion below
3.3.4.4-Landscaped Areas	Provide landscaping plan	Landscaping plan provided	Yes
3.3.4.5.2 Stormwater	25% (182m ²) of the development site shall be deep soil	29.6% or 215.32m ²	Yes
3.3.4.5 -Design & Location of garbage bin enclosures	Not compromise urban design quality	Bins able to be stored in screened area within courtyards or garages	Yes
3.3.4.5 - Building Services	Storage provided minimum 10m ² / dwelling	Storage provided within garage roof	Yes



The application has been assessed against the prescriptive measures outlined in GDCP 2013 – Chapter 3.3 *Multi-Unit Housing and Residential Flat Buildings* and Chapter 7.1 *Car parking*. As detailed in the above table, the proposed development does not comply with the prescriptive measures within the DCP. The matters of numerical non-compliance indicated by an asterisk with achievement with the applicable objectives discussed below:

Setbacks and Multi-unit development on the Woy Woy Peninsula

The proposed side and rear setbacks, in particular the side and rear entail non-compliance with the numerical measures outlined within the setback clauses within the DCP.

Notwithstanding the non-compliance with the numerical measure the design of the development would allow sufficient boundary setbacks to alleviate visual amenity, privacy and overshadowing impacts to the adjoining properties within the medium density residential zone. The proposed setbacks would allow the incorporation of appropriate private open space areas behind front courtyard fencing that would have direct access to the living areas with appropriate solar access. In relation to the rear setback, the window along the rear (southern) elevation only services a bathroom that incorporates a high sill – negating privacy impacts to the adjoining multi-dwelling development, located to the rear.

The proposal would be commensurate the scale and design of multi-unit development within the medium density zone and would allow an appropriate area for the front and rear perimeter landscaping treatment as outlined within the objectives of the Setbacks clause.

In relation to recent multi-dwelling developments that have occurred on single suburban sized lots in the Woy Woy / Ettalong Beach / Ettalong Beach Peninsula area; the proposal is essentially the same as what has been established historically and more recently under the current GDCP 2013. Recent approvals of multi-unit development with the same design scale, height, setbacks, site cover and parking include:

- DA 47716/2015 - 117 Booker Bay Road, Booker Bay
- DA49404/2015 – 127 The Esplanade, Ettalong Beach
- DA49124/2016 – 46 Berith Street, Ettalong Beach
- DA48944/2015 – 8 Osborne Avenue, Ettalong Beach
- DA52242/2017 – 9 Priestman Avenue, Ettalong Beach



- DA52934/2017 – 7 Gallipoli Avenue, Blackwall
- DA53647/2018 – 37 Edward Street, Woy Woy
- DA48245/2015 – 102-104 Broken Bay Road, Ettalong Beach
- DA50316/2016 – 5 Bogan Rd & 1 Telopea St, Booker Bay
- DA48659/2016 – 28 Bream Rd, Ettalong Beach
- DA51355/2017 – 26 Bogan Rd, Booker Bay
- DA54018/2018 – 72 & 74 Railway St, Woy Woy
- DA54017/2018 – 13 B Farnell Rd, Woy Woy
- DA53215/2017 – 11 & 13 Victoria Rd, Woy
- DA54685/2018 – 80 Victoria Rd, Woy
- DA52242/2017 – 9 Priestman Avenue, Umina Beach
- DA52934/2017 – 7 Gallipoli Avenue, Blackwall
- DA48245/2015 – 102-104 Broken Bay Road, Ettalong Beach
- DA54524/2018 – 24 Edward Street, Woy Woy
- **DA55579/2018 – 6 Flounder Road, Ettalong Beach**
- DA48177/2015 – 27-29 Warrah Street, Ettalong Beach
- DA55443/2018 – 32 Warrah Street, Ettalong Beach (approved site plan below)
- DA57079/2019 – 20 Warrah Street, Ettalong Beach

The design of the development would allow sufficient boundary setbacks to alleviate visual amenity, privacy and overshadowing impacts to the adjoining properties within the medium density residential zone. The proposed setbacks would allow the incorporation of appropriate private open space areas behind courtyard fencing that would have direct access to the living areas of each dwelling with appropriate solar access.

Unlike single dwelling-houses that are erected upon residential sized allotments, that typically have their principal private open space positioned to the rear of the dwelling-house; multi-unit dwelling and residential flat buildings have court yards positioned to the front of the front dwelling with courtyard fencing to allow an appropriate level of screening to the principal private open space. With the incorporation of a roadside planting and horizontal timber paneling, the structure avoids a monotonous form with



the bulk and scale broken by the incorporation of timber paneling. The scenic quality of the area would not be compromised with the erection of front fencing to the residential complex. The implementation of the front courtyard fencing will allow appropriate delineation of the private open space to be utilised by the front unit within the development and the adjoining streetscape.

The proposal would be commensurate the building setbacks that have been recently approved, established and permitted in the Woy Woy Peninsula area.

Building Articulation

The proposed multi-housing development would have an overall length of 40.19 metres which does not comply with the prescriptive 25 metre requirement outlined in Clause 3.3.3.4.2 of the DCP. Notwithstanding the non-compliance with the numerical measure, the proposed multi-unit development would incorporate sufficient setbacks and breaks that would negate monotonous or symmetrical appearance when viewed from the adjacent premises that will be effectively addressed, given the irregular disposition of the windows, the varying roof forms. The development would allow sufficient boundary setbacks to incorporate deep soil landscaping that would further enhance the transition and separation of the built form in relation to the adjoining premises and to the street.

With these 'breaks' in materials and form, the development meets the objectives of the Clause 3.3.3.4 Articulation and is considered acceptable.

Solar Access

The development would allow greater than three hours solar access to the living areas and private open space areas of the dwellings and neighbouring dwellings to the east and west a maintain solar access

Privacy

The proposed townhouses have been designed in a manner that would allow sufficient separation and screening to alleviate the overlooking of the adjoining properties. The living areas of the townhouses would be located on the ground floor and oriented to their private courtyards and with the incorporation of landscaping around the premises, privacy to the villas and conversely the adjoining residences would be provided appropriate visual separation. The upper floors contain bedrooms and a living areas with high sill heights only that would mitigate privacy impacts to the neighbouring properties.

Site Cover and Deep Soil Zones



The proposal would include sufficient areas for the implementation of appropriate deep soil zones around the front and rear perimeter of the allotment. The proposed building setbacks would allow landscaping to include small to medium sized trees to provide a landscaping buffer around the built form and additional privacy screening.

The development would include rainwater tanks to assist in reducing the hydraulic rate of stormwater captured by the dwelling roofs and across impermeable surfaces across the site.

The site cover is consistent with neighbouring and surrounding multi-unit development and it is widely acknowledged the Peninsula soil provide is highly permeable allowing excellent infiltration of stormwater back into the water table.

External Appearance

The proposed multi-unit housing development would incorporate a mixture of external cladding with colorbond® roofing utilising an appropriate schedule of finishes that would be compatible with the contemporary dwellings that have been erected in the locality. The building would be modulated in a manner to alleviate monotonous design. The design incorporates a balance of horizontal and vertical elements to incorporated breaks in form that is encouraged by the design criteria of the DCP. Careful design and material choice has been undertaken in the architectural treatment of the façades. The colouring of the solid walls would constitute a light earthen tone and incorporate a break in form with the implementation of vertical elements.

Residential Address

Clause 3.3.4.2.1 of the DCP stipulates that where possible, dwellings to provide a traditional street address. In this instance the front dwellings would have a front entry and façade that would provide a traditional appearance to the street. Additionally the front courtyards would include a letter box with landscaping fronting the site to assist in providing an appropriate street address.

Private Open Space

The proposal allows sufficient areas for soft landscaping areas and direct and accessible private open space from the dwellings that would enhance the connection to the outdoor areas from the living areas of the dwellings. The dimensions of the private open space for unit 2 and 3 are numerically non-complaint however the design allows a practical open space area on the ground to be provided to the occupants as the living areas connect through to the long open space located on the eastern and northern side of the lot that has good solar access during the winter months.



Further in this instance the multi-unit housing would be located within walking distance of outdoor and indoor recreational facilities which allows for occupants to regularly participate in outdoor or social pursuits. The pos would be commensurate with the scale of pos that is required for single dwelling-houses and secondary dwellings and is therefore acceptable.

It is noted that pos for a 4 bedroom dwelling house the required pos only 24m² and 16m² for a 4 bedroom dual occupancy dwelling under the Codes SEPP that would entail greater occupancy and younger cohorts that would require larger open spaces for active recreation as encouraged by health policies.

Noise

The dwellings would be separated by garages, a terrace and party walls and therefore it is considered that the masonry structure will adequately suppress noise generated by the occupants of each dwelling. The proposed dwelling is unlikely to generate offensive noise pollution that would require mitigation measures or other management procedures.

Design and Location of Garbage Bin Enclosures

As illustrated in the site plan, each unit would contain separate areas for the location of moveable garbage bins that would be screened from the internal courtyards and from the street. The bins would be located near to pedestrian entrances or driveways where gradients satisfy technical requirements.

Parking

The proposed garages provide 5 off-street parking spaces which complies with the numerical measure of 5 spaces in accordance with Central Coast DCP 2013 Chapter 7.1 parking rates for multi-housing development. Due to the narrowness of the site, no visitor parking is provided. Notwithstanding as stipulated by clause 7.1.3.2 (A) (2) Schedule of Requirements: In the area defined as the Peninsula (ie Booker Bay, Blackwall, Ettalong, Ettalong, Woy Woy) visitor parking and service vehicle access may be provided on the existing street where development contains less than 4 units, or unrestricted on-street parking is safely available within 60m of the development. As such the proposal complies with the parking requirements outlined within the GDCP 2013.





Figure 6 – Photograph of the site illustrating available unlimited parking along the street Source: GMAPS (March 2021)

Front Fencing

Unlike single dwelling-houses that are erected upon residential sized allotments, that typically have their principal private open space positioned to the rear of the dwelling-house; multi-unit dwelling and residential flat buildings have court yards positioned to the front of the front dwelling with courtyard fencing to allow an appropriate level of screening to the principal private open space. The implementation of 1.8 metre front fencing allows the incorporation of a front private courtyard which meets the objective and performance criteria stipulated in of the Fencing clause in regards to the provision of privacy.

With the incorporation of a roadside planting and horizontal timber paneling, the structure avoids a monotonous form with the bulk and scale broken by the incorporation of timber paneling. The scenic quality of the area would not be compromised with the erection of front fencing to the residential complex. The implementation of the front courtyard fencing will allow appropriate delineation of the private open space to be utilised by the front unit within the development and the adjoining streetscape.

5.3 GDCP 2013 – Chapter 6.7 – Water Cycle Management

The intent of Water Cycle Management is to minimize the impact of development on the natural water cycle. In this instance the development would relate this plan in relation to stormwater discharge from the development. The proposal would incorporate rainwater tanks to capture stormwater discharge from the development in accordance with the Water Cycle Chapter within Councils DCP 2013. The application is accompanied with a Water Cycle Management Plan which outlines the water management retention and conservation requirements in accordance with DCP Chapter 6.7. The development would not be detrimental to the functioning of the water cycle on the site and incorporate water recycling measures in accordance of the Council's Water Cycle Management requirements.

5.4 GDCP 2013 – Chapter 7.2 – Waste Management

The proposed future dwellings will have access to the existing road waste collection system from the road reserve. The proposal would be consistent with the provisions of the waste management collection in the area with waste collection bins to be collected from the road frontage. Moveable garbage bins would be located within a screened location to minimise visual impacts to the streetscape and the private opens spaces within the site. A waste management plan in relation to the recycling of materials and the disposal of waste during construction has been prepared and is provided with this application.

6.0 The likely Impact of Development

Context and setting – The proposal is considered generally to be consistent with the development pattern in the zone and will not compromise the context and the setting of the surrounding area.

Utilities – reticulated water and sewerage system electricity, telephone / internet are available

Waste – All household waste will continue to be collected by the existing waste services.

Natural Environment - The site is not located within a flood prone or bushfire prone area and is not constrained by threatened species.

Social and Economic Impacts - No adverse social or economic impacts are anticipated as a result of the proposed development. The development provides a positive effect as it will provide the opportunity to provide the Central Coast LGA with additional small dwellings to cater for the dwelling demand in the Woy Woy peninsula area.



7.0 Suitability of the Site for the development

The site is well served by public transport and is located within close proximity of various services such as shops, schools, recreational parks and medical facilities. In view of the fact that the site is located within an established residential area and that all utility services would be available for the site, the proposed development would not infringe on these established services.

8.0 The Public Interest

The public interest is well served by the proposed development. In view of the careful nature of the design it is considered that the health and safety of the public will not be affected. The proposal provides the local area with new dwellings on a site that is inherently suitable for such development. The proposal would not increase the intensity of development on the land which reinforces and supports the planning objectives of the zone.

9.0 Conclusion

As detailed within this report, the amended multi-dwelling development at 16 Warrah Street is consistent with the objectives, planning strategies and controls applicable to the site. The proposal provides increased housing density which is well designed to meet residential needs and is commensurate with the character of the surrounding area.

Given the absence of adverse environmental, social or economic impacts the DA is submitted to Council for assessment and approval, subject to necessary conditions of consent.



Appendix A - Clause 4.6 Exception to a Development Standard – Minimum Lot size for multi-dwelling development

1. Introduction

The application includes the erection of multi-unit housing, consisting of three (3) dwellings on Lot 604 within DP 10570, and is known as 16 Warrah Street, Ettalong Beach. The 727.1m² allotment does not comply with the 750m² minimum lot size for residential flat buildings within the Central Coast LEP 2014. As such the application includes a Clause 4.6 Exception to a Development Standard for the 3.1% numerical departure from the development standard.

2. Central Coast LEP 2014 - Clause 4.6 Exceptions to Development Standards

The Central Coast LEP 2014 includes clause 4.6 Exceptions to Development Standards clause 4.6 of the Standard Instrument LEP is effectively the successor to SEPP

1, as it aims to enable development standards (such as height and FSR) in the relevant LEP to be varied where appropriate. It encourages flexibility in the application of development standards, in order to achieve overall better planning outcomes. Similar to SEPP 1, it is subject to a series of stringent prerequisites to ensure that variations to development standards are only permitted in appropriate circumstances. The recent series of judgments in the matter of *Micaul Holdings Pty Limited v Randwick City Council (2015)* and *Moskovich v Waverley*

Council [2016] certainly shed some further light on how those prerequisites can or should be applied primary in relation to assessing the development in regards to environmental planning grounds and the applicable objectives outlines in the applicable environmental planning instruments. The discussion below utilises the parameters

outlined in the court judgement to provide the appropriate planning justification in regards to the submission of a Clause 4.6 Exceptions to Development Standards, in this case Clause 4.1B minimum lot size for multi dwelling housing.

Clause 4.6 Exceptions to Development Standards states:

4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*



(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:



(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated...

3. The relevant clause therein the GLEP sought to be varied:

4.1B(2) Minimum lot sizes for attached dwellings, dual occupancies, multi dwelling housing and residential flat buildings. The relevant clause states:

(2) Development consent may be granted to development on a lot in Zone R1 General Residential for a purpose shown in Column 1 of the Table to this clause if the area of the lot is equal to or greater than the area shown opposite that purpose in Column 2 of the Table.

Column 1

Dual occupancy (attached)

Dual occupancy (detached)

Multi dwelling housing

Residential flat building

Attached dwelling

Column 2

550 square metres

800 square metres

750 square metres

750 square metres

750 square metres

4. The Nature of the Development Standard sought to be varied and details of the variation:

The lot size of 727.1m² does not meet the LEP minimum lot size of 750m² under Clause 4.1B(2), which entails a variation of 3.1%. Notwithstanding the numerical non-compliance with the development standard, the variation is justified on planning grounds and is discussed below.



5. Statement on the objective of the standard to be varied as it relates to the subject site and proposal:

The objective of the development standard is to "*achieve planned residential density in certain zones.*"

In relation to the underlying objective outlined are the reasons of compliance with the set object based on environmental planning grounds:

- As demonstrated within the SEE site has sufficient area and dimensions to cater for the proposed multi-dwelling development as it is well within the floor area and vertical limitation allowed for the medium density site.
- The proposed dwellings would be consistent with the development density, scale and style of residential development within the medium density zone, surrounding streets and within the street as discussed within the SEE.
- The proposed medium density residential development would be consistent with the existing and desired character for the medium density area within the Woy Woy / Umina Peninsula locale as discussed within the SEE.
- The proposal is consistent with the evolving character of the medium density area as discussed within section 5.5.1 within the SEE.
- The proposal adheres to providing additional smaller affordable dwellings that is encouraged by the *Draft Central Coast Affordable and Alternative Housing Strategy*.

When taking into the site context – Woy Woy / Umina Beach / Ettalong Beach Peninsula locale the proposal is essentially the same as what has been established historically and more recently under the current GDCP 2013. Recent approvals of multi-unit development with the same design scale, height, setbacks, site cover and parking include:

- DA 47716/2015 - 117 Booker Bay Road, Booker Bay
- DA48127/2015 - 174 The Esplanade, Umina Beach
- DA49404/2015 – 127 The Esplanade, Umina Beach
- DA50019/2016 - 16 Berith Street, Umina Beach
- DA49124/2016 – 46 Berith Street, Umina Beach
- DA48944/2015 – 8 Osborne Avenue, Umina Beach
- DA52242/2017 – 9 Priestman Avenue Umina Beach
- DA53347/2017 - 117 Rawson Road, Umina Beach
- DA53647/2018 – 37 Edward Street, Woy Woy



Council in its planning assessment have conceded that the prescriptive requirements outlined within the *Multi-Unit Housing and Residential Flat Buildings* chapter are unrealistic for medium density development to occur within the Peninsula area. The economic feasibility to consolidate allotments and provide such little yield due to the loss of land available in regards to the required setbacks is onerous and rather the assessment of multi-dwelling style development has been taken into account the context of what is been established and recently been approved by Council. This acceptance is outlined in the assessment of DA52934/2017 – 7 Gallipoli Avenue, Blackwall.

- As outlined within the assessment against Councils DCP measures, the proposal would be within the environmental capacity of the land and not be detrimental to the surrounding properties or the public domain.
- The proposed development would be in line with the Central Coast Regional Plan that is the NSW Government's long term land use plan for the region, which covers the Central Coast City and Wyong Shire Local Government Areas. The Regional Strategy contains policies and actions designed to cater for the region's projected housing and employment growth over next 20 years. Greater housing choice is prioritised to satisfy the community's desire for smaller households. The plan places emphasis on providing new housing in existing and committed growth areas.

To meet the projected housing demands over the next 20 years, an average of 1,980 new homes will need to be constructed each year. This is 590 more homes than the average annual housing production of 1,390 dwellings over the 19 years to 2014-15. The proposed medium density development would allow for more 'affordable dwellings' that is consistent with the policies and strategic actions outlined in the strategy.

6. Objectives of the Zone

The NSW legislation website indicates the subject site is currently zoned R1 – Residential

The proposed use falls under the definitions of a '*multi dwelling housing*' under the LEP and is permissible subject Council consent.

Under the LEP the objectives of the R1 Residential zone are:

The objectives of the R1 – General Residential zone are:

- *To provide for the housing needs of the community.*



- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure development is compatible with the desired future character of the areas covered by this zone.*
- *To promote best practice in the design of multi-unit housing or similar development.*
- *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi-unit housing or similar development.*

Comment:

- The proposal would cater for the upgrading of older housing stock and the housing needs for the local population within the Central Coast LGA.
- As outlined in detail above, the development easily achieves the maximum FSR, HOB and POS / Landscaping requirements and therefore it is considered well within the development parameters available. Subsequently the amenity impacts are acceptable given the lot is less than the required 750m². In contrast a single dwelling-house could produce greater visual impacts, solar access and privacy impacts than the proposed multi-dwelling development.
- The proposal would be compatible with the surrounding intensity of medium density residential development within the immediate area.
- The proposal would allow the continuation of residential development that would facilitate the incorporation of landscaping that is compatible with the residential zone.
- As addressed within the SEE, the proposed villas would generally comply with the DCP objectives and is compatible with the desired future character of the zone.
- The proposal would not be detrimental to the residential amenity and place overbearing demands on services that would be commensurate for low density housing



- The subject site is located within walking distance of public transport and public recreational facilities.
- The proposal is consistent with the evolving character of the area as discussed within the SEE.
- The subject site includes the essential utilities, including reticulated water, sewer, power and telecommunications.
- The development caters for additional dwellings in accordance with the *Central Coast Regional Plan released in November 2015* and *Draft Central Coast Affordable and Alternative Housing Strategy* which recommends the increase of smaller dwellings in the lower socio economic areas that include Woy Woy / Umina area.

7. Assessment - Environmental Planning Grounds to justify contravening the Development Standard

Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? As outlined within the Statement of Environmental Effects (SEE), notwithstanding the non-compliance with the prescriptive measure the proposal would meet the majority of the prescribed LEP and DCP controls and would not be detrimental to the amenity of the neighbouring properties and the public domain. The development meets the desired character elements for the medium density area and caters for the density and design requirements as outlined within the GDCP 2014.

- 7.1 Explanation as to how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

The objective

The objective of the development standard is to "*achieve planned residential density in certain zones.*" The objective is achieved due to the following reasons:

The scale and intensity of the multi-dwelling development would not result in a development outcome that is inappropriate for the established evolving character of the medium density area and constraints inherent to the subject site. It has been noted that the development would be commensurate with the height, scale, site cover and floor area with single dwellings, dual occupancy developments and villa development that has occurred in the area, including the multi-dwelling development on the adjoining allotment, known as No. 7 Gallipoli Avenue.



What is the underlying purpose of the standard?

Clause 4.1B(2) contains a specific objective for medium density residential development that has been addressed above.

The relevant parts of Section 5(a) of the EP&A Act are stated inter alia:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

Accordingly, strict enforcement of the minimum lot size for medium density residential development standard in this instance would hinder the desired development outcome for the site, the orderly and economic use as well as the development of the land and would be commensurate with the scale and site coverage of surrounding development.

Is the compliance with the development standard unreasonable or unnecessary in the circumstance of the case?

Having regard to the specific objective for the lots sizes for residential flat building and multi-dwelling-housing development standard provided within Clause 4.1B(2) of the *Central Coast Local Environmental Plan 2014*, it is considered that strict compliance with this standard is unreasonable and unnecessary in this case.

Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

Comment:

The development will not have unreasonable impacts on the neighbouring residents or character of the area and is consistent with the objectives of the R1 General Residential Zone. Consequently variation to the development standard is in the public interest.

The variation allows for a Better Planning Outcome than numerical compliance

Essentially in light of the recent judgments in the including the matter of *Micaul Holdings Pty Limited v Randwick City Council* (2015) and *Moskovich v Waverley Council* (2016 large variations (55% and 65% respectively) to a development

standards were allowed due to the uniqueness of the site and ability to argue that the proposal demonstrates how the proposal achieves a better environmental



- The requirement that the consent authority be personally satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives. It is a requirement that the development be 'compatible' with them or 'capable of existing together in harmony'. It means "something less onerous than 'achievement'".
- Establishing that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe "test" 1). Other methods are available, for example that the relevant objectives of the standard would not be achieved or would be thwarted by a complying development (Wehbe "test" 3).



As demonstrated within the figures above the development would have the same scale, site cover, setbacks and streetscape appearance to the dual occupancy development that was recently approved under DA 44470/2013. Consequently the proposal provides for more affordable households which are in high demand within the medium density area. Such smaller scaled dwellings that are located within close proximity of services cater for the local demographic and subsequent housing market demands which in turn is consistent with the *Central Coast Regional Plan 2036* and the draft *Central Coast Affordable & Alternative Housing Strategy* that encourages the development of smaller dwellings within urban localities to cater for the demand of affordable housing.

Conclusion

For the reasons outlined above the clause 4.6 variation is provided in support of the development proposal at 16 Warrah Street, Ettalong Beach. As outlined above, in this instance strict enforcement of the minimum lot size for medium density residential development standard in this instance would hinder the desired development outcome for the site and the orderly and economic use of the land. The proposal meets the objectives of the applicable development standard and the overarching objectives for the R1 Residential Zone. Subsequently notwithstanding the numerical non-compliance, it is considered that strict compliance with the standard is unnecessary in this instance and would inhibit a superior planning outcome.

