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Our Reference: 24154  
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### Clause 4.6 Written request for exception to Gosford LEP 2014

#### cl. 4.1B(2) Development Standard – Minimum Lot size for multi-dwelling housing

#### LOT 604 in DP 10570 – 16 Warrah Street, Ettalong Beach

### 1.0 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 727.1m<sup>2</sup> allotment does not comply with the 750m<sup>2</sup> 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.

### 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...*

#### **1. The relevant clause therein the GLEP 2014 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**

##### **Column 2**

*Dual occupancy (attached)*

*550 square metres*

*Dual occupancy (detached)*

*800 square metres*

***Multi dwelling housing***

***750 square metres***

*Residential flat building*

*750 square metres*

*Attached dwelling*

*750 square metres*

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

The lot size of 727.1m<sup>2</sup> does not meet the LEP minimum lot size of 750m<sup>2</sup> 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
- DA48245/2015 – 102-104 Broken Bay Road, Ettalong Beach
- DA50316/2016 - 5 Bogan Rd & 1 Telopea St, Booker Bay
- DA 47716/2015 - 117 Booker Bay Road, Booker Bay
- DA52934/2017 – 7 Gallipoli Avenue, Blackwall
- DA48245/2015 – 102-104 Broken Bay Road, Ettalong Beach
- DA54524/2018 – 24 Edward Street, Woy Woy
- DA52563/2017 – 211-213 West Street, Umina Beach
- DA55579/2018 – 6 Flounder Road, Ettalong Beach

Warrah Street:

- **DA/55184/2015 - 2 Warrah Street, Ettalong Beach**
- **DA/61194/2021 – 18 Warrah Street, Ettalong Beach**
- **DA/56368/2015 - 19 Warrah Street, Ettalong Beach**
- **DA/57079/2013 – 20 Warrah Street, Ettalong Beach**
- **DA/61386/2021 – 21 Warrah Street, Ettalong Beach**
- **DA/60350/2021 – 25 Warrah Street, Ettalong Beach**
- **DA/48177/2015 – 27 Warrah Street, Ettalong Beach**
- **DA55443/2018 – 32 Warrah Street, Ettalong Beach**  
**(approved site plan below)**

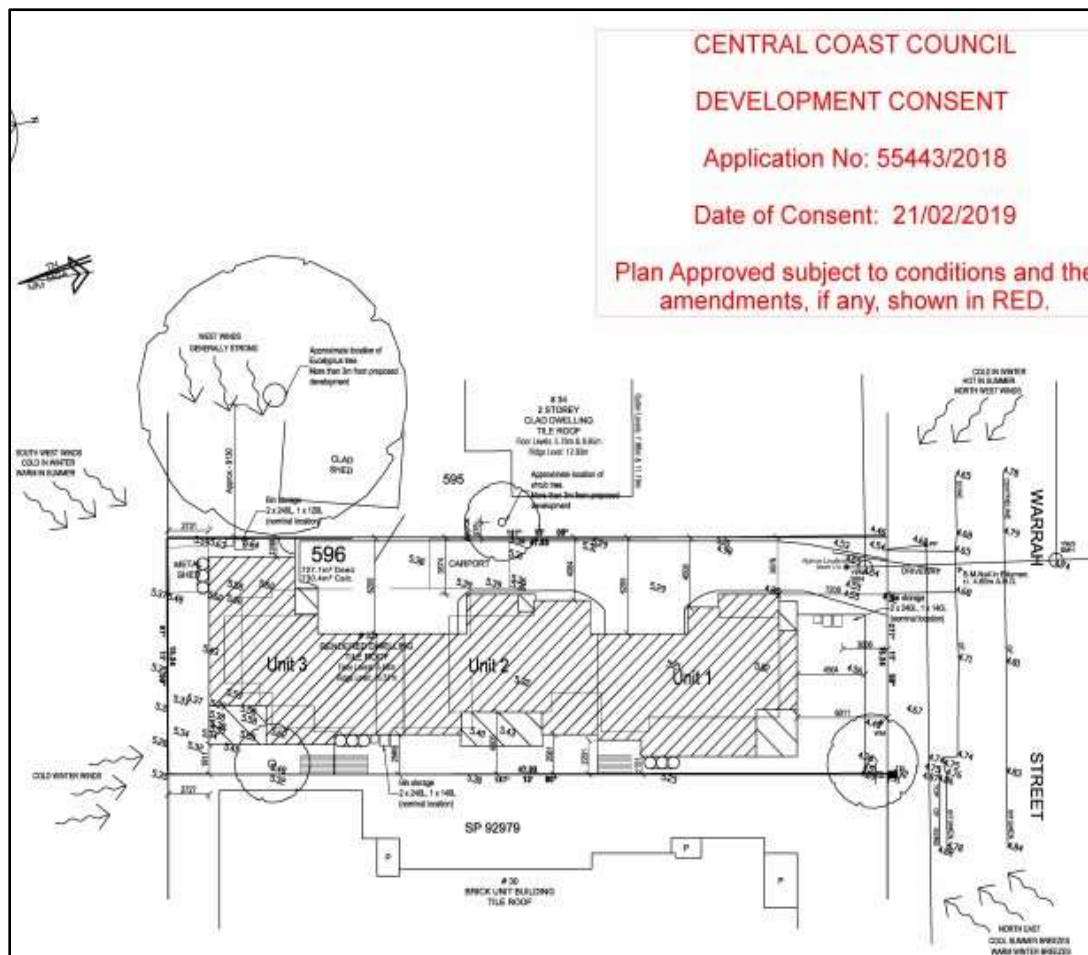


Figure 1. Excerpt of approved site plan – 32 Warrah St, Ettalong Beach KM Feb 2023

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 750m<sup>2</sup>. 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.

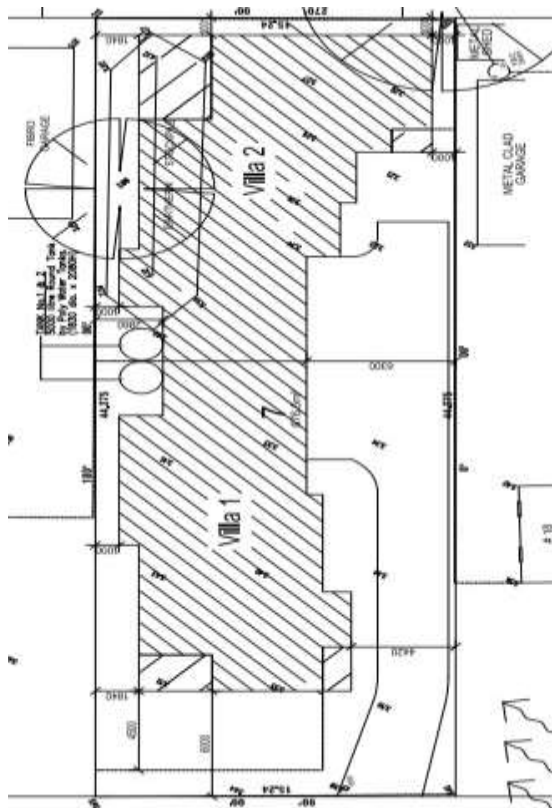
### **The variation allows for a Better Planning Outcome than numerical compliance**

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

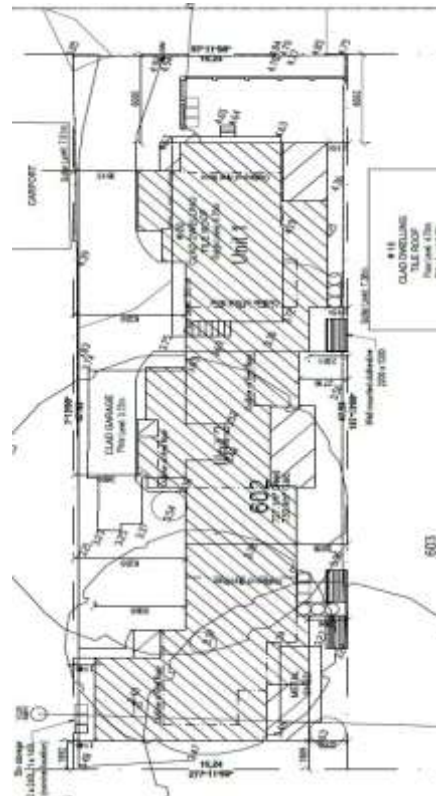
standards were allowed due to the uniqueness of the site and ability to argue that the proposal demonstrates how the proposal achieves a better environmental planning outcome than a complying scheme. In this case an indicative complying lot area is provided as part of the DA to demonstrate that it results in an inferior outcome for the site. In these matters, some other important principles that arise from the decision are:

- 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).





16 Hood Street, Blackwall



16 Warrah Street, Ettalong Beach

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.

On the basis of the variation outlined, it is submitted that Central Coast Council should support for the proposed multi-dwelling housing residential development.

If you have any questions relating to the information submitted, please do not hesitate to contact our office on 02 43443553.

Yours faithfully