



# Statement of Environmental Effects

Proposed Mixed Use Development  
(Commercial Premises and Shop Top Housing)

1-3 Alfred Street and 315 West Street, Umina Beach



Prepared for M & G Cunico Family Trust

March 2021

## Table of Contents

	Page
<b>1. Introduction.....</b>	<b>3</b>
<b>2. The Site.....</b>	<b>4</b>
2.1 Site Location & Description	
2.2 Site Features and Existing Development	
2.3 Surrounding Land	
<b>3. Zoning and Planning Controls .....</b>	<b>13</b>
3.1 Zoning	
3.2 Building Height	
3.3 Floor Space Ratio	
3.4 Other Controls	
<b>4. The Proposal.....</b>	<b>15</b>
<b>5. Planning Considerations.....</b>	<b>17</b>
5.1 Gosford LEP 2014	
5.2 Clause 4.6 Exceptions to Development Standard	
5.3 Gosford DCP 2013	
5.4 State Environmental Planning Policies	
<b>6. Environmental Impacts.....</b>	<b>49</b>
6.1 Environmental Impacts	
6.2 Site Suitability	
6.3 Previous Uses	
6.4 Site Isolation	
6.5 Access and Traffic	
6.6 Stormwater and Water Quality	
6.7 Acid Sulfate Soils	
6.8 Aboriginal Heritage	
6.9 View Impacts	
6.10 Privacy	
6.11 Overshadowing	
<b>7. Section 4.15 Assessment.....</b>	<b>52</b>
<b>8. Conclusion.....</b>	<b>54</b>

### Appendix A - AHIMS searches

## 1. INTRODUCTION

This Statement of Environmental Effects has been prepared on behalf of M & G Cunico Family Trust in support of a development application to Central Coast Council for a mixed use development on 1-3 Alfred Street and 315 West Street, Umina Beach.

The mixed use development comprises 14 shop top housing units located above ground level commercial premises and basement car parking, and also retains the existing chemist shop on the site which faces West Street. The proposal is a modified scheme of a previous application (DA 56020/2019) which was withdrawn by the applicant, and reduces the number of units, building height and floor space ratio compared to that application, and increases the amount of on-site car parking provided.

The site is zoned B2 Local Centre under Gosford LEP 2014, and the proposal is permissible with the consent of the Council.

This Statement considers the proposal against the provisions of relevant planning controls, including Gosford LEP 2014, Gosford DCP 2013 and relevant state planning controls including SEPP 65 Design Quality of Residential Apartment Development and the SEPP 65 *Apartment Design Guide*. The statement also addresses the matters identified in Council's Development Application Guide and the matters for consideration under Section 4.15 of the *Environmental Planning & Assessment Act, 1979*.

A preliminary meeting was held with Council staff on 16 January 2020, and the outcomes of that meeting have been considered and addressed in the submitted application.

The assessment of the proposal against relevant planning controls and the heads of consideration under Section 4.15 of the Environmental Planning & Assessment Act, 1979 concludes that the proposal is permissible, addresses the requirements of relevant planning controls and standards and is of a design standard appropriate for the locality.

This Statement should be read in conjunction with the supporting information submitted with the development application.

## 2. THE SITE

### 2.1 Site Location & Description

The subject site is 1-3 Alfred Street and 315 West Street, Umina Beach.



**Figure 1 – Locality**

Source: NSW SIX Maps



**Figure 2 – Aerial Photo**

Source: Central Coast Council Mapping



The site has an area of **1,416.5m<sup>2</sup>** and the real property description is Lots 32, 33 & 35 Sec A DP 8872.

## **2.2 Site Features and Existing Development**

The site is located in the Umina Village Centre, and has a “T” shape, with a frontage of 12.495m to West Street and 24.384m to Alfred Street

The site is generally flat, with existing ground levels of between RL5.72m and RL6.06m .

The site contains an existing single-storey chemist shop with a shopfront to West Street, and parking at the rear with access to Alfred Street. To the rear of the chemist shop, with frontage to Alfred Street, is a prefabricated building used as a pathology collection facility (1 Alfred Street) and an older single-storey brick dwelling house (3 Alfred Street).

Details of the site are shown in the following photographs:



**Figure 3 – Site viewed from Alfred Street**



**Figure 4 – No.1 Alfred Street**



**Figure 5 – No. 3 Alfred Street**





**Figure 6 – No. 315 West Street – existing Chemist**



**Figure 7 – Rear of existing Chemist**

## 2.3 Surrounding Land

Surrounding land uses and development are primarily commercial. On West Street there are commercial developments either side of the chemist, and there is an isolated dwelling house at the rear of the adjoining commercial development to the west, with an access driveway adjacent to the chemist providing access to West Street. Development consent was issued in March 2020 for a commercial development on the rear of the adjoining land to the west (DA57212/2019), comprising 3 storey commercial premises and a café, and no on-site car parking is provided.

On the northern parts of the property with frontage to Alfred Street, the adjoining properties to the west are used as a surveyor's office (1 Oscar Street) and a detached dwelling house (3 Oscar Street). Land to the north contains an older style dwelling house (5 Alfred Street) and beyond that is an accountant's office (7 Alfred Street). Land to the east, on the opposite side of Alfred Street, contains a large public Council car park which extends between Alfred and Bullion Streets.

Surrounding land is shown in the following photographs:



**Figure 8 – Adjoining development on cnr Alfred Street and West Street**





**Figure 9 – Adjoining development to the north in Alfred Street**



**Figure 10 – Public carpark opposite in Alfred Street**





**Figure 11 – Development adjoining the rear of the Chemist**



**Figure 12 – Adjoining development to the west in Oscar Street**





**Figure 13 – Adjoining development to the west in Oscar Street**



**Figure 14 – Adjoining commercial development in West Street**





**Figure 15 – Adjoining driveway to the west in West Street**

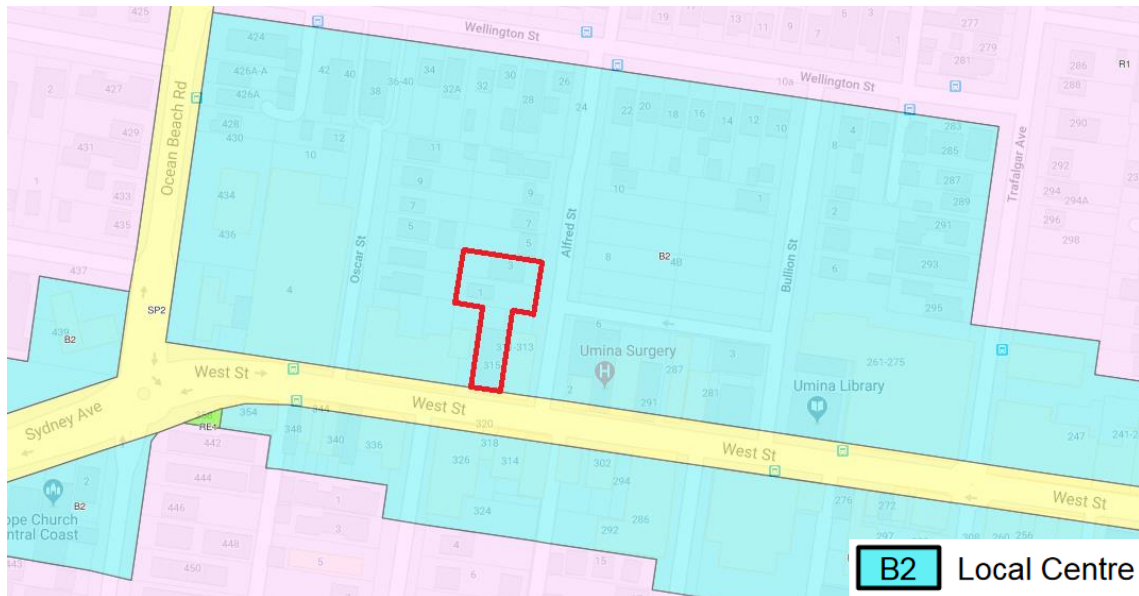


**Figure 16 – Commercial development opposite in West Street**

### 3 ZONING AND PLANNING CONTROLS

#### 3.1 Zoning

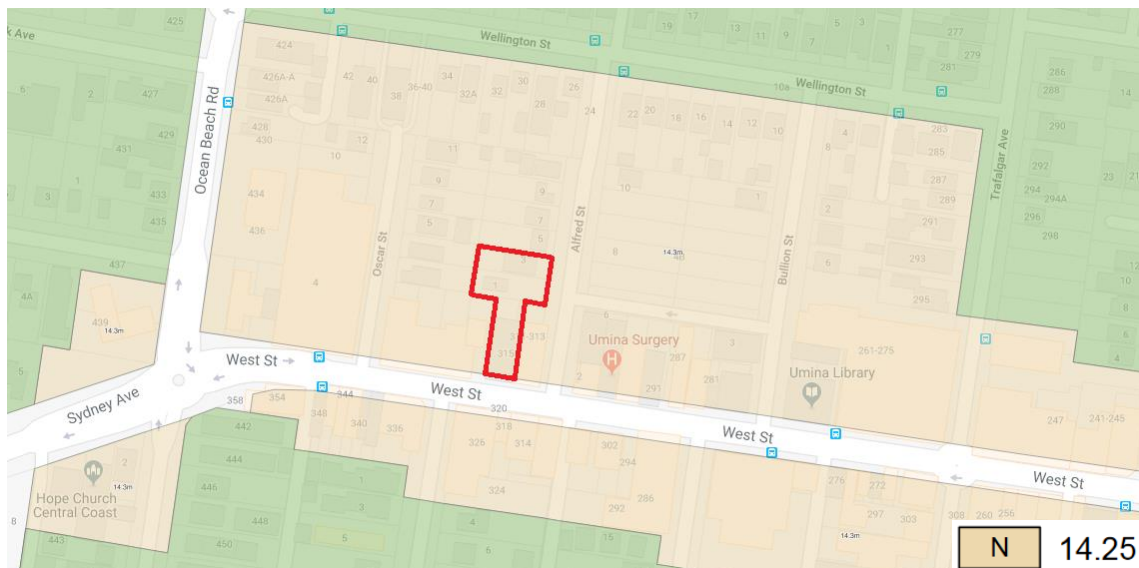
The land is zoned B2 Local Centre under Gosford Local Environmental Plan 2014, as is surrounding land, and the West Street to the immediate south is zoned SP2 Infrastructure. Commercial premises and shop top housing are permitted with consent in the B2 Local Centre zone.



**Figure 17 – Land Zoning (NSW Planning Portal)**

#### 3.2 Building Height

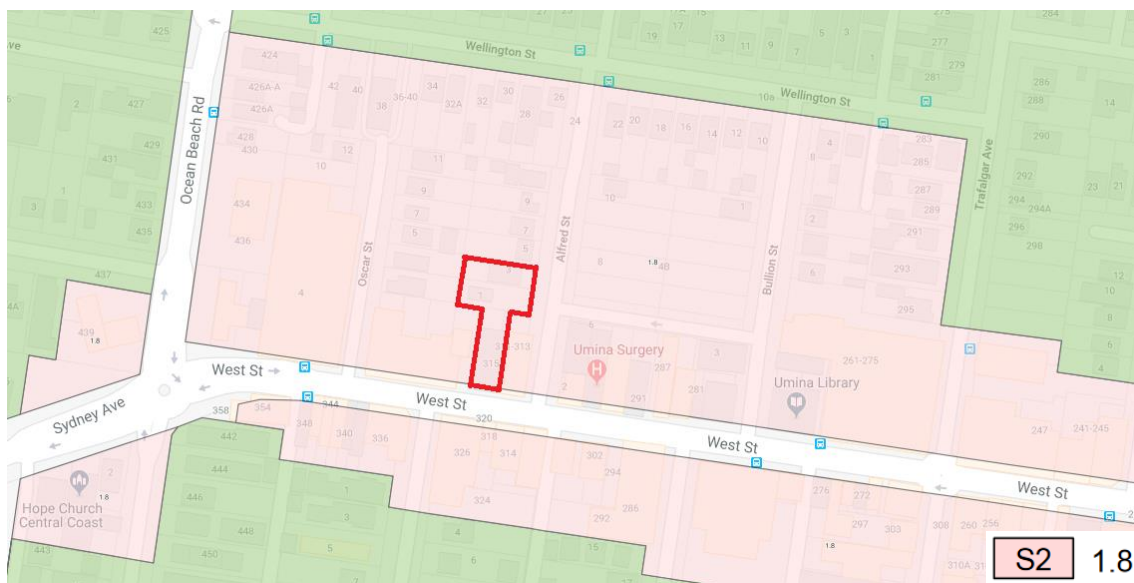
The mapped permitted Building Height for the site is 14.25m, and this applies to all of the village centre.



**Figure 18 – Building Height (NSW Planning Portal)**

### 3.3 Floor Space Ratio

The mapped permitted Floor Space Ratio for the site is 1.8:1, which also applies to the centre.



**Figure 19 – Floor Space Ratio (NSW Planning Portal)**

### 3.4 Other Controls

The site is mapped as having Class 4 Acid Sulfate Soils, and is 525m from Class 1 soils to the south-east (Umina Beach) and 1,080m from Class 2 soils to the east.

The site is not identified on the following LEP maps: Land Reservation Acquisition; Heritage; Additional Permitted Uses; or Urban Release Area.

The land is subject to number of provisions in both Gosford LEP 2014 and Gosford DCP 2013, which are addressed in Section 5 of this Statement.

The land is subject to the following relevant State Environmental Planning Policies:

- No. 65 – Design Quality of Residential Flat Buildings
- Building Sustainability Index (BASIX); and
- No. 55 – Remediation of Land

and these are addressed in Section 5 of this Statement.

The site is subject to the Planning Proposal for the draft Central Coast LEP which applies to the entire LGA and was publicly exhibited between December 2018 and February 2019, but has not been finalised. Under the draft LEP the subject land retains its B2 Local Centre zoning and both commercial premises and shop top housing remain permitted uses with consent in the B2 Local Centre zone.

The site is not mapped as being bushfire prone, or within a 1 in 100 yr flood area.



## **4. THE PROPOSAL**

The proposal is for a mixed-use development comprising commercial premises on ground floor, including retention of the existing chemist store fronting West Street, and 14 shop top dwellings located in 4 levels above the retail premises. Basement parking is proposed for 35 cars, with access to Alfred Street via a ramp.

### **4.1 Commercial Premises**

The proposed commercial premises are located on the ground level facing Alfred Street, with a glazed shop front presentation and pedestrian access paths to the commercial premises and the shop top housing entry/ lobby. The commercial premises have a gross floor area of 582.62m<sup>2</sup>, in two tenancies, with the main tenancy having an area of 509.39m<sup>2</sup> and a smaller tenancy of 74.23m<sup>2</sup>. The commercial premises are setback 3m from Alfred Street, with a covered colonnade area provided to the street, and are setback 3m to the rear, with a landscaped private courtyard provided. Commercial and residential bin storage is proposed at the ground level, with access to Alfred Street for bin presentation and collection.

The proposal retains the existing chemist store fronting West Street, which has a gross floor area of 332.46m<sup>2</sup>, and the existing rear car parking (4 spaces) is to be relocated.

### **4.2 Basement Parking**

A basement car parking level is provided with 35 parking spaces, including 14 double car stacked spaces (28 spaces total), 2 single car spaces, 4 spaces in tandem (2 x 2) and a disability access space. The basement level also provides bicycle and motorcycle parking, storage cages and lift/ stair access to the levels above. Access to the basement level is via a 6.1m wide driveway access to Alfred Street which is located adjacent to the northern boundary, and is enclosed.

The proposed car parking will provide one space per shop top unit and 2 spaces for each of the top most units, which complies with Council's DCP requirements, 4 relocated spaces for the chemist and 15 spaces for the new commercial floor area, and the amount of car parking provided is supported by a Parking Assessment Report prepared by BJ Bradley & Associates addressing the availability of car parking in the surrounding area.

### **4.3 Shop Top Housing**

The proposed shop top housing is located on four levels over the commercial premises, on the northern part of the site facing Alfred Street. The shop top housing includes 14 units, comprising 2 x 1 bedroom units, 4 x 2 bedroom units and 8 x 3 bedroom units.

The building has variable setbacks, due to the shape of the site, the nature of the uses and the articulation of the building at the upper levels. Proposed building setbacks are set out in the following table:

Boundary	Building Element	Setback
East (Alfred Street)	Commercial Premises (ground)	3.0m
	Levels 1 - 4 (walls)	3.0m – 8.5m
	Levels 1 - 4 (balconies)	600mm
	Level 4 (walls)	3.0m
	Level 4 (balconies)	600mm - 3.0m
North	Commercial Premises (ground)	0m - 3.0m
	Levels 1 – 4 (walls)	4.078m – 6.086m
	Level 4 (walls)	9.086m
	Levels 4 (balconies)	4.819m - 6.008m
West	Commercial Premises (ground)	3.0m
	Level 1 (walls/ balconies)	3.0m
	Level 2 (wall)	6.0m
	Level 2 (Balcony)	3.0m
	Levels 3 - 4 (walls/ balconies)	6.0m
South (for new development) - West Street  - Internal boundaries	Commercial Premises (ground)	28.17m
	Levels 1 – 3 (walls)	34.55m – 38.45m
	Levels 1 – 3 (balconies)	28.2m – 36.45m
	Level 4 (walls)	38.45m
	Level 4 (balconies)	34.55m
	Commercial Premises (ground)	1.5m – 6.0m
	Levels 1 - 3 (walls)	3.079m – 6.916m
	Levels 1 - 3 (balconies)	3.079m – 4.516m
	Level 4 (walls)	6.094m – 6.9m
	Level 4 (balconies)	3.102m – 4.5m

Balcony areas are provided for the shop top units, with private courtyards for the Level 1 units.

The proposal has a maximum building height of 15.663m, and the existing chemist store will remain as a single storey building. Overall the combined development has a gross floor area of 2,646.84m<sup>2</sup> and a floor space ratio of 1.87:1.

## 5. PLANNING CONSIDERATIONS

### 5.1 Gosford Local Environmental Plan 2014

Compliance with relevant controls in Gosford LEP 2014 is set out in the following table:

LEP Control/ Standard	Proposed	Complies
<b>Permissibility</b>	The proposal comprises <i>commercial premises</i> and <i>shop top housing</i> , which are permitted with consent in the B2 Local Centre zone. The proposed shop top housing is located at a higher level than, and as part of the same building as the ground floor commercial use, which satisfies the definition of <i>shop top housing</i> , and is consistent with the Land & Environment Court decision in <i>Hrsto v Canterbury City Council (No.2)</i> [2014] NSWLEC 121.	<b>Yes</b>
<b>B2 Zone Objectives</b>		
To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.	The proposal will provide for commercial premises that are well positioned in the Umina Village Centre, and are of a scale that will serve the needs of people who live in, work in and visit the local area.	<b>Yes</b>
To encourage employment opportunities in accessible locations.	The site will maintain and provide employment opportunities in the Umina Village Centre.	<b>Yes</b>
To maximise public transport patronage and encourage walking and cycling.	The site is well located and in close proximity to retail, commercial, restaurant and recreational uses which are easily accessible by walking or cycling. The development also has good access to local bus services.	<b>Yes</b>
To provide for residential uses, but only as part of a mixed use development.	The proposal provides residential uses as part of a mixed use development and will increase housing choice and diversity in the centre, and will also increase population within the centre which will patronise and support local businesses.	<b>Yes</b>
To ensure that development is compatible with the desired future character of the zone.	The development is consistent with the desired future character of the area, as addressed in the DCP assessment, and is consistent with the desired nature and scale of development Council is looking to encourage through its local centre planning controls.	<b>Yes</b>
To promote ecologically, socially and economically sustainable development.	The proposal meets BASIX requirements, and will contribute positively to the Umina Village Centre with additional commercial use to serve local residents and the provision of additional housing in the local centre which will support	<b>Yes</b>



<p>To ensure that the town centres of Erina and Woy Woy are recognised as providing a higher level, and greater diversity, of services and facilities to serve a wide population catchment from numerous localities and as key public transport nodes, secondary to Gosford City Centre.</p> <p>To ensure that village centres such as Avoca, East Gosford, Ettalong Beach, Kincumber, Lisarow, Niagara Park, Terrigal, Umina Beach, West Gosford and Wyoming are recognised as providing a broad range of services and facilities to serve the population of the locality.</p> <p>To ensure that villages are recognised as providing local level services and facilities and are developed at a scale that reflects their population catchment and as a focus for public transport routes.</p> <p>To ensure that the different roles of villages are recognised with some villages being key tourist destinations with boutique activities in addition to serving the needs of local residents, while other villages are purpose-built centres to serve the needs of the local population.</p> <p>To encourage the residential population of villages and town centres to contribute to the vitality of those locations.</p>	<p>surrounding businesses and contribute to available accommodation and the vitality of a popular beach side location.</p> <p>This objective does not apply to the proposal.</p> <p>The proposal will be consistent with the role of the Umina Village Centre, and will provide additional commercial use and housing that will support and contribute to the local area.</p> <p>The scale of the proposal is consistent with the Umina village and recent approvals, noting the higher building height and floor space ratio that applies to the B2 zone, and the identification of the area as a “village centre”, with good public transport services.</p> <p>Umina Beach is a tourist destination, and the proposal is consistent with this designation, providing an additional commercial use and housing in the area, as well as providing for the local population.</p> <p>The site is located in the Umina village centre, with good accessibility to beaches and recreational facilities, and will contribute to the growth and vitality of the area through additional commercial activity and housing.</p>	<p><b>N/A</b></p> <p><b>Yes</b></p> <p><b>Yes</b></p> <p><b>Yes</b></p> <p><b>Yes</b></p>
<p><b>Clause 4.3 Height of buildings – 14.25m</b></p> <p>Clause 4.3(2A) reduces building height to 11.5m where a site has an area of less than 1,000m<sup>2</sup> or a street frontage of 20m.</p> <p>Part 4.2.5.1.b of Gosford DCP 2013 provides clarification on the application of clause 4.3 (ie clause 4.3(2A)) to Peninsula Centres, and <u>both</u> the Alfred</p>	<p>The building has a maximum building height of 15.663m, which is supported by a Clause 4.6 variation request as provided below.</p> <p>The site has an area of 1,416m<sup>2</sup>, and frontage of 24.8m to Alfred Street (where the development will occur), and <u>Alfred Street is the applicant's nominated street frontage</u> under Part 4.2.5.1.b of Gosford DCP 2013, and the proposal therefore meets the requirements of Clause 4.3(2A).</p>	<p><b>Refer cl 4.6 request</b></p> <p><b>Yes</b></p>

<p>Street and West Street frontages are mapped in the DCP Figure 4.2.6 as being "Street Frontages" relevant to clause 4.3 of the LEP. The DCP provides that</p> <p><i>"Where more than one frontage is nominated on the map the Applicant may select the frontage to which this clause applies".</i></p>		
<p><b>Clause 4.4 Floor space ratio – 1.8:1</b></p> <p>Clause 4.4A(1) reduces FSR to 1:1 where a site has an area of less than 1,000m<sup>2</sup> or a street frontage of 20m.</p> <p>Part 4.2.5.1.b of Gosford DCP 2013 provides clarification on the application of clause 4.4A (ie clause 4.4A(1)) to Peninsula Centres, and <u>both</u> the Alfred Street and West Street frontages are mapped in the DCP Figure 4.2.6 as being "Street Frontages" relevant to clause 4.3 of the LEP. The DCP provides that</p> <p><i>"Where more than one frontage is nominated on the map the Applicant may select the frontage to which this clause applies".</i></p>	<p>The proposed floor space ratio is 1.87:1 (including the existing chemist store), which is supported by a Clause 4.6 variation request as provided below.</p> <p>The site has an area of 1,416m<sup>2</sup>, and frontage of 24.8m to Alfred Street (where the development will occur), and <u>Alfred Street is the applicant's nominated street frontage</u> under Part 4.2.5.1.b of Gosford DCP 2013, and the proposal therefore meets the requirements of Clause 4.4A(1).</p>	<p><b>Refer cl 4.6 request</b></p> <p><b>Yes</b></p>
<p><b>Clause 7.1 Acid sulfate soils</b> sets out requirements for managing acid sulfate soils</p>	<p>The site is identified as Class 4 for acid sulfate soils, and is 525m from Class 1 soils to the south-east (Umina Beach) and 1,080m from Class 2 soils to the east. A Geotechnical assessment report was provided as part of the previous application, which addressed acid sulfate soils, and concluded that the site does not require management for acid sulfate soil conditions and that excavation could be carried out without reference to an acid sulfate soil management plan.</p>	<p><b>Yes</b></p>

## 5.2 Exceptions to Development Standard under Clause 4.6 Gosford LEP 2014

As identified above, the proposal has minor variations to building height and floor space ratio requirements and the applicant requests a variation to the development standards as allowed by Clause 4.6 of Gosford LEP 2014. Neither of the development standards are expressly excluded from the operation of Clause 4.6.

The variations relate to the mapped height and mapped FSR under Gosford LEP 2014 as the provisions of clauses 4.3(2A) and 4.4A(1) of the LEP are satisfied with the nomination of Alfred Street as the nominated frontage in accordance with part 4.2.5.1.b of Gosford DCP 2013.

In submitting the requests for variation, the site is located in an identified Village Centre that is ageing and presently under-developed, and the proposal will assist in the growth and revitalisation of the centre, providing both additional retail services and an increased residential population.

The requests for variation have been prepared with consideration of relevant principles set out in various judgements applying to variations to development standards, including *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

### 5.2.1 Building Height

#### Relevant Development Standard

Clause 4.3(2) of Gosford LEP 2014 sets maximum building height through the Height of Buildings Map. Map HOB\_016A identifies the site as having an allowed building height of 14.25m.

#### Extent of Variation to Development Standard

The proposal has a maximum building height of 15.663m for the shop top housing component, which is a variation of 1.413m or 9.9% to the mapped development standard. The balance of the development fronting West Street will remain single-storey, and is well below the allowed height limit.

#### Reason for the Variation

The variation is minor and is part of a considered design response for the site, which provides consolidation of 3 separate properties located within the Umina Beach Village Centre and proposes a major renewal project that maintains the taller elements at the rear of the site, also adjoining other commercial zoned land, and maintains a lower height along the main street frontage to maintain a pedestrian-friendly scale and to maintain the relationship with adjoining and surrounding developments in West Street.



Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

Compliance with the 14.25m building height for the proposal is unreasonable or unnecessary in the circumstances of this application and this site, for the following additional reasons:

1. The additional height is part of a considered design response for the site that consolidates the building height in a smaller footprint, at the rear of the site, and away from West Street which is the main commercial street of the village centre. This approach allows the site to maintain a pedestrian-friendly scale of development to West Street, compatible with the development forms on adjoining and surrounding land along the main street;
2. The variation of 9.9% to the development standard is minor, representing less than one storey, and will not result in adverse impacts on the streetscape presentation of the development, or in adverse impacts on surrounding properties. In particular, the proposed upper level (where the variation occurs) has an open balcony presentation to the street, a reduced footprint compared to the residential levels below, and is of a design that complements the proposed building. The appearance of the upper level (and the component above 14.25m height) viewed from surrounding streets is shown in the following figures, which reinforce the limited visual impact of this part of the development;



**Figure 20 – Indicative view of variation from Alfred Street**



**Figure 21 – Indicative view of variation from Alfred Street**

3. The proposal involves the consolidation of 3 properties, and will result in a locally significant renewal project in the Umina Beach Village Centre. Having a larger site provides greater opportunity for accommodating the scale of development as proposed, and compared to smaller development sites, and the variation will assist with the viability of the development and in turn a major renewal project that will benefit the local area;
4. Shadow diagrams submitted with the application show the proposal will maintain reasonable solar access to adjoining properties in mid-winter, having regard to Council's DCP requirements;
5. The proposed additional height will not result in a significant increase in privacy impacts, having regard to the setbacks and orientation of the upper level units, and also the allowed building height under the LEP which allows multi-storey shop top housing development on the site, and adjoining properties;
6. The proposed additional height will not result in any view impacts, having regard to the flat nature of surrounding land, and the allowed building height applying to the area; and
7. The proposed variation is consistent with the objectives of both the development standard and the B2 Local Centre zone under Gosford LEP 2014, as detailed below.

In *Wehbe v Pittwater Council*, the Chief Justice summarised the common ways in which an objection might demonstrate that compliance with a development standard is unreasonable or unnecessary, including by establishing that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard, which is relevant in this case and is addressed below.

Objectives of the development standard (cl. 4.3 Gosford LEP 2014)

(a) *to establish maximum height limits for buildings*

Comment: this objective explains the purpose of the standard, and the proposal is not inconsistent with the objective.

(b) *to permit building heights that encourage high quality urban form*

Comment: the design and finish of the proposal is of a quality architectural standard, and will create a contemporary urban form that is appropriate for the site's location within an identified village centre. The proposed design responds to the dual frontages of the site, and maintains a lower, pedestrian-friendly scale to the main street commercial frontage, and a slightly increased height at the rear which adjoins other commercial zoned land that is expected to be developed with higher densities in the future, and is located opposite a large public car parking area. Overall, the variation does not compromise the urban form expected in the zone having regard to the site area, the street frontage to Alfred Street and the planning controls applying to the site and surrounding area.

(c) *to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight*

Comment: The proposed variation will maintain reasonable solar access for adjoining properties, and further detail on shadowing is provided as part of the DCP assessment. The proposal will not overshadow any public areas other than public roads.

(d) *to nominate heights that will provide an appropriate transition in built form and land use intensity*

Comment: the variation does not impact on the overall transition in built form as intended by the development standard and the nominated heights, and the land use intensity is consistent with the underlying zoning and development standards applying to the site. In particular, the site is located in a local centre zone, in which more intensive development is expected, and the overall building height is balanced by maintaining less building height along the West Street frontage.



- (e) *to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area*

Comment: View impacts have been considered in the DCP assessment, and due to the flat nature of the site and surrounding properties, the proposal (including the additional height) will not adversely impact on views from other properties.

- (f) *to protect public open space from excessive overshadowing and to allow views to identify natural topographical features*

Comment: the proposal does not overshadow any public open space areas, and the variation will not impact on views to natural topographical features.

Are there sufficient environmental planning grounds to justify contravening the development standards?

There are sufficient environmental planning grounds to justify the variations to building height in this case, for the reasons set out above, and having regard to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act*, 1979 ("the Act"), including the objects in section 1.3 of the Act, as referred to in *Four2Five Pty Ltd v Ashfield Council*, relevant to the variation as opposed to the benefits of carrying out the development as whole.

The proposed variation is consistent with the objects of the Act as follows:

*"The objects of this Act are as follows:*

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

Comment: The variation will result in a development that reasonably maximises the capacity of a large site within a zoned local centre, and with high level of access to local shopping facilities, local services, public transport services and recreational opportunities including Umina Beach. The increased capacity of the development will take advantage of the site's location and accessibility, and provide additional housing in a well located and accessible position, which will result in positive social and economic impacts for both future residents and also local businesses. The variation will not adversely impact on natural and other resources of the State.

- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The variation will be ecologically sustainable, adding vertically to the footprint of the proposed building, and will not result in adverse environmental impacts. The variation will increase the provision of housing, and housing choice, in a well-positioned and accessible location, which will have economic benefits for residents and surrounding businesses, and

the variation will improve the viability of the project to deliver these outcomes. The variation will have positive social impacts, as referenced above.

(c) *to promote the orderly and economic use and development of land,*

Comment: The site is located in a local centre, and is within walking distance of a range of local shopping facilities, local services, public transport services and recreational opportunities. Providing some additional development capacity through building height will increase the accessibility of residents on this site to the services available in the area, and will increase the use of available local infrastructure and services. The variation will promote the orderly and economic use and development of land having regard to the location of the site in a village centre and its accessibility to local services.

(d) *to promote the delivery and maintenance of affordable housing,*

Comment: The variation will result in additional housing, and housing choice, in a village centre that is within walking distance of a range of local services, and is not reliant on ownership of a motor vehicle. The provision of additional housing will increase housing supply and choice in the local area, and with transport options for future residents.

(e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

Comment: The variation will not result in adverse impacts on the environment, nor on the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. The variation is located within the footprint of a complying development, and matters relating to acid sulfate soils have been addressed as part of the submitted Geotechnical Assessment.

(f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

Comment: The site is not identified as being a heritage item, and is not in the vicinity of any heritage items, as identified in Gosford LEP 2014, and searches of the Aboriginal Heritage Information Management System (AHIMS) database shows there are no aboriginal sites recorded in or within 200m the subject land, and no aboriginal places have been declared in or near the subject land. A copy of the search results is included as **Attachment A**. The variation will not impact on the sustainable management of built and cultural heritage, including Aboriginal cultural heritage.

(g) *to promote good design and amenity of the built environment,*

Comment: The variation will involve a part additional storey to the mapped height limit, which is located with a reduced footprint compared to the lower storeys and has a narrower presentation to the street, which reduces the bulk of this element of the building. A separate assessment has been carried out against the design requirements of SEPP 65, including a

Design Verification Statement prepared by ADG Architects, and an assessment against the SEPP 65 *Apartment Design Guide*. The variation will promote good design and amenity of the built environment, being consistent with the overall design of the building, and consistent with the general scale of development that will occur in the area in the future.

- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

Comment: The variation will not adversely impact on the construction and maintenance of the building, including the protection of the health and safety of occupants.

- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

Comment: The variation (and proposal as a whole) has been assessed having regard to both local and state planning controls and considerations.

- (j) *to provide increased opportunity for community participation in environmental planning and assessment.”*

Comment: The variation (and proposal as a whole) will be publicly exhibited, and the variation will not reduce opportunities for community participation.

Is the proposal in the public interest because it is consistent with the objectives of the development standard and the objectives of the B2 Local Centre Zone?

Consistency with the objectives of the development standard is addressed above, and the proposal is consistent with the objectives of the B2 Local Centre zone, as detailed below:

*To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment: The proposal will provide for retail premises that are well positioned in the Umina Beach Village Centre, and are of a scale that will serve the needs of people who live in, work in and visit the local area.

*To encourage employment opportunities in accessible locations.*

Comment: The site will maintain and provide employment opportunities in the Umina Beach Village Centre.

*To maximise public transport patronage and encourage walking and cycling.*

Comment: The site is well located and in close proximity to retail, commercial, restaurant and recreational uses which are easily accessible by walking or cycling. The development also has good access to local bus services.

*To provide for residential uses, but only as part of a mixed use development.*

Comment: The proposal provides residential uses as part of a mixed use development and will increase housing choice and diversity in the centre, and will increase population within the centre which is likely to patronise and support local businesses.

*To ensure that development is compatible with the desired future character of the zone.*

Comment: The development is consistent with the desired future character of the area, as addressed in the DCP assessment, and is consistent with the desired nature and scale of development Council is seeking to encourage through its local centre planning controls.

*To promote ecologically, socially and economically sustainable development.*

Comment: The proposal meets BASIX requirements, and will contribute positively to the Umina Beach Village Centre with additional commercial use to serve local residents and the provision of additional housing in the local centre which will support surrounding businesses and contribute to available accommodation and the vitality of a village centre and a popular beach-side location.

*To ensure that the town centres of Erina and Woy Woy are recognised as providing a higher level, and greater diversity, of services and facilities to serve a wide population catchment from numerous localities and as key public transport nodes, secondary to Gosford City Centre.*

Comment: This objective does not apply to the proposal.

*To ensure that village centres such as Avoca, East Gosford, Ettalong Beach, Kincumber, Lisarow, Niagara Park, Terrigal, Umina Beach, West Gosford and Wyoming are recognised as providing a broad range of services and facilities to serve the population of the locality.*

Comment: The proposal will be consistent with the role of the Umina Beach Village Centre, and will provide additional commercial use and housing that will support and contribute to the local area.

*To ensure that villages are recognised as providing local level services and facilities and are developed at a scale that reflects their population catchment and as a focus for public transport routes.*

Comment: The scale of the proposal is consistent with the Umina Beach village, particularly noting the higher building height and floor space ratio that apply within the B2 zone, and the identification of the area as a “village centre”, with good public transport services.

*To ensure that the different roles of villages are recognised with some villages being key tourist destinations with boutique activities in addition to serving the needs of local residents, while other villages are purpose-built centres to serve the needs of the local population.*

Comment: Umina Beach is a tourist destination, and the proposal is consistent with this designation, providing an additional commercial use and housing in the area, as well as providing for the local population.



*To encourage the residential population of villages and town centres to contribute to the vitality of those locations.*

Comment: The site is located nearby to the main street of the village centre, with good accessibility to beaches and recreational facilities, and will contribute to the growth and vitality of the area through additional commercial activity and housing.

#### Conclusion

In conclusion, this written request demonstrates that the variation to the development standard is minor, and that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify the variation. Further, the variation is in the public interest as 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. On this basis the request satisfies the requirements of clause 4.6 of the LEP and can be supported.

### **5.2.2 Floor Space Ratio**

#### Relevant Development Standard

Clause 4.4 (2) of Gosford LEP 2014 sets maximum floor space ratio through reference to the Floor Space Ratio Map. Map FSR\_16A identifies the site as having an allowed floor space ratio of 1.8:1, which would allow a gross floor area of 2,549.7m<sup>2</sup>.

#### Extent of Variation to Development Standard

The proposed building has a gross floor area of 2,646.84m<sup>2</sup> which is a floor space ratio of 0.87:1. The additional floor space of 97.14m<sup>2</sup> is a 3.8% variation on the development standard.

#### Reason for the Variation

The variation is very minor and is part of a considered design response for the site, which provides consolidation of 3 separate properties located within the Umina Village Centre, and proposes a renewal project that will provide a high degree of accessibility for future residents and will support the renewal of the centre and local businesses.

#### Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

Compliance with the 1.8:1 floor space ratio for the proposal is unreasonable or unnecessary in the circumstances of this application and this site, for the following reasons:

1. The additional floor space is part of a considered design response for the site that consolidates the floor space in a smaller footprint, at the rear of the site, and away from West Street which is the main commercial street of the village centre. This approach allows the site to maintain a pedestrian-friendly scale of development to West Street,

compatible with the development forms on adjoining and surrounding land along the main street;

2. The variation of 3.8% is negligible, and will not result in adverse impacts on the streetscape presentation of the development, or in adverse impacts on surrounding properties. In particular, the proposed upper level has an open balcony presentation to the street, a reduced footprint compared to the residential levels below, and is of a design that complements the proposed building;
3. The proposal involves the consolidation of 3 properties, and will result in a locally significant renewal project in the Umina Beach Village Centre. Having a larger site provides greater opportunity for accommodating the scale of development as proposed, and compared to smaller development sites, and the variation will assist with the viability of the development and in turn a major renewal project that will benefit the local area;
4. The subject land has two commercial street frontages, with development built either on or close to the street on both sides, and this creates an opportunity for additional floor space compared to a site with only 1 street frontage and needing to provide more side/ rear boundary setback areas;
5. The proposal has located the car parking in a basement level, compared to the original pre-DA proposal for DA57212/2019, which proposed above ground car parking. While car parking does not constitute gross floor area, the location of parking in a basement reduces the overall bulk and scale of the development compared to one with parking above ground as was originally considered;
6. Shadow diagrams submitted with the application show the proposal will maintain reasonable solar access to adjoining properties in mid-winter, having regard to Council's DCP requirements;
7. The proposed additional floor space is unlikely to result in a significant increase in privacy impacts, having regard to the orientation of the upper level units, and considering the allowed floor space ratio under the LEP which allows multi-storey shop top housing development on the site, and adjoining properties.
8. The proposed additional floor space will not result in any view impacts, having regard to the flat nature of surrounding land, and the LEP allowed building height applying to the area; and
9. The proposed variation is consistent with the objectives of both the development standard and the B2 Local Centre zone under Gosford LEP 2014, as detailed below.

In *Wehbe v Pittwater Council*, the Chief Justice summarised the common ways in which an objection might demonstrate that compliance with a development standard is unreasonable or unnecessary, including by establishing that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard, which is relevant in this case and is addressed below.

Objectives of the development standard (Clause 4.4(1) of Gosford LEP 2014)

- (a) *to establish standards for the maximum development density and intensity of land use*

Comment: this objective explains the purpose of the standard, and the proposal is not inconsistent with the objective.

- (b) *to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,*

Comment: The site is in the Umina *Mainstreet Centre* character area, which promotes mixed use development, and in particular, development which maintains a “pedestrian-friendly” scale of development on the main street (ie West Street), as is proposed in the subject application. A separate assessment has been undertaken against the character requirements of Gosford DCP 2013, and the proposal is consistent with the desired future character of the surrounding area.

- (c) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

Comment: the proposed additional floor space reflects the site’s location in a local centre and with a high degree of accessibility to local services and public transport, and will not adversely impact on adjoining properties, noting that reasonable solar access is maintained to surrounding properties, the proposal is unlikely to result in adverse privacy impacts and there will be no unreasonable impacts on views from surrounding properties.

- (d) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*

Comment: the subject site is in a local centre commercial zone, and surrounding properties have redevelopment potential in line with the objectives and permitted uses of the B2 zone. The planning controls applying to the centre encourage redevelopment, and larger building forms, compared to the existing scale of development, and this is also expressed in the DCP character statement applying to the land. The Umina Beach Village Centre is likely to undergo transformation and renewal in line with the permitted planning controls and Council’s objectives for the centre, and the proposal maintains a lesser intensity and height of development along the main street frontage, consistent with the desired future character, and



the additional floor space is located at the rear of the site, and immediately opposite a large public car park.

- (e) *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*

Comment: the proposed variation is very minor, and is able to be accommodated on the site noting it is a large consolidated site of 1,416m<sup>2</sup>, and having regard to the variation to building height also sought which will maintain the overall proportion of the development. The site has two commercial street frontages, and is built to the street on one frontage and close to the street on the other, and this allows for some additional development potential compared to a site with only 1 street frontage. The gross floor area of the development is distributed across the site to enable a pedestrian-friendly scale of development to West Street, and to provide consistency with adjoining and surrounding development in the main street.

- (f) *to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,*

Comment: the proposal provides a good standard of architectural form and detailing, which is appropriate for the site's location, and separates the building elements to minimise the massing and bulk of the development at the upper levels. The proposal provides variable building lines and uses design features and changes in materials to provide articulation and modulation to the building.

- (g) *to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,*

Comment: this objective does not apply to the subject site which is zoned B2 Local Centre.

- (h) *to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.*

Comment: this objective does not apply to the subject site, which is zoned B2 Local Centre, however the proposal does result in the consolidation of 3 properties.

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify the variations to building height in this case, for the reasons set out above, and having regard to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act*, 1979 ("the Act"), including the objects in section 1.3 of the Act, as referred to in *Four2Five Pty Ltd v Ashfield Council*, relevant to the variation as opposed to the benefits of carrying out the development as whole.

The proposed variation is consistent with the objects of the Act as follows:

*“The objects of this Act are as follows:*

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*

Comment: The variation will result in a development that reasonably maximises the capacity of a large site within a zoned local centre, and with high level of accessibility to local shopping facilities, local services, public transport services and recreational opportunities including Umina Beach. The increased capacity of the development will take advantage of the site’s location and accessibility, and provide for additional housing in a well located and accessible position, which will result in positive social and economic impacts both for future residents, and also for local businesses. The variation will not adversely impact on natural and other resources of the State.

- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The variation will be ecologically sustainable, adding vertically to the footprint of the proposed building, and will not result in adverse environmental impacts. The variation will increase the provision of housing, and housing choice, in a well-positioned and accessible location, which will have economic benefits for residents and surrounding businesses, and the variation will improve the viability of the project to deliver these outcomes. The variation will also have positive social impacts, as referenced above.

- (c) *to promote the orderly and economic use and development of land,*

Comment: The site is located in a local centre, and is within walking distance of a range of local shopping facilities, local services, public transport services and recreational opportunities. Providing some additional development capacity through a minor increase in gross floor area will increase the accessibility of residents on this site to the services available in the area, and will increase the use of available local infrastructure and services. The variation will promote the orderly and economic use and development of land having regard to the location of the site and its accessibility to local services.

- (d) *to promote the delivery and maintenance of affordable housing,*

Comment: The variation will result in additional housing, and housing choice, in a local centre that is within walking distance of a range of local services, and is not reliant on ownership of a motor vehicle. The provision of additional housing will increase housing supply in the local area, and with transport options for future residents.

- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

Comment: The variation will not result in adverse impacts on the environment, nor on the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. The variation is located within the footprint of a complying development, and matters relating to acid sulfate soils have been addressed as part of the submitted Geotechnical Assessment.

- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

Comment: The site is not identified as being a heritage item, and is not in the vicinity of any heritage items, as identified in Gosford LEP 2014, and searches of the Aboriginal Heritage Information Management System (AHIMS) database shows there are no aboriginal sites recorded in or within 200m the subject land, and no aboriginal places have been declared in or near the subject land. A copy of the search results is included as **Attachment A**. The variation will not impact on the sustainable management of built and cultural heritage, including Aboriginal cultural heritage.

- (g) *to promote good design and amenity of the built environment,*

Comment: The variation will involve floor space within a reduced footprint compared to the lower storeys and has a narrower presentation to the street, which reduces the bulk of this element of the building. A separate assessment has been carried out against the design requirements of SEPP 65, including a Design Verification Statement prepared by ADG Architects, and an assessment against the SEPP 65 *Apartment Design Guide*. The variation will promote good design and amenity of the built environment, being consistent with the overall design of the building, and consistent with the general scale of development that will occur in the area in the future.

- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

Comment: The variation will not adversely impact on the construction and maintenance of the building, including the protection of the health and safety of occupants.

- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

Comment: The variation (and proposal as a whole) has been assessed having regard to both local and state planning controls and considerations.

- (j) *to provide increased opportunity for community participation in environmental planning and assessment.”*

Comment: The variation (and proposal as a whole) will be publicly exhibited, and the variation will not reduce opportunities for community participation.



### Conclusion

In conclusion, this written request demonstrates that the variation to the development standard is very minor, and that compliance with the standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify the variation. Further, the variation is in the public interest as 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. On this basis the request satisfies the requirements of clause 4.6 of the LEP and can be supported.

### **5.3 Gosford Development Control Plan 2013**

Consistency with relevant provisions in Gosford DCP 2013 is set out in the table below, and the requirements for development in the Umina Beach Village Centre are set out in Part 4.2 of the DCP.

In assessing the proposal against Gosford DCP 2013 it is recognised that the *Environmental Planning & Assessment Act* reinforces that the provisions contained in a DCP are to provide guidance and to be flexibly applied (Section 3.42 of the Act). Non-compliance can be addressed through alternative solutions or addressing how a proposal otherwise meets the objectives of the DCP.

### Chapter 2 - Character

Chapter 2 of DCP 2013 contains Character Maps and Character Statements to be considered with development applications. The subject site is in the Umina *Mainstreet Centre* character area, which describes the desired character as:

#### ***Desired Character***

*This should remain a mixed-use centre that provides a range of services and accommodation for local residents as well as visitors, where the scenic potential of a prominent backdrop to Brisbane Water and the Hawkesbury is enhanced by new development that encourages high levels of street activity as well as achieving improved standards of amenity plus urban-and-civic design quality.*

*Protect and enhance existing levels of “main-street” activity with building forms that maintain both the pedestrian-friendly scale of existing one and two storey shop-front developments, and also the current level of midday sunlight along footpaths and laneways. Promote high levels of on-street activity by maximising the number of retailers or businesses and the continuity of shop-windows along all street frontages and surrounding the outdoor public carparks. Avoid indoor arcades that would draw people away from the street. Incorporate awnings, colonnades or balconies in all buildings to provide sheltered pedestrian settings that encourage pavement dining. Contribute to high levels of visible activity along all streets by surrounding upper storeys with balconies that encourage restaurant dining or residents’ outdoor recreation.*

*Ensure that new developments (including alterations to existing buildings) do not dominate their predominantly low-rise surroundings or disrupt the main-street development patterns in this established coastal shopping village. Along all public streets and outdoor carparks, shop-front facades should have a zero setback and a*

*maximum height of two storeys, with taller storeys set back behind terraces to maintain a pedestrian-friendly scale as well as midday sunlight along footpaths and pedestrian areas. Vary the overall height of buildings within permissible height limit and ensure that siting and form preserve levels of privacy, sunlight and visual amenity that are enjoyed by existing dwellings and their private open spaces.*

*Reflect the form of development that is typical of traditional coastal centres where a wide variety of retailers are accommodated by separate buildings upon narrow-fronted allotments. Along any street or outdoor carpark, avoid the appearance of a continuous wall of development or uniform building heights. Vary the shape and height of all visible facades. Top-most storeys should be setback behind wide roof terraces, and roofs plus parapet heights should step from one building to the next. Street corners should be emphasised by taller forms. In general, neighbouring buildings should be separated by landscaped courtyards and alleyways that provide view corridors, access to apartment lobbies, and daylight plus an outlook for above-ground dwellings.*

*Disguise the scale and bulk of new buildings. All visible facades should employ extensive windows that are shaded by lightly-framed balconies, verandahs or exterior sunshades, plus painted finishes and some board or sheet cladding rather than expanses of plain masonry. Roofs should be gently-pitched to minimise the height of ridges, flanked by wide eaves that shade terraces and also disguise the scale of exterior walls. Side and rear facades should match the design quality of the street frontage.*

*Conceal off-street parking behind shops or apartments, and provide unobtrusive vehicle entrances from laneways or secondary streets to minimise the disruption of shopfronts and associated pedestrian activity. Contribute to co-ordinated street improvements that include dedicated pedestrian crossings, footpath paving, landscaping and lighting to provide safe and secure settings for informal social interaction. Building colour schemes and commercial signs should be co-ordinated and limited in size and number to promote the identity of this coastal centre, rather than emphasising corporate sponsorship.*

The proposal is for a mixed use development that maintains active frontages to both streets at the ground level, and will increase the amount of commercial activity on the site and increase housing supply and choice in the Umina Beach Village Centre. The proposal has been designed to locate more development at the rear of the site, adjoining Alfred Street and the large public car park, and in order to maintain a lower scale and more “pedestrian-friendly” form of development along West Street, consistent with the desired future character statement.

On the Alfred Street frontage the proposal provides an active street frontage, with commercial use at the ground level, and balconies provided at the upper levels which will contribute to high levels of activity. The design of the building facing Alfred Street provides a 3m setback to the commercial use, and provides recessed building walls for the above-ground residential levels, with light-weight balconies located closer to the street, and the street presentation narrows for the topmost level.

On the West Street frontage the existing chemist store and street presentation will remain, and the residential components are well setback from the street, behind the chemist store, with balconies and articulation provided. To the sides, adjoining the rear of neighbouring commercial properties, the proposal has above podium levels, with setbacks provided and architectural detailing, and it is expected that future development of the neighbouring property to the north will also build close to this alignment.

The northern and western elevations on the ground level are 3m from the western boundary and to the boundary on the northern side, which is likely to be built to when adjoining sites are redeveloped, and landscaping is proposed adjacent to the western side boundary, and along the northern boundary at Level 1 using planting boxes. Residential balconies and building walls are setback from the boundaries, with variable alignments and setbacks, and proposed balconies have a light-weight appearance.

Balconies are provided along most of the facades and the shape of all facades is varied, and employs design features to minimise bulk and scale, and where zero setbacks are provided at upper levels ,architectural detailing is used with changes in colour and materiality.

Car parking is provided at a basement level, using the minimum width opening and driveway width to allow two-way movement.

Overall the proposal is consistent with the future character of the area, having regard to the zoning of the site and higher density building forms allowed under the planning controls, and floor space and building height has been distributed to maintain a pedestrian-friendly scale of development to West Street.

The proposal has been considered against the Scenic Quality requirements in Chapter 2.2 of the DCP, and the site is within a designated commercial village centre, on flat land, and will not adversely impact on the scenic character of the former Gosford LGA.

#### Chapter 4.2 – Peninsula Centres

Chapter 4.2 of the DCP sets out requirements for development in identified Peninsula Centres, including the “Umina Beach Village Centre”, and parts of the DCP controls have no effect due to clause 6A(2) of SEPP 65 - Design Quality of Residential Apartment Development, and are addressed in the assessment against the design criteria of the SEPP 65 *Apartment Design Guide*.

Compliance with relevant controls in Chapter 4.2 of the DCP is set out in the following table:

DCP Requirement	Proposed	Consistent
<b>4.2.4 Vision</b>	The proposal is consistent with the vision for the Umina Beach Village Centre in that it provides a new form of mixed use development, and renewal of the site facing Alfred Street. The scale of commercial development proposed will provide a better level of service for residents/ tourists and the residential component will enable the creation of a community in the centre that can support local business and take ownership of the centre through their use of the centre's services after hours.	<b>Yes</b>



<b>4.2.5.1 Street Frontage</b> Additional building height where street frontage is > 20m Street Frontage Map Encourage active street frontages	The site has 2 street frontages, with the applicant's nominated frontage of Alfred Street exceeding 20m width, and the West Street frontage being 12.49m wide. The frontage to Alfred Street will be active, with a shopfront presentation, and the existing chemist store and active frontage to West Street will be retained.	<b>Yes</b>
<b>4.2.5.2 Building Height</b>  <u>14.25m building height</u> 4 storeys 12.75m wall height 2 storey/ 8.75m to street	The proposal seeks a variation to the 4 storey building height (and associated wall heights), consistent with the submitted clause 4.6 variation request. The proposal retains a low building height to West Street, complying with the DCP, and the street wall height to Alfred Street (to the top of the solid balustrading) is 4.45m. At the upper levels the building walls are setback 3m from the street and with light-weight balcony elements provided forward of this, together with changes in materials/ architectural treatment which reduces the visual impact of the Alfred Street elevation at the upper levels, and with a narrower street presentation provided for the top most level.	<b>Variation as per cl.4.6 request, consistent with objectives</b>
<b>4.2.5.3 Street Setbacks and Building Envelopes</b> Front Setbacks Map & Envelopes	<p>West Street is mapped as having a nil setback, which is maintained for the existing chemist. The mapped setback to Alfred Street is 3m, and the proposal complies, providing a 3m courtyard setback at the ground level and a 3m setback for walls at the upper levels. Light weight balcony elements are provided forward of upper level unit walls along part of the Alfred Street elevation, however these are open and light weight building elements and will not give rise to adverse visual impact to the street.</p> <p>The proposal maintains a consistent setback to Alfred Street, which is a secondary street frontage, and does not step in from the street at the upper levels along this frontage. This is however offset by the building's immediate elevation to Alfred Street having 6m setbacks on either side, which presents a narrower building presentation to the street which is approximately 50% of the Alfred Street frontage on Levels 1 to 3 and 25% of the frontage on Level 4. These large setbacks on either side of the building when viewed from Alfred Street lessen the overall visual impact of development along this frontage, and the use of light weight balcony treatments further reduces visual impacts for pedestrians.</p> <p>The proposal will result in negligible additional shadowing of surrounding streets in mid-winter compared to the development standards applying to the site and adjoining sites, and development likely to occur in the future. The proposal maintains a pedestrian-friendly scale to West Street, which is the main commercial street, and on the Alfred Street frontage the walls of upper levels are setback 3m with light weight balcony treatment provided forward of this.</p>	<b>Street setback met to walls, variation for balconies and upper levels envelope</b>

<b>4.2.5.3 Side &amp; Rear Setbacks</b> Lower 2 levels should not be setback where adjoining land zoned to permit business development	The site adjoins land zoned to permit business development, with zero setbacks maintained either side of the chemist facing West Street, and a zero setback is provided at ground level on the northern boundary. Along the western side boundary there is a wall built to the boundary, with a landscaped setback to the commercial premises behind that. On Level 1, residential uses are proposed, and as a result, the side setback requirements of the <i>SEPP 65 Apartment Design Guide</i> apply. On Levels 2 and above, side setbacks are also determined by the ADG.	<b>Yes</b>
<b>4.2.5.4 Building Separation</b>	Separation distances between habitable room and to non-habitable rooms are addressed in the <i>SEPP 65 Apartment Design Guide</i>	<b>N/A - Refer SEPP 65</b>
<b>4.2.5.5 Building Depth</b> 10m/ 20m office floors  18m residential 10m single aspect units	The proposed includes commercial use on the ground floor only, which has separate controls under 4.2.5.3 above, requiring zero side and rear setbacks. The large commercial space provides windows on the front and rear elevation, which is reasonable  ) relates to ventilation and solar access ) and addressed in the <i>SEPP 65 Apartment Design Guide</i>	<b>Yes</b>       <b>N/A - Refer SEPP 65</b>
<b>4.2.6.1 Building Facades</b> various	The proposal provides modulated and articulated facades, and in particular, the presentation to Alfred Street includes a defined ground level shop front (the base), and above that there are recessed walls behind balconies along part of the street frontages, and with a narrower presentation for the topmost level. Along the side elevations there is visual separation between the lower commercial level and the upper residential levels, and articulation is provided through variable building lines, design treatments, materiality, and balconies/ windows.	<b>Yes</b>
<b>4.2.6.2 Top Floor Design</b> Various	The top most storey has a narrower footprint compared to the levels below. The proposal has a gently sloping flat roof over the topmost level only, and this roof form has been used to minimise the bulk and height of the development.	<b>Yes</b>
<b>4.2.6.4 Active Street</b> Various Street Awning Map	The proposal maintains an active frontages to West Street, and there is no active frontage/ awning requirement applying to the Alfred Street frontage. Notwithstanding, the proposal provides an active frontage to Alfred Street, with a shop front provided, and a covered courtyard area is provided between the shopfront and the front boundary.  Active laneway frontages and the Umina Beach Extension Area Structure Plan are addressed separately below.	<b>Yes</b>
<b>4.2.6.5 Building Entries</b> Various	The residential lobby and access to the secondary commercial space will be readily visible from Alfred Street, and the existing access to the chemist from West Street will be maintained. The location of the residential	<b>Yes</b>

	entry and garage entry door from Alfred Street will also be setback behind the line of, and will not dominate, the prominence of the shop front.	
<b>4.2.6.6 Awnings</b>	The Alfred Street frontage is not identified as requiring an awning, and a covered courtyard area is provided between the shopfront and the front boundary.	<b>Yes</b>
<b>4.2.6.7 Materials and Finishes</b>	The proposal provides a variety of external finishes and building elements to achieve a coherent streetscape and to contribute to the articulation of the overall façade design, and maximising glazing for the commercial use fronting Alfred Street	<b>Yes</b>
<b>4.2.7.1 Ceiling Heights/ Room Dimensions</b>	3.3m floor to ceiling heights are proposed for ground level commercial, and residential floors heights are addressed in the <i>SEPP 65 Apartment Design Guide</i> .	<b>Yes, and SEPP 65</b>
<b>4.2.7.2 Internal Circulation</b>	Addressed in the <i>SEPP 65 Apartment Design Guide</i> .	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.3 Solar Access</b>	Addressed in the <i>SEPP 65 Apartment Design Guide</i> .	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.4 Ventilation</b>	Addressed in the <i>SEPP 65 Apartment Design Guide</i> .	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.5 Visual Privacy</b>	Addressed in the <i>SEPP 65 Apartment Design Guide</i> .	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.6 Acoustic Privacy</b>	Building separation controls are addressed in the assessment against SEPP 65.	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.7 Private Open Space</b>	Addressed in the <i>SEPP 65 Apartment Design Guide</i> .	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.8 Common Open Space</b>	Addressed in the <i>SEPP 65 Apartment Design Guide</i> .	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.9 Storage</b>	Addressed in the <i>SEPP 65 Apartment Design Guide</i>	<b>N/A - Refer SEPP 65</b>
<b>4.2.7.10 External Clothes Drying</b>	Internal clothes drying is proposed, consistent with contemporary practice and other approvals for multi-storey residential developments.	<b>Variation</b>
<b>4.2.7.11 Safety and Security</b>	Compliance with 'Safer by Design' principles is addressed below.	<b>Yes</b>
<b>4.2.8 Heritage</b>	The site is not identified as a heritage item under Gosford LEP 2014, and the site is not in the vicinity of a heritage item.	<b>N/A</b>
<b>4.2.9 Housing Choice and Mix</b> Mix of dwelling types 1/3 <sup>rd</sup> adaptable 10% accessible	<p>The proposal provides a mix of 1, 2 and 3 bedroom units. While the proportion of 3 bedroom units is greater than 1/3<sup>rd</sup>, these units will cater for families and also potentially for older residents who require more space for visitors and family to stay.</p> <p>The application is supported by a BCA Assessment which confirms that access compliance in accordance with Part D3 of the BCA, including AS1428.1-2009 is readily achievable.</p> <p>The proposal has 3 adaptable units (Units 4, 8 &amp; 12), which have level access via the lift, which is 21% of the units)</p>	<b>Variation, as addressed</b>

<b>4.2.10 Advertising and Signage</b>	No advertising or signage is proposed as part of this application, and separate application will be made as required	<b>N/A</b>
<b>4.2.11 Vehicular Access and Car Parking</b>  Parking as per DCP Part 7	Car parking is proposed for 35 cars, which meets the residential requirements and provides relocated spaces for the existing chemist, and a reduced rate for the proposed commercial uses is sought on the basis of available car parking in the surrounding area, as addressed in the submitted Traffic Assessment Report and as detailed further below.	<b>Variation, as detailed below</b>
<b>4.2.12.1 Energy Efficiency</b>	The application is supported by a BASIX Certificate that confirms that with the commitments contained in the certificate, the proposed development is able to meet BASIX requirements, and is BASIX compliant.	<b>Yes</b>
<b>4.2.12.2 Floodprone Properties and Stormwater Management</b>	The site is not floodprone.  Stormwater disposal is in accordance with the submitted stormwater plans prepared by ACOR Consultants	<b>N/A</b>  <b>Yes</b>
<b>4.2.12.3 Water Conservation</b>	Water conservation is achieved through both the proposed stormwater management system, and in accordance with the submitted BASIX Certificate.	<b>Yes</b>
<b>4.2.12.4 Waste and Recycling</b>	A Waste Management Plan has been prepared in accordance with Part 7.2 of the DCP and is submitted with the application	<b>Yes</b>
<b>4.2.12.5 Wind Mitigation</b>	The proposal is only slightly above 14m in height, and is not expected to give rise to adverse wind conditions.	<b>Variation</b>
<b>4.2.13 Centre Improvements</b>	Footpaths will be provided in accordance with Council's requirements, and the appropriate materials and lighting are proposed.	<b>Yes</b>
<b>4.2.14 Precinct Controls Umina Beach – Structure Plan</b>	The proposal does not provide an east-west link between Alfred and Oscar Streets, given the proximity of the land to the east-west link provided by West Street, any new links would more appropriately be located further to the north, as is addressed further below.	<b>Variation</b>

#### DCP Carparking Requirements

Under Part 7.1 of the DCP car parking is required as follows:

<b>Element</b>	<b>Parking Required</b>	<b>Number of spaces</b>
Shop Top Housing	1 space per dwelling (no visitor requirement)	14 spaces
Shops	1 space per 30m <sup>2</sup> (582.62m <sup>2</sup> )	20 spaces
Chemist	Relocate existing 4 car spaces	4 spaces
<b>Total</b>		<b>38 spaces</b>

The proposal provides 35 on-site parking spaces located in the basement, including 14 double car stacked spaces (26 spaces total), 2 single car spaces, 4 tandem spaces (2 x 2) and a disability access space. Each double car stacked space is capable of being accessed independently, with the double car stackers turning through 90° so they don't require drivers to manoeuvre into those spaces. Drivers travel onto the stacker supports and vacated cars are then slid into the appropriate



upper or lower space, as detailed in the Appendix E of the Parking Assessment Report. The basement level also provides 4 bicycle spaces and one motorcycle parking space.

Access to the basement level is provided via a 6.1m wide driveway access to Alfred Street which is located adjacent to the northern boundary, and is enclosed.

The proposed car parking will provide one space per shop top unit and 2 tandem spaces for the top most units, which complies with Council's DCP requirements, 4 relocated spaces for the chemist and 15 spaces for the new commercial floor area, and the amount of car parking provided is supported by a Parking Assessment Report prepared by BJ Bradley & Associates which addresses the availability of car parking in the surrounding area.

The subject land is located immediately opposite a major public car park, and is surrounded by other on-street car parking in surrounding streets. A Parking Assessment Report including parking surveys has been prepared by BJ Bradley & Associates addressing the car parking requirements of the proposal, the availability of off-site car parking and the parking and traffic impacts of the proposal on the surrounding area.

The Parking Assessment Report details available car parking in the surrounding area based on site surveys, and there are 321 spaces available within proximity to the subject land (ie within 200m), and there is further parking located outside this radius. Half hourly parking surveys were carried out on a Friday, between 8.00am and 10.00am; 11.00am and 1.00pm and between 3.00pm and 5.00pm to correspond with peak trading periods for commercial businesses at Umina Beach, and the surveys showed that there were between 62 and 129 vacant car spaces within proximity to the site, with an average of 106 vacant spaces.

The results of the parking surveys confirm that the adjacent public off-street car parking area and nearby kerbside parking areas have capacity to satisfy the increase in parking demand associated with the development.

The Parking Assessment report concludes that *"the overall car parking shortfall (7 spaces) can easily be accommodated in kerbside parking areas at Umina Beach and the public parking area between Alfred Street and Bullion Street that have a combined excess of approximately 106 spaces, during an average working day and the development will not create adverse traffic or parking impacts in Umina Beach area"*.

The proposal provides 1 car space for use by persons with disability, which meets the requirements of part 7.1.2.7.a of the DCP, and this space is located in proximity to the basement lift, which addresses the requirements of part 7.1.2.7.b of the DCP.

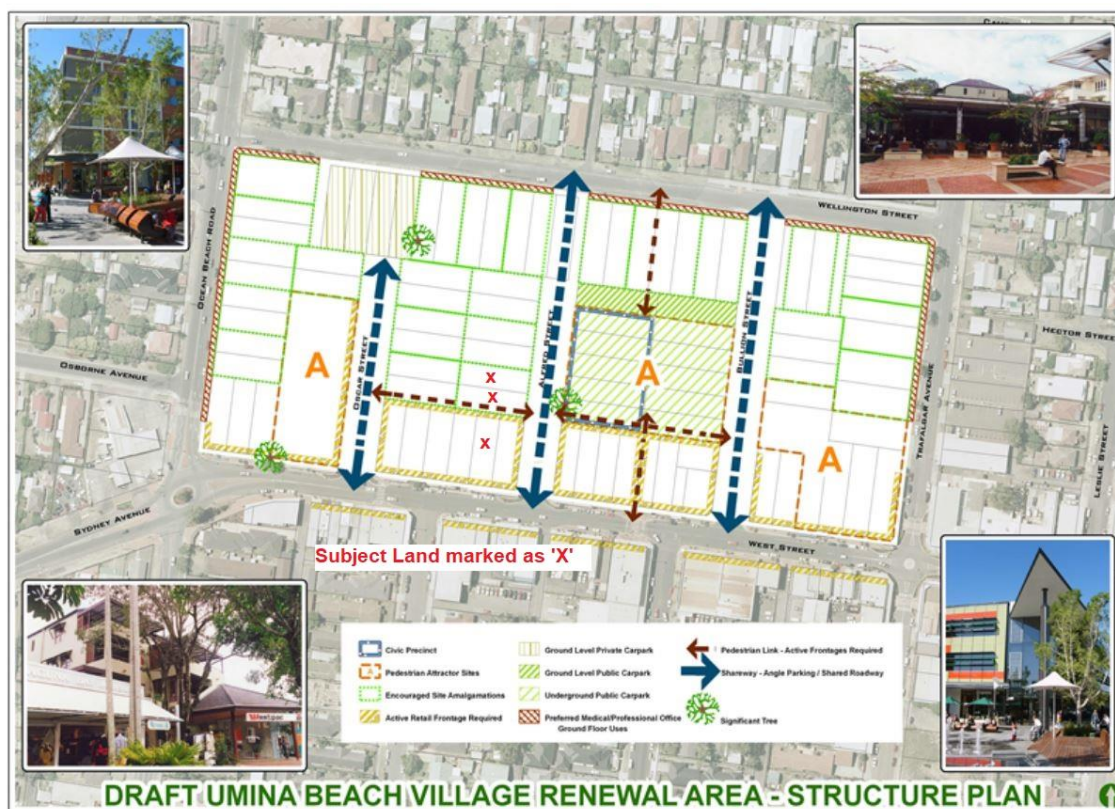
The proposed basement ramp complies with relevant grade requirements, as detailed in the submitted engineering plans, and the Parking Assessment Report confirms that:

*“AS/NZS 2890.1 – 2004 suggests that for a Class 1 parking facility, serving between 25 and 100 car spaces and frontage to a local road, a Category 2 driveway is appropriate. That is, a combined driveway 6.0 metres to 9.0 metres wide, is suitable.*

*The proposed access driveway to the basement parking area will be approximately 6.2 metres wide at the boundary and therefore satisfies the recommended criteria in AS/NZS 2890.1 - 2004.”*

#### Umina Beach Renewal Area Structure Plan

Chapter 4.2.14 of Gosford DCP 2013 contains Precinct Controls for the Umina Village Centre, including a Structure Plan, and a key feature and driver for this was the potential redevelopment of the Bullion Street car park as a Civic Centre and Civic Square, including the relocation of Council's Library. The Civic Precinct was intended to provide a focal point for the centre, and the Structure Plan identifies the Precinct and encourages accessibility to the proposed Civic Precinct and the existing car park which would both be “key attractors”. Details of the Structure Plan are shown below, with the subject land also identified.



**Figure 23 – Umina Beach Structure Plan (Chapter 4.2 Gosford DCP 2013)**

The proposal achieves site consolidation consistent with the Structure Plan, and with the addition of 315 West Street. The proposal does not however provide an east-west pedestrian link as shown

on the Structure Plan (between Oscar Street and Alfred Street), for a number of reasons as detailed below.

It is evident that there is no current proposal to relocate Council's Library or to develop a Civic Precinct, however the land remains in Council's ownership and there may be future potential for redevelopment of the precinct, however this could be done privately, depending on the nature of development and provided that public car parking was maintained in an easy and accessible manner on the site and if the short to medium term displacement of public car parking could be managed during construction works. The development of a Civic Precinct on the car park site was a major driver behind the Structure Plan, and there is no certainty whether this project will ever proceed or whether some alternative redevelopment will occur.

Irrespective of whether a Civic Centre or redevelopment occurs on the car park site, the current public car park serves an important role in the Umina Beach Village Centre, and will remain a key attractor, and it appears unlikely that any future development of the site would fundamentally change the ongoing supply of public parking in this location. Given this, accessibility within the village centre to the public car park is likely to remain a planning objective for the Structure Plan and the ongoing development of the centre.

It is of note that the 3m pedestrian laneway between Oscar and Alfred Streets in the Structure Plan is located at the southern end of the street block, at the rear of properties fronting West Street. In terms of providing east-west pedestrian connection generally between these streets, and between future mixed use development in Oscar Street and the public car park, the identified pathway provides only a minimal reduction in walking time and distance compared to a route using West Street. A comparison in walking distance from the same points in Oscar and Alfred Streets, using either West Street or a pedestrian path as shown in the Structure Plan, shows a difference of some 76m between the two routes. This is a minor additional travel distance, and the West Street route has the benefits of providing a largely covered travel path (noting there is no requirement for awnings along the Structure Plan pathway) and will add to activity along West Street, which is the main street of the centre, with the route being adjacent to a number of existing businesses.

The identified pedestrian pathway in the Structure Plan extends on both sides of Alfred Street (ie between Oscar and Bullion Streets), however there are different circumstances for the block between Alfred and Bullion Streets as this is effectively already a laneway, with a sealed width of 6.7m, notwithstanding it does not appear to be a public road. Additionally, the Structure Plan does not identify a pedestrian link between Trafalgar Avenue and Bullion Street, which would equally provide a connection between the eastern parts of the centre and the car park/ potential Civic Precinct, and this detracts from the strategic arguments for a linkage on the western side of Alfred Street.

The imposition of a 3m wide pathway on 1 West Street, together with an apparent additional setback of 3m (as per Figure 4.2.11 of the DCP), has a significant and unreasonable impact on the development potential of 1 West Street, sterilising an area of some 228.6m<sup>2</sup> from development, which is almost 50% of the site, and would effectively sever the current consolidated site that has been assembled. It is understood part of the reasoning for the pathway may have also included increased development potential under Gosford LEP 2014, however the site is located 1 block back from West Street and directly opposite the mooted Civic Precinct, and the development controls applying to the site are reasonable and appropriate for the site and location in their own right. The development potential applying to the site is the same as other properties on the outer edge of the centre (ie along Wellington Street), which have less connection to the centre and its revitalisation, and these properties are not burdened with having to dedicate 25% of their area for a pathway and a further 25% lost to additional setbacks. Given the extent of business zoned land on the northern side of West Street, and the planning objective to provide connectivity to the public car park and any future Civic Precinct, it appears a mid-block connection between Oscar and Alfred Streets may be more functional and appropriate.

The Structure Plan also encourages active frontage along the pedestrian link between Oscar and Alfred Streets, however this does not match current and future development along the alignment, and may not be able to be achieved. On the western side, adjoining Oscar Street, there is an existing surveying practice and car parking area, which cannot accommodate a link, and any likely future redevelopment of this land would also be significantly impacted by the required dedication of land and setbacks as the subject land. On the southern side of the identified link (at 327 – 329 West Street) there is an existing access driveway and car parking area servicing a number of tenancies, and this is likely to be maintained into the future as an access point/ driveway location, and does not provide an active frontage. The recently approved development at 323-325 West Street (DA57212/ 2019) provides a 3m rear setback to its northern boundary, however the existing chemist shop on 315 West Street to the east is to be maintained as a single tenancy, and is not able to provide a front and rear active frontage, and the rear area is also used for access and car parking, similar to the adjoining property to the east at 311-313 West Street. Any future redevelopment of the adjoining land at 311-313 West Street is likely to have to maintain vehicular access in a similar location, and future active use along the northern side of this property remains unlikely.

In summary, and in considering the proposed layout of the development relative to the Umina Beach Structure Plan, the proposal:

- will not impact on the capacity to develop a future Civic Precinct on the adjoining car park site to the east;
- will not unreasonably impact on pedestrian travel distance between Oscar Street and Alfred Street in order to access the existing car park and any future Civic Precinct, and with weather protection being available along the West Street route, and main street pedestrian activity being maintained;



- will be consistent with the connectivity between Trafalgar Avenue and Bullion Street, on the eastern side of the public car park/ possible Civic Precinct;
- will be able to achieve reasonable development potential, consistent with the site's location close to the Main Street, and without a significant part of 1 West Street being sterilised; and
- is unlikely to impact on potential future active uses along the pedestrian link alignment, given the nature of existing and future likely development, and particularly the likelihood of vehicular access points being maintained on the southern side, facing both Oscar and Alfred Streets due to access restrictions to West Street.

#### 'Safer by Design' Principles

The proposed design has considered 'safer by design' principles, and in particular:

- The proposal provides a high degree of natural surveillance to the streets and internally, with active commercial uses at the ground level, including a shop front presentation to Alfred Street and the access controlled entry points, and with balconies at the upper levels providing passive surveillance to front, rear and side boundaries;
- There is a delineation between private and public areas, and the entry to the basement and residential lobby/ commercial areas will have electronic access control;
- Lighting will be provided in the entry footpath area and entrance to the residential lobby, and will be maintained at all times; and
- The site, and in particular the entry footpath will be well-maintained at all times, and any graffiti will be removed within 24 hours of its appearance.

## 5.4 State Environmental Planning Policies

Relevant State Environmental Planning Policies (SEPPs) applying to the land are SEPP 65 - Design Quality of Residential Apartment Development, SEPP – Building Sustainability Index (BASIX) and SEPP 55 – Remediation of Land.

#### SEPP 65 Design Quality of Residential Apartment Development

The application is accompanied by SEPP 65 Design Verification from ADG Architects, which addresses compliance of the project with the design quality principles in the SEPP. The SEPP 65 *Apartment Design Guide* also applies to the proposal, and an assessment of how the proposal addresses the design criteria is provided below.

Design Criteria	How the proposal addresses the criteria
<b>Communal Open Space</b> Communal open space minimum of 25% of the site	The proposal does not provide on-site communal open space, due to the commercial zoning of the site and the nature of ground commercial floor uses as required by Council's DCP, and having regard to the private open space provided in balconies and courtyards and the location of the

<p>Design guidance is also provided for development unable to achieve the design criteria, such as on sites within business zones, or in a dense urban area.</p>	<p>site in a commercial centre and within walking distance of Umina Beach and recreational facilities.</p> <p>The <i>Apartment Design Guide</i> recognises that where developments are unable to provide communal open space in accordance with the criteria, such as on sites within business zones or in a dense urban area, there are alternatives, such as providing larger balconies and increased private open space for apartments. These circumstances apply to the subject land and proposal, which is on commercial zoned land in a defined centre, and where DCP controls require ground floor commercial use and encourage development to build to side and rear boundaries at the lower levels. The proposal provides balcony/ courtyard sizes in excess of the minimum areas required under the <i>Apartment Design Guide</i>, and where there is good proximity to public open space and facilities, both of which apply to the subject proposal, which has good access to regular bus services, and is within walking distance of Umina Beach and recreational facilities.</p>
<p><b>Deep Soil Zones</b> For sites greater between 650m<sup>2</sup> and 1,500m<sup>2</sup>, 7% of site area, min width 3m.</p> <p>Design guidance is also provided where the design criteria is not possible to be achieved.</p>	<p>The proposal does not provide deep soil areas of 3m width, however a landscaped area of 66.87m<sup>2</sup> with 3m width and 800mm soil depth is provided at the rear of the commercial premises at the ground level, perimeter planting boxes with 600mm soil depth are provided on the 1<sup>st</sup> and 4<sup>th</sup> levels and permeable courtyard areas with 800mm soil depth and stepping stone pavers are provided on the Level 1 podium adjoining Units 2 and 3 on the northern side.</p> <p>The <i>Apartment Design Guide</i> recognises that achieving the deep soil area may not be possible on some sites, including commercial sites in centres and where there are non-residential uses at ground level, both of which apply to the subject site and proposal, and where acceptable stormwater management is achieved, and alternative forms of planting are provided such as on structures, as is proposed in the application.</p>
<p><b>Visual Privacy</b> Side &amp; rear boundary setbacks <u>Habitable</u></p> <ul style="list-style-type: none"> <li>• 6m up to 4 storeys</li> <li>• 9m 5-8 storeys</li> </ul> <p><u>Non- Habitable</u></p> <ul style="list-style-type: none"> <li>• 3m up to 4 storeys</li> <li>• 4.5m 5-8 storeys</li> </ul>	<p>The subject land is zoned commercial, and DCP requirements encourage development to build to the side and rear boundaries for the first 2 levels, and particularly where development on adjoining sites is also likely to build to the boundary.</p> <p>There are no multi-storey residential developments on surrounding properties, although there is potential for this to occur in the future with shop top housing.</p> <p>The proposal provides 6m setbacks from building walls and windows to the northern and western boundaries, and with balconies setback 4.5m on the northern side and 2.85m on the western side. On the northern side, approximately 50% of the overall balcony lengths have a reduced width of 1.5m which allows access for cleaning and maintenance, however</p>

	<p>are not of a width that is likely to be used for sitting or the placement of tables and chairs. Privacy screens are also proposed for all balconies to minimise any privacy impacts from balconies to adjoining properties.</p> <p>The <i>Apartment Design Guide</i> notes that no separation is required between blank walls, and these are provided at the upper levels adjoining commercial properties that front West Street, and these include architectural detailing and are likely to be built to at least in part when adjoining properties are redeveloped.</p>
<p><b>Solar &amp; Daylight Access</b>          Living rooms and POS of 70% of apartments receive min 3hrs sunlight, 9am-3pm mid-winter.</p> <p>Max 15% apartments receive no direct sunlight, 9am-3pm mid-winter.</p>	<p>The proposal provides 71% apartments with solar access. There are 4 apartments which face south and will not receive direct sunlight, however these units take considerable advantage of ocean views to the south (as is a consideration referenced in the <i>Apartment Design Guide</i>), and the balance of apartments all receive some solar access.</p> <p>The <i>Apartment Design Guide</i> recognises that achieving the solar access design criteria may not be possible on some sites, including where significant views are oriented away from the desired aspect for direct sunlight, as is the case with the subject site which has significant ocean views to the south to Umina Beach at the upper levels.</p>
<p><b>Natural Ventilation</b>          Min 60% apartments naturally cross ventilated.</p> <p>Max 18m depth of cross-through apartments.</p>	<p>57% of apartments receive ventilation and take advantage of coastal north easterly breezes. The shape of the site is unusual and cross ventilation to apartments has been maximised.</p> <p>All apartments have minimum dimensions of less than 18m.</p>
<p><b>Ceiling Heights</b>          Min 2.7m (hab), 2.4m (non-hab)</p>	<p>Min 2.7m floor levels will be provided</p>
<p><b>Apartment Size and Layout</b>          Min apartment size</p> <ul style="list-style-type: none"> <li>• 1 Bed 50m<sup>2</sup></li> <li>• 2 Bed 70m<sup>2</sup></li> <li>• 3 Bed 90m<sup>2</sup></li> </ul> <p>Variable sizing and layout requirements.</p>	<p>The proposal complies with 1-bedroom units being 58.03m<sup>2</sup>, 2-bedroom units being between 96.3 m<sup>2</sup> and 102.12m<sup>2</sup>, and 3-bedroom units ranging from 125.89m<sup>2</sup> to 138.24m<sup>2</sup>.</p> <p>The building has been designed to provide quality apartments that are well proportioned, functional and provide a good standard of amenity for residents. The depth of combined living, kitchen areas has been kept within 8 metres where one aspect.</p>
<p><b>Private Open Space</b>          Min balcony area/ depth</p> <ul style="list-style-type: none"> <li>• 1 Bed – 8m<sup>2</sup>/ 2m</li> <li>• 2 Bed – 10m<sup>2</sup>/ 2m</li> <li>• 3 bed – 12m<sup>2</sup>/ 2.4m</li> </ul>	<p>The proposal provides considerably more than the required private open space areas for all apartments, in either courtyards or balconies, all of which comply with the minimum depth requirements.</p>

<b>Common Circulation</b> Max 8 apartments off circulation core on a single level	The proposal has a maximum of 4 apartments serviced by the circulation core.
<b>Storage</b> <ul style="list-style-type: none"> <li>• 1 Bed – 6m<sup>3</sup></li> <li>• 2 Bed – 8m<sup>3</sup></li> <li>• 3 bed – 10m<sup>3</sup></li> </ul> 50% within apartment	The proposal will meet the requirements for storage, both in units and basement level storage areas, and reasonable storage is available for all apartments.

#### SEPP – Building Sustainability Index (BASIX)

A BASIX Certificate is submitted with the application that concludes that with the commitments contained in the certificate, the proposed development is able to meet BASIX requirements, and is BASIX compliant.

#### State Environmental Planning Policy 55 – Remediation of Land

SEPP 55 applies to all development and requires consideration and management of site contamination issues as part of the development assessment process. The current, and previously known use of the site has been for commercial purposes, and there are no known previous uses that would lead to the site being contaminated or unsuitable for the proposed use, and particularly noting that residential uses are only located on the upper levels.



## **6. ENVIRONMENTAL IMPACTS**

Council's Guide to preparing Development Applications identifies specific matters to be addressed in the Statement of Environmental Effects.

### **6.1 Environmental Impacts**

The proposal has considered a number of general environmental impacts including:

- **Waste.** Residential waste from the proposal will be stored in a separate enclosure to the commercial waste, and will be collected via Council's domestic waste contractor, with bins to be placed on Alfred Street for weekly collection, and a Waste Management Plan has been submitted with the application. Commercial waste will be collected by a commercial contractor.
- **Design.** The proposal responds to the location of the site in a local commercial centre, close to bus services, local shopping and services and recreational facilities, and the design responds to the site, with commercial premises located at the ground level with active street frontages. Overall the proposal exhibits an architectural design that will enhance the local area and is appropriate for the location and setting of the site.

### **6.2 Site Suitability**

The subject land has been zoned to permit commercial and shop top housing development, and the nature and form of the development has regard to the setting of the site with dual street frontages.

The site has an area of 1,416m<sup>2</sup> which is able to reasonably accommodate the proposed development.

A Geotechnical Report on the site and proposed development has been prepared by Douglas Partners, and is submitted with the application

### **6.3 Previous Uses**

The only known uses of the land have been for commercial purposes, which have remained until the present. It is considered there is a low likelihood of any site contamination as a result of previous uses, and all residential uses will be located on the upper levels of the development.

### **6.4 Site Isolation**

The proposal will occur around the property at 311-313 West Street, which is located on the corner of West and Alfred Streets, and contains a part single and part 2 storey commercial building containing a Commonwealth Bank branch, and with a zero side setback to the subject land and rear car parking accessed from Alfred Street. This property has an area of 505.9m<sup>2</sup> according to Council records.

The adjoining land at 311-313 West Street has the same planning controls as the subject land, being zoned B2 Local Centre with an LEP mapped building height of 14.25m and FSR of 1.8:1, and with the same permitted uses as the subject land. Gosford LEP 2014 does not specify any minimum lot size for the development of 311-313 West Street, and the site has compulsory nil setbacks to both West and Alfred Streets under Gosford DCP 2013.

With respect to site isolation, a representative of the owner has attempted to contact the owner of 311-313 West Street, with no success, to discuss options for the development of that property. Accordingly, and in accordance with the Land and Environment Court Planning Principle set out in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251, consideration has been given to the future development potential of 311-313 West Street, which does not have a minimum lot size for future development, and a schematic massing diagram for future development of 311-313 West Street is provided as part of the submitted architectural plans (Sheets 11.1 and 11.2) which shows that the 311-313 West Street retains reasonable development potential in its own right.

#### **6.5 Access and Traffic**

The site provides vehicular access from Alfred Street, and the driveway is located over 60m from the intersection of Alfred Street and West Street.

Car parking is addressed in the DCP assessment and submitted Parking Assessment Report, and the proposal meets the DCP requirements for the residential development, the existing chemist store spaces will be relocated and 15 parking spaces are provided for the new commercial uses, with a shortfall of 3 spaces which is offset by available car parking surrounding the site. The results of the parking surveys carried out as part of the Parking Assessment Report confirm that the adjacent public off-street car parking area and nearby kerbside parking areas have sufficient capacity to satisfy any increase in parking demand associated with the proposal which is not provided on site.

The Parking Assessment Report also addresses traffic generation associated with the proposal, based on the RTA Guide to Traffic Generating Development, and the estimated traffic generation for the combined mixed use development during weekday peak periods is 30 trips in the am peak and 36 trips in the pm peak. The Parking Assessment Report concludes the site has good access to public transport, with bus stops on both sides of the roads, servicing activities associated with the proposal will be minimal and the proposal will have no adverse safety impact on roads in the Umina Beach area.

#### **6.6 Stormwater and Water Quality**

Stormwater management and water quality is proposed in accordance with the submitted stormwater strategy plans prepared by ACOR Consultants.

### **6.7 Acid Sulfate Soils**

The site is identified as Class 4 for acid sulfate soils, and is 525m from Class 1 soils to the south-east (Umina Beach/ Broken Bay) and 1,080m from Class 2 soils to the east. The Geotechnical assessment report provided as part of the application addresses acid sulfate soils, and concludes that the proposal (including basement excavation) does not require management for acid sulfate soil conditions and that excavation could be carried out without reference to an acid sulfate soil management plan.

### **6.8 Aboriginal Heritage**

A search of the Aboriginal Heritage Information Management System (AHIMS) database shows that there are no aboriginal sites recorded in or within 200m the subject land, and no aboriginal places have been declared in or near the subject land. A copy of the search results is included as Attachment A.

### **6.9 View Impacts**

The subject land and surrounding properties are flat, and the proposal will not give rise to any unreasonable impacts on views from existing or future development.

### **6.10 Privacy**

Privacy impacts have been considered in the design of the proposal, with all walls and windows being setback 6m from the northern and western boundaries, and with privacy screens proposed for all balconies to minimise impacts on surrounding properties.

### **6.11 Overshadowing**

Shadow diagrams have been prepared showing shadowing from the proposed development in mid-winter and the March/ September equinox. During mid-winter, the proposal will result in shadowing of surrounding properties generally consistent with the height of buildings allowed in the zone, and the additional shadowing as a result of the variation to height controls will not result in significant additional overshadowing.

## 7. SECTION 4.15 CONSIDERATIONS

The following assessment addresses the matters required to be considered under Section 4.15 of the *Environmental Planning & Assessment Act 1979*.

### **(1) Matters for consideration—general**

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

(a) *the provisions of:*

(i) *any environmental planning instrument*

Comment: the proposal has been assessed against both the Gosford LEP 2014 and relevant State Environmental Planning Policies. The proposal is permissible in the zone, and variations have been sought under clause 4.6 of the LEP to building height and FSR having regard to the location of the site in a local commercial centre, and the design response that provides height at the rear of the site and maintains a pedestrian-friendly scale to West Street.

(ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved)*

Comment: The site is subject to the Planning Proposal for the draft Central Coast Local Environmental Plan (CCLEP) which applies to the entire LGA and has been publicly exhibited. Under the draft LEP the subject land retains its B2 Local Centre zoning, and both commercial premises and shop top housing remain permitted uses with consent in the B2 Local Centre zone under the draft LEP. The proposal is also consistent with the updated objectives for the B2 Local Centre zone under the draft LEP.

(iii) *any development control plan*

Comment: the proposal has been assessed against Gosford DCP 2013, and is generally consistent with relevant DCP requirements, with variations sought to building height, consistent with the requested clause 4.6 variation, and substantiated variations for communal open space, car parking and the provision of an internal pedestrian link, as addressed in the Statement, which are consistent with the objectives of the DCP.

(iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F*

Comment: There is no planning agreement relevant to the subject land or the proposal.



- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates*

Comment: There are no matters prescribed in the regulations that impact on the proposal.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

Comment: As detailed in the Statement, environmental impacts have been considered and addressed for the proposal, and in particular impacts on views, privacy and overshadowing. The social and economic impacts of the proposal are positive in terms of providing additional retail premises, increased housing and housing choice in an area well serviced by public transport, and contributing to the overall revitalisation of the Umina Beach village centre.

- (c) *the suitability of the site for the development*

Comment: As detailed in the previous section, the site is suitable for the proposed development.

- (d) *any submissions made in accordance with this Act or the regulations*

Comment: This is a matter Council will consider once the application has been notified.

- (e) *the public interest*

Comment: the proposal will provide a development that will result in the renewal of the site, with additional commercial premises and housing, consistent with the desired future vision of the centre, and in this regard is in the public interest.

## **8. CONCLUSION**

In conclusion, the proposal is a permissible use for the land and will provide a quality development that is consistent with the zoning of the land and the site's location in the Umina Village Centre and in close proximity to local shopping and services, public transport and recreational facilities. The proposal is consistent with the objectives of the B2 Local Centre zone and is permitted under the Gosford Local Environmental Plan 2014. The proposal seeks some variations to floor space ratio and building height requirements, in accordance with clause 4.6 of the LEP, and based on the site's location, and the location of development away from West Street in order to maintain a pedestrian-friendly scale to the main street. The proposal is generally consistent with the objectives of the Gosford Development Control Plan 2013, with some variations consistent with the clause 4.6 variation request and other matters, which are addressed in the DCP assessment. The proposal has considered acid sulfate soil impacts, which are addressed in the Statement, and an acid sulfate soil management plan is not required.

An assessment of the proposal has been carried out pursuant to Section 4.15 of the *Environmental Planning & Assessment Act 1979*, which supports the proposal.

## Attachment A – AHIMS Search Results

### 1 Alfred Street



Office of  
Environment  
& Heritage

### AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : 1 Alfred St

Client Service ID : 518114

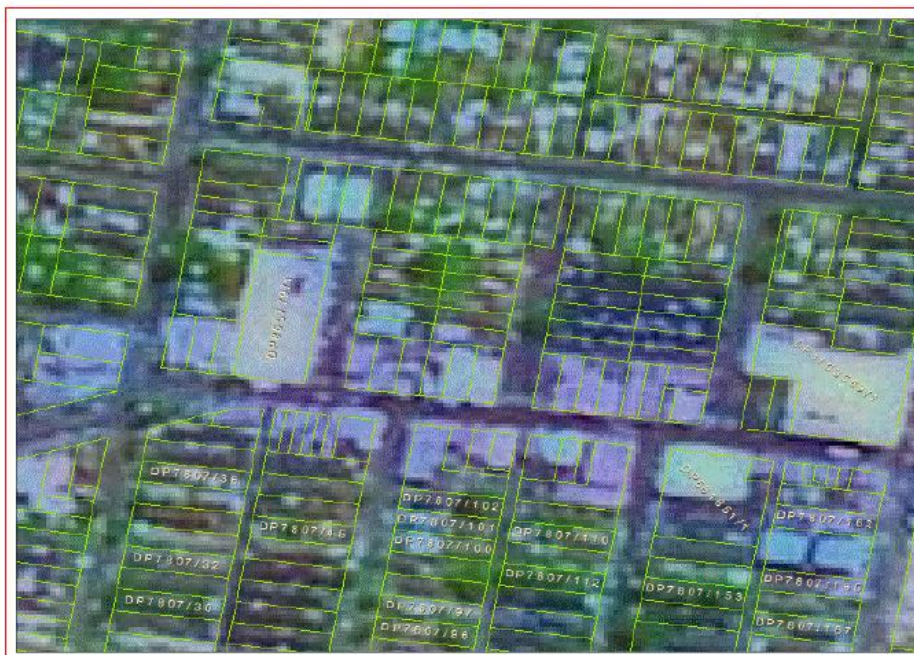
Michael Leavey Consulting  
Suite 2.08 Platinum Building East 4 Ilya Ave  
Erina New South Wales 2250  
Attention: Michael Leavey  
Email: michael@michaelleaveyconsulting.com.au

Date: 06 July 2020

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 33, DP:DP8872, Section : A with a Buffer of 200 meters, conducted by Michael Leavey on 06 July 2020.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

## Attachment A – AHIMS Search Results (cont.)

### 3 Alfred Street



Office of  
Environment  
& Heritage

## AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : 3 Alfred St

Client Service ID : 518112

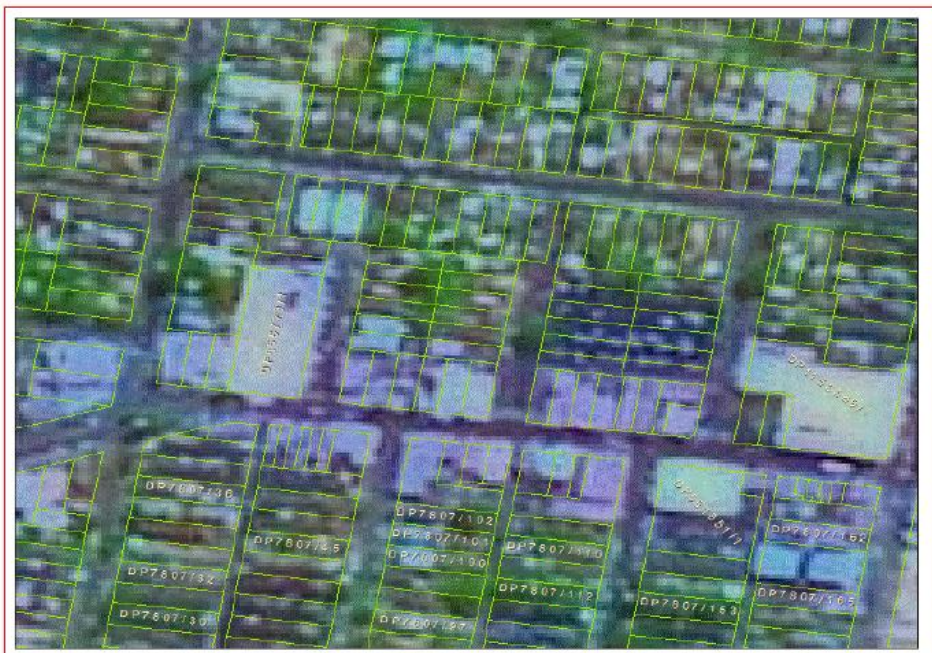
Michael Leavey Consulting  
Suite 2.08 Platinum Building East 4 Ilya Ave  
Erina New South Wales 2250  
Attention: Michael Leavey  
Email: michael@michaelleaveyconsulting.com.au

Date: 06 July 2020

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 32, DP:DP8872, Section : A with a Buffer of 200 meters, conducted by Michael Leavey on 06 July 2020.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *



## Attachment A – AHIMS Search Results (cont.)

### 315 West Street



Office of  
Environment  
& Heritage

### AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : 315 West St

Client Service ID : 518117

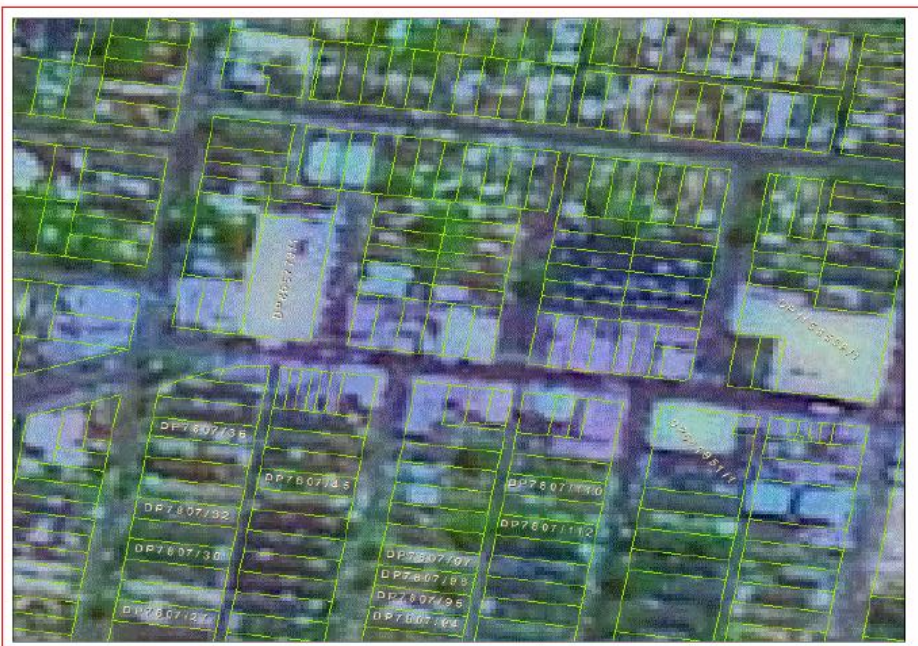
Michael Leavey Consulting  
Suite 2.08 Platinum Building East 4 Ilya Ave  
Erina New South Wales 2250  
Attention: Michael Leavey  
Email: michael@michaellaveyconsulting.com.au

Date: 06 July 2020

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 35, DP:DP8872, Section : A with a Buffer of 200 meters, conducted by Michael Leavey on 06 July 2020.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *