

# Central Coast

## Local Planning Panel

Central Coast  
LOCAL PLANNING PANEL MEETING  
Business Paper  
**3 September 2020**



# Meeting Notice

**The Local Planning Panel Meeting  
of Central Coast  
will be held remotely - online,  
at 2.00 pm,  
for the transaction of the business listed below:**

## **1 PROCEDURAL ITEMS**

1.1 Disclosures of Interest ..... 3

## **2 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

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## **3 PLANNING REPORTS**

3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
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3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car  
parking..... 120

3.3 Planning Proposal - 239 Debenham Road North, Somersby ..... 160

Donna Rygate  
**Chairperson**

**Item No:** 1.1  
**Title:** Disclosures of Interest  
**Department:** Governance

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**Central Coast**  
Local Planning Panel

3 September 2020 Local Planning Panel Meeting

Reference: F2020/02502 - D14161098

The NSW Local Planning Panel Code of Conduct states that all panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting.

### **Recommendation**

***That Panel Members now confirm that they have signed a declaration of interest in relation to each matter on the agenda for this meeting and will take any management measures identified.***

**Item No:** 2.1  
**Title:** Confirmation of Minutes of Previous Meeting  
**Department:** Governance

3 September 2020 Local Planning Panel Meeting

Reference: F2020/02502 - D14161120

Author: Rachel Callachor, Local Planning Panel Support Coordinator

### **Summary**

*The Minutes of the following Meetings of the Local Planning Panel, which have been endorsed by the Chair of those meetings, are submitted for noting:*

- ***Local Planning Panel Meeting held on 20 August 2020***

### **Recommendation**

***That the minutes of the previous Local Planning Panel Meeting held on 20 August 2020 are submitted for noting.***

### **Attachments**

- 1 MINUTES - Local Planning Panel - 20 August 2020 D14149476



## Local Planning Panel

### Minutes of the **LOCAL PLANNING PANEL MEETING**

Held remotely - online  
on 20 August 2020

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#### **Panel Members**

Chairperson	Kara Krason
Panel Experts	Garry Fielding Greg Flynn
Community Representative/s	Tony Tuxworth

#### **Central Coast Council Staff Attendance**

Ailsa Prendergast	Section Manager Development Assessment South
Chris Ross	Senior Development Planner Development Assessment South
Brian McCourt	Development Planner Development Assessment South
Rachel Callachor	Local Planning Panel Support Coordinator

#### **Public Forum Attendance**

Aliecha Weiss for the recommendation for item 3.1  
Charles Raneri on behalf of the applicant for item 3.1  
Anthony Banham on behalf of the applicant for item 3.1

The Chairperson, Kara Krason, declared the meeting open at 2:00pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

The Chair read an acknowledgement of country statement.

#### **Apologies**

***The Panel noted that no apologies had been received.***

#### **1.1 Disclosures of Interest**

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***The Panel noted that disclosure forms had been submitted and no conflicts of interest had been identified.***

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**2.1 Confirmation of Minutes of Previous Meeting**


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***The Minutes of the following Meetings of the Local Planning Panel, which have been endorsed by the Chair of those meetings, are submitted for noting:***

- ***Local Planning Panel Meeting and Briefing with Applicant and Council staff held on 6 August 2020***
- ***Supplementary Local Planning Panel Meeting held on 10 August 2020.***

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**Public Forum**


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***Aliecha Weiss spoke for the recommendation for item 3.1***

***Charles Raneri spoke on behalf of the applicant for item 3.1 and provided responses to enquiries from the Panel.***

***Anthony Banham spoke on behalf of the applicant for item 3.1 and provided responses to enquiries from the Panel.***

The Chair noted that in addition to submissions received during the notification period, written submissions were received from Ross Ward, Robyn and Roslyn Jenkins, W Anderson and Julie Collimore as an alternative to addressing the panel and provided to panel members ahead of the meeting, consistent with the procedure outlined on Council's website.

The Chair also noted that the Panel had received a Supplementary Assessment Report from Council Officers in relation to Item 3.2 and that Council had placed the supplementary assessment report on its website.

The Local Planning Panel public meeting closed at 3:23pm. The Panel moved into deliberation from 3:25pm, which concluded at 4:00pm.

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**3.1 DA57231/2019 - 454 Ocean Beach Road, Umina Beach  
Proposed 11 Room Boarding House Development with Caretakers  
Residence**


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<b>Site Inspected</b>	Yes
<b>Relevant Considerations</b>	As per Council assessment report
<b>Material Considered</b>	<ul style="list-style-type: none"> <li>• Documentation with application</li> <li>• Council assessment report</li> <li>• Submissions</li> <li>• Additional written submissions in lieu of addressing Panel</li> </ul>
<b>Council Recommendation</b>	Approval subject to conditions
<b>Panel Decision</b>	<b><i>1 That the Local Planning Panel grant consent to the proposed development, pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979,</i></b>

**subject to amendment of the conditions in the schedule attached to the report, and modified/additional conditions as detailed below, and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.**

**2 That Condition 1.1 regarding the architectural plan references description be amended as follows:**

*1.1 Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.*

**Architectural Plans by CDR Design PTY LTD**

<b>Drawing</b>	<b>Description</b>	<b>Issue</b>	<b>Date</b>
DA/02	Site Analysis	B	30.08.2019
DA/03	Site Plan	C	30.11.2019
DA/04	Ground Floor Plan	E	30.11.2019
DA/05	First Floor Plan	C	30.11.2019
DA/06	Roof Plan	C	30.11.2019
DA/07	Street Elevations	C	30.11.2019
DA/08	East and West Elevations	C	30.11.2019
DA/09	North and South Elevations	D	30.11.2019
DA/10	Sections AA and BB	C	30.11.2019
DA/11	Section CC	B	30.08.2019
DA/12	Context Sections	C	30.11.2019
DA/31	Bin Enclosure Design	A	30.11.2019

**3 That new condition 2.3 be included as follows:**

**2.3 Submit amendments to the approved plans and Boarding House Management Plan to Council pursuant to clause 139 of the Environmental Planning and Assessment Regulation 2000 that must detail:**

a) **Plan DA/04 – Ground Floor Plan is to be modified in the following manner:**

1. **Room 2 is to have the entry door and adjoining window relocated to the southernmost portion of the western wall.**

2. **The disabled car park and associated manoeuvring space for passengers is to be mirrored, with the car space and driveway shifted north to the area currently shown as the manoeuvring space, and the manoeuvring space shifted south to the area currently shown as the parking space.**

3. **The entry door to Room 2 is to open directly to the manoeuvring area of the relocated disabled car park, enabling direct access from the door through the manoeuvring area to the pathway of the boarding house, allowing access from Room 2 to the communal living room without the need for occupants to exit the site.**
- b) **Plans DA/02, DA/03, DA/07, DA/08 are to be modified to reflect the changes required under C2.3(a)**
- c) **The Boarding House Plan of Management is to be amended to include:**
1. **Details for an alternate contact person should the boarding house manager not be contactable.**
  2. **Arrangements for an alternate manager to be on-site during periods the manager is on leave.**
  3. **No smoking is to be permitted within the communal outdoor area.**
- 4 **That Condition 5.16 be amended to change the Height of screen to 1500mm, as detailed below:**
- 5.16 The privacy screens located atop the outer wall of the balconies of rooms 7, 8, 9, and 10 as shown on First Floor Plan DA/05, Revision C, dated 30.11.2019, and on North & South Elevations DA09, Revision D, dated 30.11.2019, both prepared by CDR Design Pty Ltd, are to be permanently fixed in place to a minimum height of 1500mm above RL8.60m with the horizontal slats angled such that no view in a downward manner is available to residents of the rooms from either within the room, or on the balcony.**
- 5 **That Condition 5.17 be amended to replace the word opaque with obscured or translucent, as detailed below:**
- 5.17 Northern windows to Room 6 as shown on First Floor Plan DA/05, Revision C, dated 30.11.2019, and on North & South Elevations DA09, Revision D, dated 30.11.2019, both prepared by CDR Design Pty Ltd are to be finished in an obscured or translucent glazing to a height of 1500mm above RL 8.75m.**
- 6 **That Condition 6.17 be amended to replace the word opaque with obscured or translucent, as detailed below:**
- 6.17 Northern windows to Room 6 are to remain as obscured or translucent glazing to the height specified in Condition 5.17 of this consent for the lifetime of the development.**
- 7 **That a new Condition be included in relation to site management, as detailed below:**

- 6.18 Contact phone numbers for the boarding house manager and an alternate contact person (should the manager not be contactable), are to be provided to all boarding house residents and to neighbouring residents should they have enquiries regarding the Boarding House operations.**
- 8 That a new Condition be included in relation to length of stay, as detailed below:**
- 6.19 The minimum period of stay is six (6) months as per the approved Plan of Management. No rooms is to be let to any person without a contract of tenancy entered into that stipulates the minimum stay as detailed within this condition.**
- 9 That Council advise those who made written submissions of the Panel's decision.**
- 10 That Council advise the relevant external authorities of the Panel's decision.**

**Reasons**

- 1 The Panel supports the proposal for the reasons provided in the assessment report.
- 2 The proposed development meets the objectives of the zone and satisfies the objectives and development standards of State Environmental Planning Policy (Affordable Rental Housing) 2009.
- 3 The proposed development is considered to be compatible with the character of the area, and subject to the conditions of consent including additional conditions relating to operational matters, will not have unreasonable impacts on the streetscape or the residential amenity of neighbouring properties.
- 4 The Proposal provides for housing choice and is of public benefit and in the public interest.
- 5 Adjoining property owners were notified of the proposed development in accordance with Council's policy. The panel considered written submissions made during and subsequent to the public exhibition including written submissions received as an alternative to addressing the panel consistent with Council procedures. The Panel considered that issues raised by the community have been adequately addressed in the

assessment report and that no new issues were raised during the public meeting.

**Votes** The decision was unanimous

### 3.2 DA 58092/2020 - 73 Caroline Street, East Gosford - 2 Lot Subdivision/Demolition of Existing Swimming Pool

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**Site Inspected** Yes

**Relevant Considerations** As per Council assessment report

**Material Considered**

- Documentation with application
- Council assessment report & Supplementary report
- Submissions

**Council Recommendation** Approval subject to conditions

**Panel Decision**

- 1** *That the Panel is satisfied that the clause 4.6 written request from the applicant to vary the minimum lot size standard in Clause 4.1 of Gosford Local Environmental Plan 2014 adequately addresses the matters required to be addressed and demonstrated under clauses 4.6(3) and 4.6(4) of the LEP. The Panel is satisfied that the written request demonstrates that there are sufficient environmental planning grounds to justify the non-compliance with the development standard and that compliance with the development standards is unreasonable and unnecessary in the circumstances of the case, as the proposed development will be consistent with the objectives of the clause, the R2 – Low Density Residential zone and the Environmental Planning and Assessment Act 1979. The concurrence of the Secretary of the Department of Planning Industry & Environment may be assumed.*
- 2.** *That the Local Planning Panel grant consent to the proposed development, pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979, subject to the conditions in the Council assessment report, and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.*
- 3** *That Council advise those who made written submissions of the Panel's decision.*

**Reasons**

- 1 The Panel supports the proposal for the reasons provided in the assessment reports.
  
- 2 It is considered that the proposed development meets the objectives and relevant provisions of Gosford LEP 2014 and Gosford Development Control Plan 2013 and is compatible with the character of the area and the prevailing subdivision pattern of neighbouring allotments (completed and approved).
  
- 3 Subject to the recommended conditions of consent, the proposed development will not have unreasonable impacts on the streetscape or the residential amenity of neighbouring properties.
  
- 4 The Proposal is considered to be of public benefit and is in the public interest.
  
- 5 Adjoining property owners were notified of the proposed development in accordance with Council's policy. The Panel considered the concerns raised by the community in the submissions have been adequately addressed in the assessment report. No new issues were raised by the public at the meeting.

**Votes**

The decision was unanimous

**Item No:** 3.1  
**Title:** Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah

**Department:** Environment and Planning

3 September 2020 Local Planning Panel Meeting

Reference: DA/993/2019 - D14148009  
Author: Amanda Hill, Town Planner  
Manager: Salli Pendergast, Principal Development Planner North  
Approver: Andrew Roach, Unit Manager, Development Assessment

### Summary

An application has been received under Section 8.2 of the *Environmental Planning and Assessment Act, 1979 (EP&A Act)* for Council to review its decision on determination of Development Application No. DA/993/2019 for proposed Boarding House (Comprising 2 Buildings, 18 Double Rooms & Caretakers Room) & Associated Works at 17 Burns Road, Ourimbah. The Application was refused under delegated authority on 15 April 2020.

The Section 8.2 review application proposes to amend the original proposal. The original application was for an 18 room boarding house across two buildings accommodating 36 lodgers and an on-site manager. The amended proposal is for a 15 room boarding house development across two buildings accommodating 30 lodgers and an on-site manager.

The application has been examined having regard to the matters for consideration detailed in section 4.15 and section 8.2 of the Environmental Planning & Assessment Act 1979 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application has been referred to the Local Planning Panel as a result of the number of written objections received during the public exhibition period. 28 submissions have been received.

<b>Applicant</b>	Urbanesque Planning Pty Ltd
<b>Owner</b>	Pinchgut Pty Ltd
<b>Application No</b>	DA/993/2019
<b>Description of Land</b>	Lot 17 DP 706878, Lot 18 DP 706878, Lot 19 DP 706878, Lot 20 DP 706878 17 Burns Road, OURIMBAH NSW 2258
<b>Proposed Development</b>	Boarding House (Comprising 2 Buildings, 15 Double Rooms & Caretakers Room) & Associated Works
<b>Site Area</b>	2247.40 m <sup>2</sup>
<b>Zoning</b>	R2 Low Density Residential
<b>Existing Use</b>	Vacant Land
<b>Employment Generation</b>	N/A
<b>Estimated Value</b>	\$586,230.00

**Recommendation**

- 1 ***That the Local Planning Panel refuse the application subject to appropriate reasons for refusal detailed in Attachment 2 to the report and having regard to the matters for consideration detailed in Section 8.2 of the Environmental Planning and Assessment Act.***
- 2 ***That Council advise those who made written submissions of the Panel's decision.***
- 3 ***That Council advise the relevant State Government authorities of the Panel's decision.***

**Precis:**

<b>Proposed Development under review</b>	Demolition of existing structures and construction of a boarding house (two buildings) containing 15 boarding rooms and a Manager's residence (a total of 16 rooms).
<b>Permissibility and Zoning</b>	The subject site is zoned R2 Low Density Residential under the provisions of <i>Wyong Local Environmental Plan 2013</i> . The proposed development is defined as a 'boarding house' which is permissible within the zone with the consent of Council.
<b>Relevant Legislation</b>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i></li> <li>• <i>State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)</i></li> <li>• <i>State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)</i>.</li> <li>• <i>Wyong Local Environmental Plan 2013 (WLEP 2013)</i></li> <li>• <i>Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP 2018)</i></li> </ul>
<b>Current Use</b>	Vacant
<b>Integrated Development</b>	No
<b>Submissions</b>	The development application under review was notified (in accordance with the provisions of the <i>Wyong Development Control Plan 2013</i> ) from 21 July 2020 to 14 August 2020. 28 written submissions were received. (An evaluation of matters raised in these submissions is included later in this report).

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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**Variations to Policies**

<b>Clause</b>	Clause 4.6 Exceptions to development standards under WLEP 2013
<b>Development Standard (SEPP)</b>	Clause 30AA Boarding houses in Zone R2 Low Density Residential - <i>A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.</i>
<b>SEPP</b>	<i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>
<b>LEP</b>	<i>Wyang Local Environmental Plan 2013</i>
<b>Departure basis</b>	The proposed number of boarding rooms is 15 which results in a 25% variation to the development standard.

The proposed variation to the development standard is addressed under Clause 4.6 of WLEP 2013 and is discussed in further detail within the report.

**The Site**

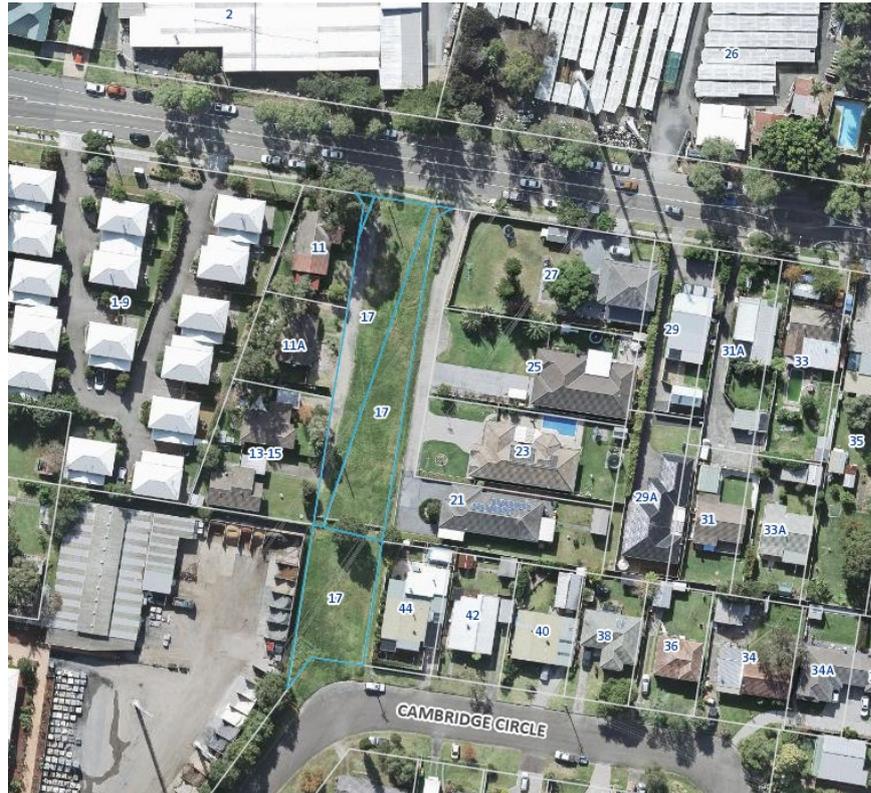
The site is commonly known as No. 17 Burns Road, Ourimbah and is legally described as Lot 17, 18, 19 and 20 in DP706878.

The site is vacant and has an overall site area of 2247.3m<sup>2</sup> and dual street frontages to Burns Road and Cambridge Circle. Burns Road has a frontage width of 24.925 metres and Cambridge Circle has a frontage of 27.785 metres. The site is generally rectangular in shape with vehicle access from Burns Road.

The site is constrained by an electricity easement and right of carriageway as shown in figure 3.

The site has right of carriageway burdens imposed over the property by virtue of the 88B attached to DP 875531, which specifies that Lots 17, 18 and 19 in DP706878 are burdened by a right of carriageway of variable width affecting the whole of the land. These rights of carriageway benefit Lots 10 and 11 in DP 875531.

The site is zoned R2 Low Density Residential under the provisions of *Wyang Local Environmental Plan 2013* (WLEP 2013).



**Figure 1 – Aerial photograph of subject and adjoining properties (site shown in outlined blue)**



**Figure 2 – View of site from Burns Road**

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

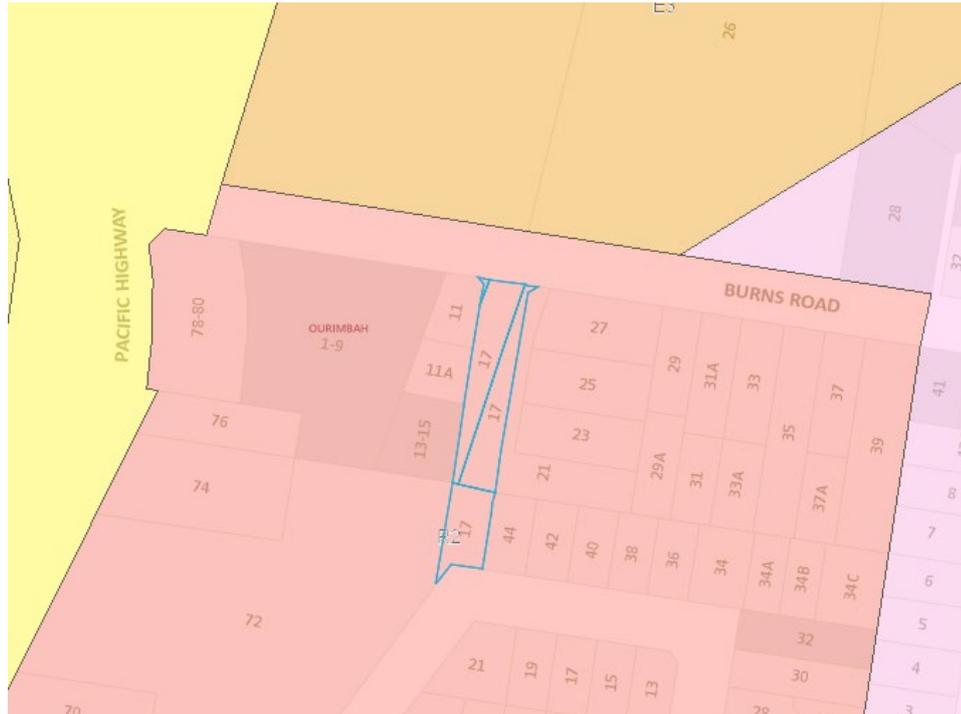


**Figure 3 - Extract from DP 875531 showing easements and rights of carriageway**

**Surrounding Development**

To the north of the subject site on the opposite side of Burns Road is a hardware and building supplies (Mitre 10) site which is heritage listed, to the east and south of the subject site are single storey dwellings. Immediately to the west of the site are single storey dwellings and a nursery (Lee Rowans Garden Centre).

The land to the north of the site is zoned E3 Environmental Management under WLEP 2013. Properties to the east, south and west of the site are zoned R2 Low Density Residential under WLEP 2013.





**Figure 6 – View of adjoining property to west**

### **Current Application**

The matter was previously determined by way of refusal under delegated authority on 15 April 2020.

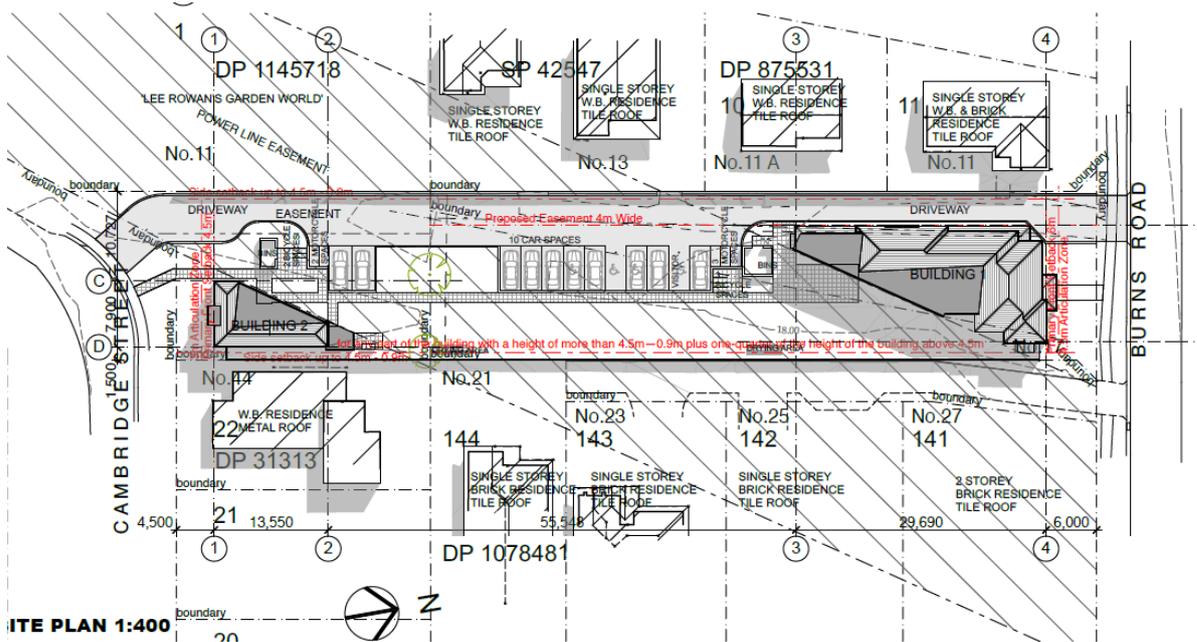
The applicant has submitted an application under Section 8.2(1)(a) of the *Environmental Planning & Assessment Act 1979* requesting Council to review its determination of the application.

It should be noted that the current application for review of Council's determination includes the following changes to the application:

- 15 double boarding rooms to accommodate 30 lodgers plus one managers room;
- Clause 4.6 variation for the proposed number of boarding rooms;
- Reduced building height for Building 1 from 7.47m to 6.915m;
- Reduced FSR from 0.29: 1 to 0.26:1; and
- Re-design to Burns Road building façade.

In all other respects the development proposal remains unchanged and the previous planning report and assessment are still applicable and included in Attachment 1.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**



**Figure 7 – Proposed Site Plan**



**Figure 8 – Perspective from Burns Road**

**History**

Council under delegated authority refused Development Application No. DA/993/2019 for proposed Boarding House (Comprising 2 Buildings, 18 Double Rooms and Caretakers Room) and Associated Works at 17 Burns Road, Ourimbah on 15 April 2020 for the following reasons:

- 1 *The proposal includes structures located within a right of carriageway and is not consistent with the objects of the Environmental Planning and Assessment Act 1979 in that it does not promote the orderly and economic use and development of the land. The proposed structures over the land would impede the right of carriageways that exist over the land.*

- 2 *The development does not comply with the objectives of the R2 zone of Wyong Local Environmental Plan 2013. In particular, the development does not provide for the housing needs of the community within a low-density residential environment and does not maintain and enhance the residential amenity and character of the surrounding area. The proposed built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use.*
- 3 *The proposal does not satisfy the provisions of Clause 7.9 of Wyong Local Environmental Plan 2013. The proposal is inadequate in the provision of essential services including vehicle access and storm water.*
- *The width of both the access driveway and circulation roadway for at least 6 metres from the property boundary does not meet the required minimum of 5.5 metres.*
  - *The proposal has not provided passing opportunities at least every 30 metres as per clause 3.2.2 of AS2890.1. The proposed single lane width is not supported.*
  - *A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken.*
  - *The proposal does not provide a 5 metres wide right of access from the public road to each Ausgrid asset, as required by Ausgrid.*
  - *Owners consent has not been provided for adjoining land owners at 11, 11A and 13-15 Burns Road that are impacted by battering of the internal roadway formation within the private property to the west as shown on the storm water plans.*
  - *Details and modelling of the 1% AEP event have not been provided to allow an assessment of any adverse impacts on adjoining land owners from filling and diverting a natural overland flow path. Details of stormwater connection and management of adjoining properties to the west has not been provided.*
  - *On-site stormwater detention has not been adequately detailed and is required as there are downstream overland flooding issues.*
- 4 *Inadequate information to determine the likely impacts of the development as required by Clause 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.*
- *The site is in proximity to (directly opposite) a listed heritage site (148) at 2 Burns Road. The applicant has not addressed the objectives of Clause 5.10 of Wyong Local Environmental Plan.*
  - *The Social Impact Assessment (SIA) did not include community consultation and does not provide for any mitigation against the perceived impacts of the community.*

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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- *A Plan of Management for the ongoing use of the boarding house has not been provided to address the impacts to the amenity and safety of residents and neighbours as a result of the ongoing use.*
  - *Building 1 is subject to the energy efficiency provisions of Section J of the BCA. The BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.*
  - *Insufficient information to determine the site is not within an accessible area and not subject to the provisions of the State Environmental Planning Policy (Affordable Rental Housing). The land is located approximately 150 metres from a suitable bus stop that provides a connection to Ourimbah station. The frequency of the service outside of peak times has not been adequately addressed.*
  - *A turning path assessment for the largest design vehicle likely to access the site has not been undertaken, to demonstrate the functionality of the driveway design.*
- 5 *The proposal results in amenity impacts to neighbouring properties, the streetscape and the immediately surrounding area and impacts to intended residents of the boarding house.*
- *Inadequate regard for the existing prevailing development pattern and privacy impacts of immediately adjoining properties.*
  - *Inadequate setback of the proposed driveway to boundaries with neighbouring properties and insufficient landscaping screen planting.*
  - *The proposed development does not provide a safe pedestrian route between neighbouring dwellings and Burns Road.*
  - *The proposed aesthetic of the development does not adequately reflect the residential character of the intended use or the residential character of the area.*
  - *The internal communal room in building 1 (Burns Road) is inadequate in size for the number of boarding rooms and is further constrained by being a thoroughfare.*
  - *The proposed 4.5 metre front setback to Burns Road is inconsistent with the 6 metre local setback controls for Category B roads (Burns Road) and the existing prevailing setback pattern of low-density residential development.*

**Applicant's Response to Reasons for Refusal**

The following is a summary of the applicant's response to the reasons for refusal.

- 1 *The proposal includes structures located within a right of carriageway and is not consistent with the objects of the Environmental Planning and Assessment Act 1979 in that it does not promote the orderly and economic use and development of the land. The proposed structures over the land would impede the right of carriageways that exist over the land.***

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Applicant's submission:*

Council is in receipt of the owner's legal advice from Somerville Legal Pty Ltd, dated 4 February which addresses this issue. A deferred commencement consent is requested.

*Planning comment:*

Council officer's have a different opinion in that imposing an easement in deferred commencement circumstances where the in-principle agreement of the owner of the land to be burdened has been provided is a different circumstance.

The requirements/matters relating to the imposition of a deferred commencement condition are taken from *Visionary Investment Group Pty Ltd v Wollongong City Council [2019] NSWLEC 1234*.

The case law states at 188 –

*However, there are limits to what can be achieved by conditions. Firstly, a condition of consent cannot, in effect, be a refusal in disguise – reason for close scrutiny of any deferred commencement condition. A condition of consent cannot defer determination to the future, when the ultimate decision-maker would have a very broad scope such that at the time of the issuing of the consent there would be certainty as to the eventual outcome (Mison v Randwick Municipal Council (1991) 23 NSWLR 734) (Mison). Mison identified two (potentially overlapping) errors may arise - that the condition effectively changes the development for which approval was sought, and, secondly that the condition is in terms which lack finality or certainty so that there is no valid consent.*

The extinguishment or amendment of the existing right of carriageway is not open to "deferred commencement" as the outcome is not certain, particularly where Council has not received any preliminary documentation from the beneficiary of the easement that they agree in principle to a change to the Right of Carriageway.

On this basis, the application is not supported having structures over the land that would impede the right of carriageway that exist over the land. The application under review has not addressed this reason for refusal.

**2 *The development does not comply with the objectives of the R2 zone of Wyong Local Environmental Plan 2013. In particular, the development does not provide for the housing needs of the community within a low-density residential environment and does not maintain and enhance the residential amenity and character of the surrounding area. The proposed built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use.***

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Applicant's submission:*

The amended proposal is considered to overcome Council's opinion concerning the built form and character of the surrounding residential area.

The maximum height of the development is 6.915m compared to 7.47m previously (Building 1). Building 2 has a height of 5.8m (as previously). Note: Under the Wyong DCP, the maximum building height for dwellings if not specifically mapped by the WLEP 2013 is 10m or two storeys.

The proposed FSR is 0.26:1 compared to 0.29:1 previously. GFA – 583.6m<sup>2</sup> compared to 651.1m<sup>2</sup> previously.

*Planning comment:*

The revised building height for building 1 and a reduced FSR does not overcome this reason for refusal.

The residential character of the surrounding area is domestic scale well-articulated, two storey townhouse developments and predominantly single storey dwellings. The character of the area does include some non-residential uses, however the objectives of the zone require the maintenance and enhancement of the residential character. The development still proposes building lengths that are excessive and largely unarticulated resulting in a building bulk that is uncharacteristic of the area and does not adequately reflect the residential nature of the proposed use and the surrounding R2 Low Density Residential zone. The lack of articulation contributes to the building having a character that is inconsistent with the anticipated outcomes of the zone.

In this regard, the built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use.

The development remains non-compliant with the objectives of the R2 Low Density Residential zone of *Wyong Local Environmental Plan 2013*. The application under review has not addressed this reason for refusal.

**3 *The proposal does not satisfy the provisions of Clause 7.9 of Wyong Local Environmental Plan 2013. The proposal is inadequate in the provision of essential services including vehicle access and storm water.***

- ***The width of both the access driveway and circulation roadway for at least 6 metres from the property boundary does not meet the required minimum of 5.5 metres.***

**3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Applicant's submission:*

The driveway has been widened to comply.

*Planning comment:*

The width of the access driveway at Burns Road frontage for 6m from the property boundary is compliant. The application under review has addressed this reason for refusal.

- ***The proposal has not provided passing opportunities at least every 30 metres as per clause 3.2.2 of AS2890.1. The proposed single lane width is not supported.***

*Applicant's submission:*

The driveway provides adequate passing opportunities.

*Planning comment:*

The submitted plans have not adequately demonstrated the dimensions for all off-street car parking spaces and access driveway widths to make an informed engineering assessment in accordance with clause 3.2.2 of AS2890.1. The application under review has not addressed this reason for refusal.

- ***A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken.***

*Applicant's submission:*

A swept path analysis is provided with the review documentation.

*Planning comment:*

A swept path analysis has been submitted for 2 car parking spaces on the proposed development site demonstrating swept paths of a 85<sup>th</sup> percentile vehicle. The swept path analysis does not demonstrate how trucks would access and turn on the site and consider Ausgrid's requirements of providing a 5m wide access to the right of access from the public road to each Ausgrid asset. The application under review has not addressed this reason for refusal.

- ***The proposal does not provide a 5 metres wide right of access from the public road to each Ausgrid asset, as required by Ausgrid.***

*Applicant's submission:*

Condition.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Planning comment:*

It is not appropriate to condition for a 5 metres wide right of access from the public road to each Ausgrid asset as required by Ausgrid because no such clear and unimpeded access is available by the proposed development. The application under review has not addressed this reason for refusal.

- ***Owners consent has not been provided for adjoining land owners at 11, 11A and 13-15 Burns Road that are impacted by battering of the internal roadway formation within the private property to the west as shown on the storm water plans.***

*Applicant's submission:*

No battering is required on land outside the site area as retaining walls will be provided in the same manner as illustrated further south. Therefore, no owner's consent will be required.

*Planning comment:*

There is no documentation submitted with the review application to confirm that there will be no earthworks such as battering in the neighbouring properties that would not require adjoining land owner's consent. No detail on retaining walls has been submitted for assessment either. The application under review has not addressed this reason for refusal.

- ***Details and modelling of the 1% AEP event have not been provided to allow an assessment of any adverse impacts on adjoining land owners from filling and diverting a natural overland flow path. Details of stormwater connection and management of adjoining properties to the west has not been provided.***

*Applicant's submission:*

The owner's stormwater engineer is to consult with Council's engineer prior to amending plans concerning this issue and the remaining matters.

*Planning comment:*

The revised application has not provided details and modelling of the 1% AEP event to demonstrate that the proposal will not have any adverse impacts on the adjoining land owners. The application under review has not addressed this reason for refusal.

- ***On-site stormwater detention has not been adequately detailed and is required as there are downstream overland flooding issues.***

**3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Applicant's submission:*

The owner's stormwater engineer is to consult with Council's engineer prior to amending plans concerning this issue and the remaining matters.

*Planning comment:*

The revised application has not submitted revised concept stormwater drainage plans prepared by a suitably qualified and experienced civil/hydraulic engineer addressing on-site stormwater detention. The application under review has not addressed this reason for refusal.

**4 *Inadequate information to determine the likely impacts of the development as required by Clause 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.***

- ***The site is in proximity (directly opposite) a listed heritage site (I48) at 2 Burns Road. The applicant has not addressed the objectives of Clause 5.10 of Wyong Local Environmental Plan.***

*Applicant's submission:*

Addressed in amended Statement of Environmental Effects.

*Planning comment:*

Clause 5.10(4) under WLEP 2013 requires the consent authority to consider the effect of the proposed development on the heritage significance of an item or area.

The site is in proximity (directly opposite) a listed heritage site (I48) at 2 Burns Road.

As per the Applicant's submission, the amended Statement of Environmental Effects has failed to identify this heritage item in proximity to the site and has not demonstrated that the proposal is consistent with the objectives of Clause 5.10 being summarised as to conserve environmental heritage, and the significance of items and conservation areas including fabric, setting and views. The application under review has not addressed this reason for refusal.

- ***The Social Impact Assessment (SIA) did not include community consultation and does not provide for any mitigation against the perceived impacts of the community.***

*Applicant's submission:*

The SIA is considered to adequately address the social impacts of the development.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Planning comment:*

The submitted Social Impact Assessment has acknowledged the topics raised by the community through Council's notification process, however, community consultation has not been undertaken and a clear plan for mitigating against the perceived impacts has still not been provided. The application under review has not adequately addressed this reason for refusal.

- ***A Plan of Management for the ongoing use of the boarding house has not been provided to address the impacts to the amenity and safety of residents and neighbours as a result of the ongoing use.***

*Applicant's submission:*

A Plan of Management is provided.

*Planning comment:*

The Operational Plan of Management (POM) provided is inadequate and does not provide confidence that the development will be well managed. The POM lacks the following information:

- 1 The Manager's role in relation to compliance with the House Rules and occupancy agreement.
- 2 The consequences for breaching the House Rules or occupancy agreement and the process that will apply.
- 3 A description of the complaints procedure for both external and internal complaints and internal conflicts.
- 4 The length of tenure offered, screening procedure and selection criteria for residents.
- 5 The Manager's role in relation to providing each new resident with information on local services, facilities and public transport to assist them on their arrival.
- 6 The rules regarding use of the common room to ensure reasonable amenity for all residents and neighbours.

The application under review has not adequately addressed this reason for refusal.

- ***Building 1 is subject to the energy efficiency provisions of Section J of the BCA. The BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.***

*Applicant's submission:*

The owner's consultant's advice differs. The whole development is subject to SEPP BASIX.

### 3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)

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*Planning comment:*

A BASIX Certificate has been submitted for a multi dwelling development for 16 dwelling units. The proposal is for a boarding house. BASIX has an alternative assessment process for assessing the thermal comfort of large boarding houses where it is proposed to accommodate more than 12 people or with a gross floor area of over 300m<sup>2</sup>. This applies to Building 1. NatHERS accredited software is unsuitable to model the thermal comfort of individual boarding house rooms.

Building 1 is a Class 3 building under the Building Code of Australia (BCA) and is therefore subject to Section J of the BCA. Section J outlines energy efficiency provisions and applies at the time of obtaining a Construction Certificate.

Building 2 is a smaller boarding house building and is required to complete a BASIX assessment using the single dwelling tool and assess the thermal comfort of the building as a whole.

The BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.

The application under review has not addressed this reason for refusal.

- ***Insufficient information to determine the site is not within an accessible area and not subject to the provisions of the State Environmental Planning Policy (Affordable Rental Housing). The land is located approximately 150 metres from a suitable bus stop that provides a connection to Ourimbah station. The frequency of the service outside of peak times has not been adequately addressed.***

*Applicant's submission:*

The site is not within an accessible area. This is made clearer in the amended Statement of Environmental Effects. While serviced by frequent busses, the intervals do not meet the requirements for an accessible area.

*Planning comment:*

The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2013 and the former Wyong Local Government Area is located in the Sydney Region (as defined by the SEPP). The subject site does not meet the requirements for an accessible area under Clause 27(2) of SEPP ARH, and therefore Clauses 29, 30 and 30A under Division 3 of SEPP ARH do not apply to the subject site.

The development for the purpose of a boarding house is permissible in the R2 Low Density Residential zone under the provisions of WLEP 2013. In the absence of local planning

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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provisions relating to boarding houses as a development category, a merit assessment that aligns with the assessment criteria identified within SEPP ARH has been undertaken on the proposed plans under review. It is to be noted that Clauses 29, 30 and 30A under Division 3 of SEPP ARH do not apply to the site by virtue of the site not being within an accessible area. A summary of that assessment has been included within Attachment 3. The application under review has addressed this reason for refusal.

- ***A turning path assessment for the largest design vehicle likely to access the site has not been undertaken, to demonstrate the functionality of the driveway design.***

*Applicant's submission:*

A swept path analysis is provided with the review documentation.

*Planning comment:*

A swept path analysis has been submitted for 2 car parking spaces on the proposed development site demonstrating swept paths of a 85<sup>th</sup> percentile vehicle. The swept path analysis does not demonstrate how trucks would access and turn on the site and consider Ausgrid's requirements of providing a 5m wide access to the right of access from the public road to each Ausgrid asset. The application under review has not addressed this reason for refusal.

**5 *The proposal results in amenity impacts to neighbouring properties, the streetscape and the immediately surrounding area and impacts to intended residents of the boarding house.***

- ***Inadequate regard for the existing prevailing development pattern and privacy impacts of immediately adjoining properties.***

*Applicant's submission:*

Each building is positioned with a compliant front setback which is consistent with the development pattern. Privacy impacts have been considered in the design of the development and may be subject to conditions if Council considers further measures are necessary.

*Planning comment:*

Both buildings have proposed front setbacks that are consistent with residential development permitted within the R2 zone. The remainder of the development remains unchanged with regards to addressing privacy impacts to the neighbouring dwellings particularly to the western side of the subject site. The application under review has not adequately addressed this reason for refusal.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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- ***Inadequate setback of the proposed driveway to boundaries with neighbouring properties and insufficient landscaping screen planting.***

*Applicant's submission:*

An amended landscape plan has been prepared and submitted providing for additional landscaping and screen planting.

*Planning comment:*

The submitted landscape plan (DA 1, Rev. C) shows similar landscaping along the western boundary to that proposed under the original application (DA 1, Rev. B). This landscaping and proposed boundary fencing along the western boundary has no regard for the existing right of carriageways over the subject site benefiting the neighboring properties to the west.

The application under review has not shown any amendment to setback of the driveway from the western boundary to soften the hard stand area of the site and separate it from neighbouring properties. The application under review has not adequately addressed this reason for refusal.

- ***The proposed development does not provide a safe pedestrian route between neighbouring dwellings and Burns Road.***

*Applicant's submission:*

The site is not to be accessed by neighbouring dwellings.

*Planning comment:*

The proposal under review does not provide adequate pedestrian safety. The proposed driveway will service 10 car parking spaces for the proposed boarding house along with 4 dwellings on neighbouring properties. The driveway design does not provide sufficient space for two way passing traffic, nor does it provide a footpath. A dedicated footpath within the development should be provided for safe pedestrian movement from Cambridge Street to Burns Road, to allow residents to safely access public transport, particularly having regard for the potential for vehicular conflict in two way traffic and the existing right of carriageway over the land that benefit Lots 10 and 11 in DP 875531. The application under review has not adequately addressed this reason for refusal.

- ***The proposed aesthetic of the development does not adequately reflect the residential character of the intended use or the residential character of the area.***

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

*Applicant's submission:*

The design of the development has been amended to reflect a more domestic character. Refer to revised presentation of Building 1. Council had previously indicated that there were no issues with the scale and presentation of Building 2 which faces Cambridge Circle.

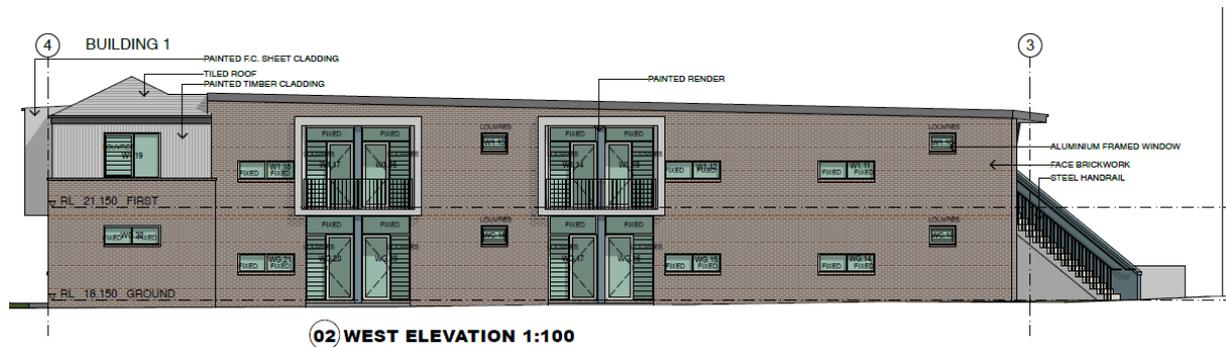
*Planning comment:*

The revised presentation to building 1 has addressed the front setback criteria within the low density residential zone and has provided landscaping within this setback.

The original presentation of building 1 is shown in figures 9 and 10:



**Figure 9 - Original presentation of building 1 (north elevation)**



**Figure 10 - Original presentation of building 1 (west elevation)**

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

The proposed presentation of building 1 is shown in figures 11 and 12:



**Figure 11 - Proposed presentation of building 1 (north elevation)**



**Figure 12 - Proposed presentation of building 1 (west elevation)**

### 3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)

The proposed presentation of building 2 with building 1 in the background in shown in figure 13.



**Figure 13 - Proposed presentation of building 2 with building 1 in background**

The revised presentation has improved the front setback and articulation to building 1 only. Buildings 1 and 2 has retained a built form that is incongruous within the existing surrounding R2 zone. The proposal remains unacceptable in terms of building length and articulation. Building 1 retains a building length of 29 metres and results in building bulk on the site. Building 2 has wall lengths greater than 10m with no substantial articulation resulting in building bulk.

The side elements are still highly visible elements due to the orientation of adjoining lots, and insufficient consideration has been given to these facades and additionally to the existing development pattern of the immediately adjoining properties within the area. The development will overlook and create privacy impacts to these adjoining properties.

The proposed aesthetic of the development does not adequately reflect the residential character of the intended use and residential character of the area. The proposal is unacceptable in terms of building bulk and scale. The building design is incongruous within its context and with the intended use and the anticipated development outcomes of the R2 zone.

The application under review has not adequately addressed this reason for refusal.

- ***The internal communal room in building 1 (Burns Road) is inadequate in size for the number of boarding rooms and is further constrained by being a thoroughfare.***

*Applicant's submission:*

The amended proposal has redesigned the area and location of the communal room. The room is self contained and more accessible to all lodgers.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Planning comment:*

The revised plans show a ground floor communal room within building 1 that is reasonable in size and is not a thoroughfare. As required by SEPP ARH, this communal room is required to receive a minimum of 3 hours of direct sunlight between 9am and 3pm mid winter. The application under review has not submitted solar access plans to ascertain whether the communal room will receive sufficient solar access.

- ***The proposed 4.5 metre front setback to Burns Road is inconsistent with the 6 metre local setback controls for Category B roads (Burns Road) and the existing prevailing setback pattern of low-density residential development.***

*Applicant's submission:*

The setback to Burns Road has been amended to 6m.

*Planning comment:*

A 6m front setback and a 24.2m<sup>2</sup> articulation zone is proposed for building 1 facing Burns Road. The application under review has addressed this reason for refusal.

**Ecologically sustainable principles**

The proposal has been assessed having regard to ecologically sustainable development principles and it is considered that the development does not adequately demonstrate that it is consistent with the principles.

The proposed development does not demonstrate satisfactory stormwater, drainage and erosion control and that the proposal is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations.

**Climate change**

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application.

This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope/combat/withstand these potential impacts. Further consideration in relation to flood affectation of the site is required by the applicant.

### **Assessment**

Having regard for the matters for consideration detailed in s. 4.15 of the EP&A Act and other statutory requirements, Council's policies and s. 10.7 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

#### ***State Environmental Planning Policy (Affordable Rental Housing) 2009***

SEPP ARH 2009 identifies that "Division 3 – Boarding Houses" applies to land to any of the following zones or any equivalent land use zones:

- (a) Zone R1 General Residential,*
- (b) Zone R2 Low Density Residential,*
- (c) Zone R3 Medium Density Residential,*
- (d) Zone R4 High Density Residential,*
- (e) Zone B1 Neighbourhood Centre,*
- (f) Zone B2 Local Centre,*
- (g) Zone B4 Mixed Use*

The application of SEPP (ARH) is subject to the limitations of clause 27 which provides:

- (1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.*
- (2) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.*
- (3) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.*

The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2013 and the former Wyong Local Government Area is located in the Sydney Region (as defined by the SEPP). The subject site does not meet the requirements for an accessible area under Clause 27(2) of SEPP ARH, and therefore Clauses 29, 30 and 30A under Division 3 of SEPP ARH do not apply to the subject site.

The development for the purpose of a boarding house is permissible in the R2 Low Density Residential zone under the provisions of WLEP 2013. In the absence of local planning provisions relating to boarding houses as a development category, a merit assessment that aligns with the assessment criteria identified within SEPP ARH has been undertaken on the

### **3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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proposed plans under review. It is to be noted that Clauses 29, 30 and 30A under Division 3 of SEPP ARH do not apply to the site by virtue of the site not being within an accessible area. A summary of that assessment has been included within Attachment 3.

The application under review is addressing Clause 30AA as a development standard with regard to the number of proposed boarding rooms permitted within the R2 Low Density Residential Zone. Clause 30AA of SEPP ARH states:

*A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.*

The application under review has reduced the number of boarding rooms from 18 to 15. The proposed number of rooms does not comply with Clause 30AA of the SEPP. The applicant is addressing this development standard under Clause 4.6 of WLEP 2013 which is discussed in further detail within this report.

#### **State Environmental Planning Policy (BASIX) 2004**

As the proposed building is for residential purposes, it is subject to the provisions of SEPP (BASIX) 2004.

A BASIX Certificate has been submitted for a multi dwelling development for 16 dwelling units. The proposal is for a boarding house. BASIX has an alternative assessment process for assessing the thermal comfort of large boarding houses where it is proposed to accommodate more than 12 people or with a gross floor area of over 300m<sup>2</sup>. This applies to Building 1. NatHERS accredited software is unsuitable to model the thermal comfort of individual boarding house rooms.

Building 1 is a Class 3 building under the Building Code of Australia (BCA) and is therefore subject to Section J of the BCA. Section J outlines energy efficiency provisions and applies at the time of obtaining a Construction Certificate.

Building 2 is a smaller boarding house building and is required to complete a BASIX assessment using the single dwelling tool and assess the thermal comfort of the building as a whole.

The BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.

The submitted BASIX report does not comply with SEPP (BASIX) 2004.

**Wyong Local Environmental Plan 2013**

*Zoning and Permissibility*

The subject site is zoned R2 Low Density Residential under the provisions of *Wyong Local Environmental Plan 2013* (WLEP 2013). The proposed development is defined as follows:

**Boarding house** means a building that:

- (a) is wholly or partly let in lodgings, and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

Development for the purpose of a boarding house is permissible with consent in the R2 Low Density Residential zone.

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain and enhance the residential amenity and character of the surrounding area.*
- *To provide a residential character commensurate with a low density residential environment.*

The development does not comply with the objectives of the R2 zone. In particular, the development does not provide for the housing needs of the community within a *low density* residential environment. The proposed development is excessive in density having regard for the low density zone. The proposal does not maintain and enhance the *residential amenity and character* of the surrounding area. The character of the area includes some non-residential uses, however the objectives of the zone require the maintenance and enhancement of the residential character. The residential character in the surrounding area of the site is domestic scale well articulated two storey townhouse developments and predominantly single storey dwellings. In this regard, the built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use. This forms a basis for refusal.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Principal Development Standards*

The subject site is not mapped as having any building height or floor space ratio limitations under clauses 4.3 or 4.4 of WLEP 2013.

*Clause 4.6 Exceptions to Development Standards*

The proposed development breaches the development standard under Clause 30AA of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH).

Clause 30AA of SEPP ARH states:

*A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.*

The proposed number of boarding rooms is 15 which represents a 25% variation to the maximum number of boarding rooms permitted under the development standard.

The applicant has made a written request pursuant to Clause 4.6 to vary the Clause 30AA development standard (Refer to Attachment 4). Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

- 4.6(3) Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The applicants written request has not demonstrated that strict compliance with the number of boarding rooms development standard is unnecessary and unreasonable. The proposal does not comply with the objectives of the R2 Low Density Residential zone; the proposal does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use and inadequate information determines the likely impacts of the development.

- 4.6(3) Whether there are sufficient environmental planning grounds to justify contravening the development standard.

The applicants written request has not provided sufficient grounds/reasons for the proposed variation to the development standard. The proposal is not consistent with the objectives of the R2 zone; the boarding house is not of a scale and appearance consistent with low density development; and the proposal has not minimised amenity impacts to neighbouring properties.

- 4.6(4) Whether the proposed development is consistent with the objectives of the particular standard and objectives of the zone.

There are no objectives to the development standard to consider.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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The proposal is not considered to be consistent with the objectives of the R2 Low Density Residential zone.

- 4.6(4) Whether the proposed development is in the public interest.

The proposal is not in the public interest as it is not consistent with the zone objectives.

- 4.6(4) Concurrence of the Director General

The proposed variation to the number of boarding rooms is 25% and would require concurrence from the Secretary of the Department of Planning, if the Clause 4.6 was supported.

- 4.6(5) Any State or regional significant planning matters raised by contravening the standard

There are no state or regional matters that arise as a result of the contravention of the standard.

The applicant's written request has not demonstrated that compliance with the development standard is unreasonable and unnecessary and does not satisfy the clause 4.6 criteria. The request to vary the Clause 30AA development standard relating to the maximum number of boarding rooms under SEPP ARH to permit 15 boarding rooms within the boarding house development is not supported.

*Clause 5.10 – Heritage conservation*

Clause 5.10(4) requires the consent authority to consider the effect of the proposed development on the heritage significance of an item or area.

The site is in proximity (directly opposite) a listed heritage site (I48) at 2 Burns Road.

The applicant has failed to identify this heritage item in proximity to the site and has not demonstrated that the proposal is consistent with the objectives of Clause 5.10 being summarised as to conserve environmental heritage, and the significance of items and conservation areas including fabric, setting and views.

*Clause 7.9 – Essential Services*

This clause requires Council to ensure that services such as water, sewer, electricity, and stormwater drainage and road access can be adequately provided. The application has not demonstrated that all of these services are adequately provided for the development and adjoining properties.

### **3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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The proposal is not satisfactory with regard to clause 7.9 of WLEP.

#### ***Draft Central Coast Local Environmental Plan 2018***

Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP) was exhibited from 2 December 2018 until 28 February 2019 and will replace the planning instruments relating to the former Local Government Areas. Under the provisions of Draft CCLEP, the site retains its R2 Low Density Residential zoning and development for the purpose of a boarding house remains permissible. There are no additional or amended clauses or provisions warranting further discussion.

#### ***Wyong Development Control Plan 2013***

##### *Chapter 2.11 – Parking and Access*

The DCP requires 1 parking space per 5 beds and 1 space for a manager. The proposal provides 10 parking spaces in total. The proposal is compliant in this regard.

Insufficient information has been provided to determine the design of the access driveway and internal circulation roadway meets the requirements of AS/NZS 2890.1.

##### *Chapter 3.1 – Site Waste Management*

A Waste Management Plan was submitted with the original application in accordance with the DCP. The development application under review has not clearly addressed waste collection arrangements for existing adjoining properties which at present utilise the site via the existing right of carriageway. It is noted that Ausgrid would not permit the waste collection vehicle to enter any parts of the site subject to the transmission easement due to required clearance from the infrastructure. A turning path assessment for the largest design vehicle likely to access the site such as garbage trucks has not been provided to demonstrate the functionality of the driveway design to address waste management for the site.

#### **Submissions**

The Section 8.2 application was notified in accordance with *Chapter 1.2 - Notification of Development Proposals* under *Wyong Development Control Plan 2013* (WDCP).

Notification was undertaken from 21 July 2020 to 14 August 2020. A total of 28 submissions were received. The objections request that the consent authority adhere to its previous decision to refuse the proposal.

A summary of the issues for objection are:

- Negative impacts to house prices.

### **3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Comment:* This is speculation and no evidence has been provided to support this. The impact of the proposed development on the value of adjoining properties is not a matter for consideration under s. 4.15 of the EP&A Act.

- Overshadowing concerns.

*Comment:* The submitted shadow diagrams demonstrate reasonable levels of solar access impact to adjoining properties

- Privacy impacts to adjoining dwelling houses

*Comment:* The remainder of the development remains unchanged with regards to addressing privacy impacts to the neighbouring dwellings particularly to the western side of the subject site.

- Not in accessible area – Clause 27 of SEPP ARH

*Comment:* The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2013 and the former Wyong Local Government Area is located in the Sydney Region (as defined by the SEPP). The subject site does not meet the requirements for an accessible area under Clause 27(2) of SEPP ARH, and therefore Clauses 29, 30 and 30A under Division 3 of SEPP ARH do not apply to the subject site. This matter is discussed further within the report.

- Does not comply with Clause 30AA of SEPP ARH

*Comment:* The proposed boarding house does not comply with the maximum number of rooms within the R2 Low Density Residential zone as required under Clause 30AA of SEPP ARH. The applicant has addressed the non-compliance with the development standard requesting a variation under Clause 4.6 of WLEP 2013. This matter is discussed further within the report. The Clause 4.6 variation to the development standard is not supported.

- No regard for heritage item

*Comment:* The application under review has failed to address this matter as discuss within this report.

- Ausgrid easement restrictions – 5m wide access driveway not provided

*Comment:* This matter is discussed in the report and the applicant has not provided the 5 metre side access.

- The driveway is not wide enough for entry and exit of 2 vehicles and trucks with no passing bays.

**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Comment:* Insufficient information has been submitted to address this matter as discussed within this report.

- Does not comply with objectives of the R2 zone

*Comment:* The development remains non-compliant with the objectives of the R2 Low Density Residential zone of *Wyang Local Environmental Plan 2013* as discussed within this report.

- Not compatible with character of the area

*Comment:* The built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use.

- The building impedes the right of carriageways that benefit lots 11 and 10 in DP 875531

*Comment:* The application under review has not addressed this issue and is a recommended reason for refusal.

- No community consultation

*Comment:* The submitted Social Impact Assessment has acknowledged the topics raised by the community through Council's notification process, however, community consultation has not been undertaken and a clear plan for mitigating against the perceived impacts has still not been provided.

- Number of rooms is excessive for the site

*Comment:* This has been discussed within the assessment of this report. Although reduced under the proposal, the number of rooms is a non compliance which is not supported.

- No boundary setbacks from driveway to allow landscaping

*Comment:* The application under review has not shown any amendment to setback of the driveway from the western boundary to soften the hard stand area of the site and separate it from neighbouring properties.

- Where will residents put their bins on kerb side for collection?

*Comment:* The proposal under review has not given adequate consideration and provision for the management of waste for adjoining properties.

### 3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah (contd)

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- No safe pedestrian route between neighbouring dwellings and Burns Road

*Comment:* The proposal under review has not given adequate consideration and provision for pedestrian safety of the neighbouring dwellings to the west to access Burns Road.

- Traffic on Burns Road would not allow for backing into traffic

*Comment:* Insufficient information has been submitted to address this matter as discussed within this report.

- Proposal does not comply with disabled access.

*Comment:* The application has nominated two accessible rooms G2 and G3 and two accessible parking spaces. The submitted Disability Access Report dated 13 March 2020 prepared by Lindsay Perry Access was prepared based on 22 boarding rooms. The access report does not reflect the proposed development under review.

- Safety regarding electromagnetic radiation from high voltage power lines.

*Comment:* The application was referred to Ausgrid who have not raised concern in this regard.

#### **Submissions from Public Authorities**

##### *Ausgrid*

The site is burdened by an electricity easement through the middle of the site. The application was referred to Ausgrid due to the proximity of overhead power lines, substation and the electricity easement, having regard for the consultation requirements of Clause 45 of State Environmental Planning Policy (Infrastructure) 2007.

Ausgrid provided the same response dated 28/11/2019 as originally submitted, which includes requirements and recommended conditions of consent. The proposal does not provide a 5 metre wide right of access from the public road to each Ausgrid asset, as required by Ausgrid in their advice.

#### **Internal Consultation**

The application was referred to the following internal officers and the following comments have been provided:

**3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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*Senior Development Engineer*

The application has been assessed by Council's Senior Development Engineer in relation to access, drainage and water/sewer and concerns have been raised in relation to the function of the driveway, inadequate consideration of storm water management and inadequate consideration of flood affectation. These concerns are contained within reasons for refusal.

*Social Planner*

Council's Social Planner has reviewed the submitted Social Impact Assessment and Plan of Management. The social planner has identified inadequacies in the documentation submitted. These inadequacies form reasons for refusal.

*Contributions Officer*

As the application is not supported, contributions have not been applied.

**Likely impacts of the development**

*Built environment*

Having regard to the applicant's response to the reasons for refusal and the assessment of those matters in review of this application, it is considered the potential built environment impacts are unreasonable.

*Natural environment*

Having regard to the applicant's response to the reasons for refusal and the assessment of those matters in review of this application, the proposal is considered unsatisfactory in relation to impacts on the natural environment.

*Economic impacts*

The application is not supported based on likely impacts of the development however the economic impacts of the development are not raised in reasons for refusal.

*Social impacts*

Having regard to the applicants response to the reasons for refusal and the assessment of those matters in review of this application; the strong community objection; lack of community consultation; lack of mitigations to address community concerns and an insufficient Plan of Management, it is considered, the application provides insufficient information to determine the likely social impacts of the development.

### **Suitability of the site for the development**

For the reasons identified in the above assessment and contained within Council's reasons for refusal, it is considered that the site is not suitable for the proposed development.

### **The Public Interest**

For the reasons identified in the above assessment and contained within Council's reasons for refusal and having regard for the matters raised in public submissions, the proposal is not considered to be in the public interest.

### **Other Matters for Consideration**

#### *Contributions*

Contributions would apply were the development application under review supported.

### **Conclusion and Recommendation:**

The development application under review has been assessed against the heads of consideration as detailed in section 4.15 and section 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and all other relevant instruments and polices.

The revised development has not resolved all the issues which resulted in the previous refusal. The proposal under review remains inconsistent with the objects of the EP&A Act in that it does not promote the orderly and economic use and development of the land. The proposal under review is considered unsatisfactory under the heads of consideration set out in Section 4.15 of the EP&A Act. The proposal under review is considered unsatisfactory with regard to *Wyong Local Environmental Plan 2013* with regard to zone objectives, heritage conservation and essential services. The proposal under review results in unsatisfactory impacts to the streetscape and neighbouring properties and there is insufficient information provided to determine all likely significant impacts. The proposal under review is not in the public interest, having regard for the matters raised in submissions received in relation to the development application under review.

The development application received under Section 8.2 of the *Environmental Planning and Assessment Act 1979* for Council to review its decision on determination of Development Application No. DA/993/2019 for proposed Boarding House (Comprising 2 Buildings, 18 Double Rooms & Caretakers Room) & Associated Works at 17 Burns Road, Ourimbah be refused for the reasons outlined in Attachment 2.

### **Attachments**

- |          |   |           |
|----------|---|-----------|
| <b>1</b> | Attachment 1 Original Development Assessment Report | D14149322 |
| <b>2</b> | Attachment 2 Section 8.2 Reasons for Refusal        | D14149324 |

**3.1 Section 8.2 Review Development Application No. DA/993/2019 -  
Proposed Boarding House - 17 Burns Road, Ourimbah (contd)**

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<b>3</b>	Attachment 3 SEPP ARH Compliance Table	D14149325
<b>4</b>	Attachment 4 Clause 4.6 Variation	D14149327
<b>5</b>	Development Plans	D14160598
<b>6</b>	Landscape Plan	D14034033

## CENTRAL COAST COUNCIL

Development and Assessment

**Boarding House (Comprising 2 Buildings, 18 Double Rooms & Caretakers Room) & Associated Works**

DA No: DA/993/2019

Author: Janice Wheeler

**SUMMARY**

A development application has been received for a Boarding House (Comprising 2 Buildings, 18 Double Rooms & Caretakers Room) & Associated Works at 17 Burns Road, OURIMBAH NSW 2258. The application has been assessed having regard to the matters for consideration detailed in Section 4.14 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements.

<b>Applicant</b>	Urbanesque Planning Pty Ltd
<b>Owner</b>	Pinchgut Pty Ltd
<b>Application No</b>	DA/993/2019
<b>Description of Land</b>	Lot 17 DP 706878, Lot 18 DP 706878, Lot 19 DP 706878, Lot 20 DP 706878 17 Burns Road, OURIMBAH NSW 2258
<b>Proposed Development</b>	Boarding House (Comprising 2 Buildings, 18 Double Rooms & Caretakers Room) & Associated Works
<b>Site Area</b>	2247.40 m <sup>2</sup>
<b>Zoning</b>	R2 Low Density Residential (proposed R2 Low Density Residential)
<b>Existing Use</b>	Vacant
<b>Employment Generating</b>	-
<b>Estimated Value</b>	\$586230

**RECOMMENDATION**

1. That Council **refuse** DA/993/2019 at Lot 17 DP 706878, Lot 18 DP 706878, Lot 19 DP 706878, Lot 20 DP 706878, 17 Burns Road, OURIMBAH NSW 2258 for a Boarding House (Comprising 2 Buildings, 18 Double Rooms & Caretakers Room) & Associated Works for the reasons provided in Attachment 1.
2. That Council **advise** those who made written submissions of Council's decision.
3. That the relevant state government authorities be notified of the decision.

*Do not delete this line*

**Precis:**

<b>Proposed Development</b>	Demolition of existing structures and construction of two boarding houses containing 18 boarding rooms and a Manager's residence (a total of 19 rooms).
<b>Permissibility and Zoning</b>	The subject site is zoned R2 Low Density Residential under the provisions of <i>Wyang Local Environmental Plan 2013</i> . The proposed development is defined as a boarding house which is permissible within the zone with the consent of Council.
<b>Relevant Legislation</b>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i></li> <li>• <i>State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)</i></li> <li>• <i>Wyang Local Environmental Plan 2013 (WLEP 2013)</i></li> <li>• <i>Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP 2018)</i></li> </ul>
<b>Current Use</b>	Vacant
<b>Integrated Development</b>	No
<b>Submissions</b>	44 submissions

**Variations to Policies**

Nil

**The Site**

The site is commonly known as No. 17 Burns Road, Ourimbah and is legally described as Lot 17, 18, 19 and 20 in DP706878.

The site is vacant and has an overall site area of 2247.3m<sup>2</sup> and dual street frontages to Burns Road and Cambridge Circle. Burns Road has a frontage width of 24.925 metres and Cambridge Circle has a frontage of 27.785 metres. The site is generally rectangular in shape with vehicle access from Burns Road.

The site is constrained by an electricity easement and right of carriageway.

The site is zoned R2 Low Density Residential under the provisions of *Wyong Local Environmental Plan 2013* (WLEP 2013).



**Figure 1 – Aerial photograph of subject and adjoining properties (site shown in outlined blue)**



**Figure 2 – View of site from Burns Road**

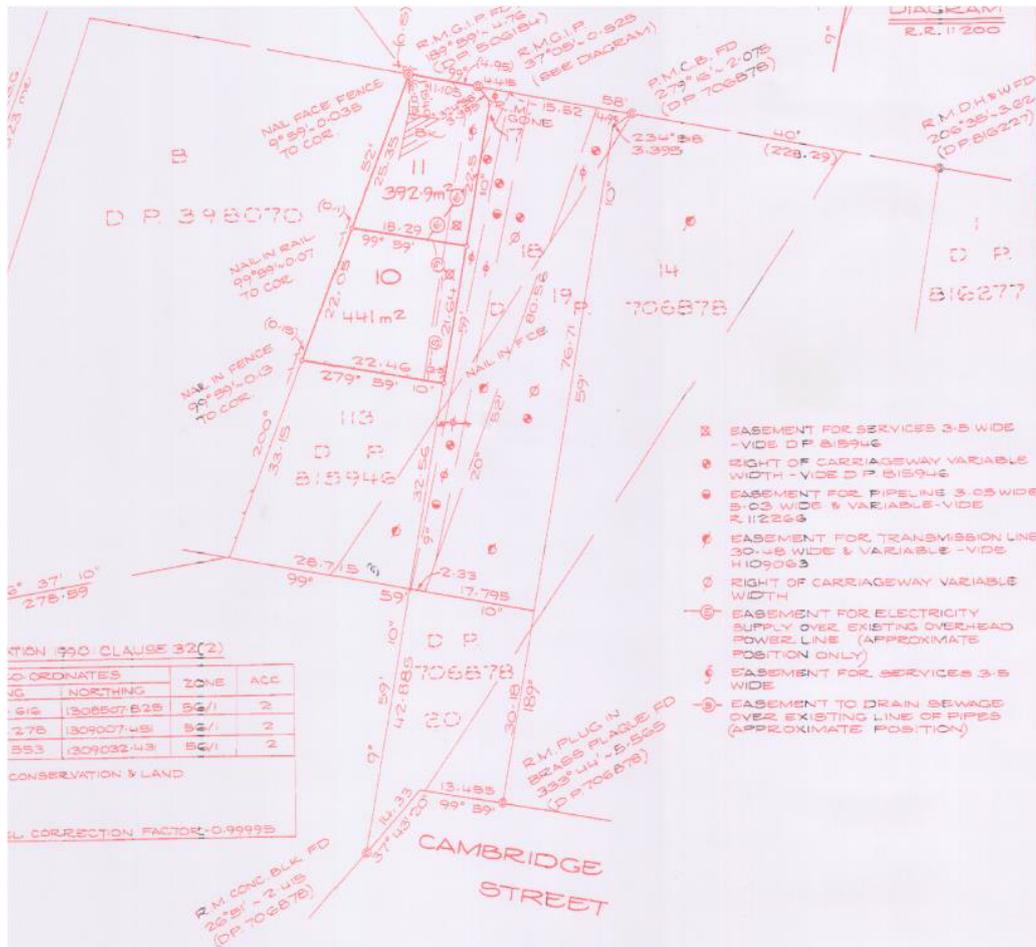


Figure 3 - Extract from DP 875531 showing easements and rights of carriageway

### Surrounding Development

To the north of the subject site on the opposite side of Burns Road is a hardware and building supplies (Mitre 10) site which is heritage listed, to the east and south of the subject site are single storey dwellings. Immediately to the west of the site are single storey dwellings and a nursery (Lee Rowans Garden Centre).

The land to the north of the site is zoned E3 Environmental Management under WLEP 2013. Properties to the east south and west of the site are zoned R2 Low Density Residential under WLEP 2013.

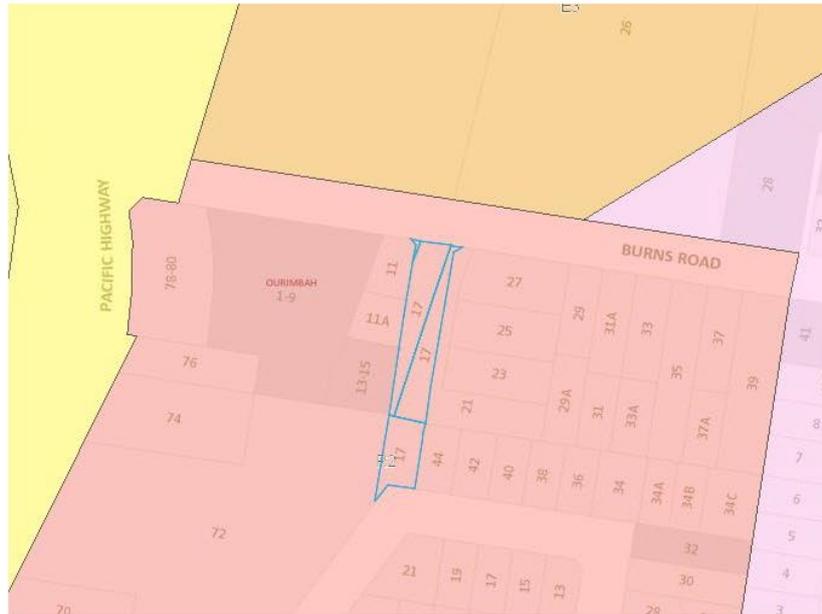


Figure 4 – Zoning Map (site depicted by blue outline)



Figure 5 – View of adjoining property to east



*Figure 6 – View of adjoining property to west*

### **The Proposed Development**

Development Application No. 993/2019 seeks consent for the construction of two, two storey buildings that in combination comprise a boarding house containing 19 rooms including a manager's residence.

The boarding house is proposed in the form of two buildings. Each building addresses either Burns Road or Cambridge Circle, with communal open space areas and at grade open car parking areas located between. An undercroft car parking area is proposed below the front building containing 10 resident car parking spaces which includes one car parking space for the on-site manager. A room to accommodate the on-site manager is proposed within the building fronting Burns Road.

The boarding rooms are proposed to be double rooms, each accommodating a maximum of two lodgers. Each room is proposed to contain a kitchenette and bathroom facilities. A common living room is proposed on the ground floor of the Burns Road building.

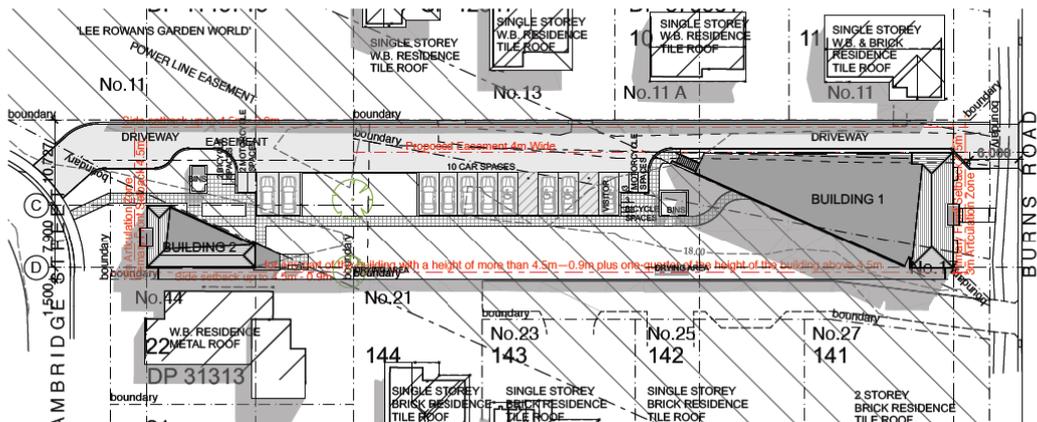


Figure 7 – Proposed Site Plan



Figure 8 – Perspective from North-West

**The Environmental Planning and Assessment Act 1979**

The proposal is not consistent with the objects of the *Environmental Planning and Assessment Act 1979* in that it does not promote the orderly and economic use and development of the land.

The site has right of carriageway burdens imposed over the property by virtue of the 88B attached to DP 875531, which specifies that Lots 17, 18 and 19 in DP706878 are burdened by a right of carriageway of variable width affecting the whole of the land. These rights of carriageway benefit Lots 10 and 11 in DP 875531. On this basis, Council cannot support an application for structures over the land that would impede the right of carriageways that exist over the land.

**Consultation – s. 4.15 (1)(d) of the EP&A Act**

The application was notified in accordance with *Chapter 1.2 (Notification of Development Proposals) of Wyong Development Control Plan 2013 (WDCP 2013)* from 7 November 2019 to 28 November 2019. A total of 44 submissions were received.

In accordance with Council's adopted *Policy for Determining Development Applications Subject to Significant Public Objections*, a business update was provided to Councillors and no call up request was received.

General issues raised during the notification periods include:-

- *Non-compliance with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.*

#### Comment

Boarding houses are a permissible use in the R2 zone under *Wyong Local Environmental Plan 2013*. As such, the applicant has elected to make an application pursuant to the local LEP. As Council does not have specific local controls relating to boarding houses, the applicant has utilised the SEPP (ARH) as a guide to a merit based assessment. Were the application subject to the SEPP (ARH), it would include a number of non-compliances. Refer to discussion below.

- *Number of boarding rooms is excessive in an R2 zone. Concern that it is not low density development.*

#### Comment

The application is made under *Wyong Local Environmental Plan 2013*, and as such is not limited to 12 boarding rooms in an R2 zone as required by Clause 30AA of SEPP (ARH). Notwithstanding the above, it is considered that the proposed 19 boarding rooms is too dense for the site and is not commensurate with a low density residential environment and the R2 zone.

- *The boarding house is not located in an accessible area.*

#### Comment

The application is not required to be in an accessible area as it is made under the provisions of the *Wyong Local Environmental Plan 2013*. The applicant has not provided sufficient information to determine if the site is within an accessible area as defined by SEPP (ARH) and as such whether the SEPP is applicable to the development. The site is within 150 metres of the Pacific Highway where bus services have good connection to Ourimbah Station during peak travel times.

- *Public through site access should be provided.*

Comment

The site is private freehold land and as such there is no requirement or obligation to provide public access beyond the obligations of the Right of Carriageways over the land that benefit directly adjoining land owners.

- *Insufficient information regarding the role of the caretaker.*

Comment

The application makes reference to a plan of management although this has not been provided. This issue is contained in Council's reasons for refusal.

- *Insufficient parking available.*

Comment

The DCP requires 1 parking space per 5 beds and 1 space for a manager. The proposal provides 10 parking spaces in total. The proposal is compliant in this regard.

- *Privacy concerns.*

Comment

The proposal does not have sufficient regard for the prevailing development pattern of the immediately adjoining properties.

- *Heritage impacts.*

Comment

The proposal has not identified or considered the heritage item on the opposite site of Burns Road. This is included in Council's reasons for refusal.

- *Building over right of carriageway.*

Comment

The 88B attached to DP 875531, specifies that Lots 17, 18 and 19 in DP706878 are burdened by a right of carriageway of variable width affecting the whole of the land. These rights of carriageway benefit Lots 10 and 11 in DP 875531. Council cannot support an application for structures over the land that would impede the right of carriageways that exist over the land. This is contained within Council's reasons for refusal.

- *Insufficient driveway width for service vehicles and pedestrian safety.*

Comment

Adequacy of the driveway and pedestrian safety are contained within Council's reasons for refusal. The proposal does not provide a 5 metre wide right of access from the public road to each Ausgrid asset, as required by Ausgrid in their advice.

- *Proposal does not comply with disabled access.*

#### Comment

The application has nominated an accessible room (G6) and a nominated parking space.

- *Safety regarding electromagnetic radiation from high voltage power lines.*

#### Comment

The application was referred to Ausgrid who have not raised concern in this regard.

- *Concern regarding the location of structures, proposed tree planting and parking of vehicles within the electricity transmission easement.*

#### Comment

Ausgrid have provided recommendations in relation to the application that would be required to adhere to (were the application supported).

- *Traffic on Burns Road would not allow for backing into traffic.*

#### Comment

Adequacy of the driveway and pedestrian safety are contained within Council's reasons for refusal.

- *The proposal does not have sufficient regard for the orientation of the surrounding subdivision pattern and does not allow for the access and amenity needs of these properties.*

#### Comment

The proposal does not have sufficient regard for the prevailing development pattern of the immediately adjoining properties. Issues relating to access are contained within Council's reasons for refusal.

- *The proposal does not have regard for the flow of water and is located in a floodway.*

#### Comment

This issue is contained within Council's reasons for refusal.

- *Safety concerns as there is insufficient information regarding occupants of the boarding house. Concern regarding alcohol and mental health issues.*

Comment

This is speculation with no evidence to substantiate this claim. The comment is considered to be based on perception rather than fact. The application makes reference to a plan of management although this has not been provided. This issue is contained in Council's reasons for refusal.

- *Negative impacts to house prices.*

Comment

This is speculation and no evidence has been provided to support this. The impact of the proposed development on the value of adjoining properties is not a matter for consideration under s. 4.15 of the EP&A Act.

- *The proposal will dominate the local character.*

Comment

The proposal has a built form character that is incongruous within the existing surrounding R2 Low Density Residential zone. This issue is included within Council's reasons for refusal.

- *Overshadowing concerns.*

Comment

The submitted shadow diagrams demonstrate reasonable levels of solar access impact to adjoining properties

- *View loss concerns.*

Comment

Although view impact relationships are not considered significant in this instance, they are the product of built form which is large and unarticulated and result in many amenity impacts including a perception of view interruption.

- *Insufficient consideration of waste servicing for existing adjoining residential properties.*

Comment

The proposal has not given adequate consideration and provision for the management of waste for adjoining properties.

**Public Authority Consultation**Ausgrid

The site is burdened by an electricity easement through the middle of the site. The application was referred to Ausgrid due to the proximity of overhead power lines, substation and the electricity easement, having regard for the consultation requirements of Clause 45 of State Environmental Planning Policy (Infrastructure) 2007.

Ausgrid provided a response dated 28/11/2019, which includes requirements and recommended conditions of consent. The proposal does not provide a 5 metres wide right of access from the public road to each Ausgrid asset, as required by Ausgrid in their advice (attachment 4).

### **Internal consultation**

The application was referred to the following internal officers and the following comments have been provided:

- Senior Development Engineer

The application has been assessed by Council's Senior Development Engineer in relation to access, drainage and water/sewer and concerns have been raised in relation to the function of the driveway, inadequate consideration of storm water management and inadequate consideration of flood affectation. These concerns are contained within reasons for refusal (reason number 3).

- Social Planner

Council's Social Planner has reviewed the submitted Social Impact Assessment. The social planner has identified inadequacies in the documentation submitted. These inadequacies form reasons for refusal (reason number 4).

- Contributions Officer

As the application is not supported, contributions have not been applied.

### **Ecologically sustainable principles**

The proposal has been assessed having regard to ecologically sustainable development principles and it is considered that the development does not adequately demonstrate that it is consistent with the principles.

The proposed development does not demonstrate satisfactory stormwater, drainage and erosion control and that the proposal is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations.

### **Climate change**

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application.

This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope/combat/withstand these potential impacts. Further consideration in relation to flood affectation of the site is required by the applicant.

### **Assessment**

Having regard for the matters for consideration detailed in s. 4.15 of the EP&A Act and other statutory requirements, Council's policies and s. 10.7 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

#### **s. 4.15 (1)(a)(i) of the EP&A Act: Provisions of relevant Instruments/Plans/Policies**

##### State Environmental Planning Policy (Affordable Rental Housing) 2009

SEPP ARH 2009 identifies that "Division 3 – Boarding Houses" applies to land to any of the following zones or any equivalent land use zones:

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential,
- (d) Zone R4 High Density Residential,
- (e) Zone B1 Neighbourhood Centre,
- (f) Zone B2 Local Centre,
- (g) Zone B4 Mixed Use

The application of SEPP (ARH) is subject to the limitations of clause 27 which provides:

(1) *This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.*

(2) *Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.*

(3) *Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.*

The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2013 and the former Wyong Local Government Area is located in the Sydney Region (as defined by the SEPP). Insufficient information has been provided by the applicant to demonstrate that the

site is not within an accessible area and as such not subject to the provisions of the SEPP (ARH). The land is located approximately 150 metres of a suitable bus stop that provides a connection to Ourimbah station, however the frequency of the service outside of peak times has not been adequately addressed.

The development for the purpose of a boarding house is permissible in the R2 Low Density Residential zone under the provisions of WLEP 2013 and the proposal does not rely on the provisions of SEPP ARH 2009. In the absence of local planning provisions relating to boarding houses as a development category, a merit assessment that aligns with the assessment criteria identified within SEPP ARH 2009 has been undertaken. A summary of that assessment has been included within Attachment 3.

#### State Environmental Planning Policy (BASIX) 2004

As the proposed building is for residential purposes, it is subject to the provisions of SEPP (BASIX) 2004. However, BASIX has an alternative assessment process for assessing the thermal comfort of large boarding houses where it is proposed to accommodate more than 12 people and has a floor area of over 300m<sup>2</sup>.

Where the above criteria is achieved, the building is a Class 3 building under the Building Code of Australia (BCA) and is therefore subject to Section J of the BCA. Section J outlines energy efficiency provisions and applies at the time of obtaining a Construction Certificate.

The BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.

#### **Wyong Local Environmental Plan 2013**

##### *Zoning and Permissibility*

The subject site is zoned R2 Low Density Residential under the provisions of Wyong Local Environmental Plan 2013 (WLEP). The proposed development is most accurately defined as follows:

**Boarding house** means a building that:

- (a) is wholly or partly let in lodgings, and
- (b) provides lodgers with a principal place of residence for 3 months or more, and
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Development for the purpose of a boarding house is permissible with consent in the R2 Low Density Residential zone.

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain and enhance the residential amenity and character of the surrounding area.*
- *To provide a residential character commensurate with a low density residential environment.*

The development does not comply with the objectives of the R2 zone. In particular, the development does not provide for the housing needs of the community within a *low density residential environment*. The proposed development is excessive in density having regard for the low density zone. The proposal does not maintain and enhance the *residential amenity and character* of the surrounding area. The character of the area includes some non-residential uses, however the objectives of the zone require the maintenance and enhancement of the residential character. The residential character in the surrounding area of the site is domestic scale well articulated two storey townhouse developments and predominantly single storey dwellings. In this regard, the built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use.

▪ *Principal Development Standards*

The subject site is not mapped as having any building height or floor space ratio limitations under clauses 4.3 or 4.4 of WLEP 2013.

▪ *Clause 5.10 – Heritage conservation*

Clause 5.10(4) requires the consent authority to consider the effect of the proposed development on the heritage significance of an item or area.

The site is in proximity (directly opposite) a listed heritage site (148) at 2 Burns Road.

The applicant has failed to identify this heritage item in proximity to the site and has not demonstrated that the proposal is consistent with the objectives of Clause 5.10 being summarised as to conserve environmental heritage, and the significance of items and conservation areas including fabric, setting and views.

▪ *Clause 7.9 – Essential Services*

This clause requires Council to ensure that services such as water, sewer, electricity, and stormwater drainage and road access can be adequately provided. The application has not

demonstrated that all of these services are adequately provided for the development and adjoining properties.

#### Roads, access & parking

The design of the access driveway and internal circulation roadway does not meet the requirements of AS2890.1, in particular Section 3.2.2 and Wyong Development Control Plan 2013 – Chapter 2.11 – Parking & Access Clause 4.3, d. The width of both the access driveway and circulation roadway for at least 6 metres from the property boundary does not meet the required minimum of 5.5 metres.

The proposal has not provided passing opportunities at least every 30 metres as per clause 3.2.2 of AS2890.1. The proposed single lane width is not supported by Council's Traffic Engineer.

A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken, to demonstrate the functionality of the driveway design.

The proposal does not provide a 5 metres wide right of access from the public road to each Ausgrid asset, as required by Ausgrid in their advice.

#### Stormwater Management

The stormwater plans show battering of the internal roadway formation within private property to the west. Owners consent has not been provided for adjoining land owners at 11, 11A and 13-15 Burns Road).

A natural overland flow path that conveys flows from upstream properties is proposed to be filled and diverted along the western boundary. Details and modelling of the 1% AEP event have not been provided to allow an assessment of any adverse impacts on adjoining land owners. Details of stormwater connection and management of adjoining properties to the west has not been provided.

On-site stormwater detention has not been adequately detailed and is required having regard for the location of the development in the local catchment and known downstream overland flooding issues.

Accordingly, the proposal is not satisfactory with regard to clause 7.9 of WLEP.

#### ***Draft Central Coast Local Environmental Plan 2018***

Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP) was exhibited from 2 December 2018 until 28 February 2019 and will replace the planning instruments relating to the former Local Government Areas. Under the provisions of Draft CCLEP, the site retains its R2 Low Density Residential zoning and development for the purpose of a boarding house

remains permissible. There are no additional or amended clauses or provisions warranting further discussion.

**s. 4.15(1)(a)(iii) of the EP&A Act: Provisions of any Development Control Plan**

***Wyong Development Control Plan 2013***

*Chapter 2.11 – Parking and Access*

The DCP requires 1 parking space per 5 beds and 1 space for a manager. The proposal provides 10 parking spaces in total. The proposal is compliant in this regard.

The design of the access driveway and internal circulation roadway does not meet the requirements of AS2890.1, in particular Section 3.2.2 and Wyong Development Control Plan 2013 – Chapter 2.11 – Parking & Access Clause 4.3, d. The width of both the access driveway and circulation roadway for at least 6 metres from the property boundary does not meet the required minimum of 5.5 metres.

The proposal has not provided passing opportunities at least every 30 metres as per clause 3.2.2 of AS2890.1. The proposed single lane width is not supported by Council's Traffic Engineer.

A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken, to demonstrate the functionality of the driveway design.

*Chapter 3.1 – Site Waste Management*

A Waste Management Plan was submitted with the application in accordance with the DCP. The application does not clearly address waste collection arrangements for existing adjoining properties which at present utilise the site via the existing right of carriageway. It is noted that Ausgrid would not permit the waste collection vehicle to enter any parts of the site subject to the transmission easement due to required clearance from the infrastructure.

**s. 4.15(1)(b) of the EP&A Act: Likely impacts of the development**

**a) Built environment**

The proposal has a built form character that is incongruous within the existing surrounding R2 zone. The surrounding character includes some non-residential uses that include large buildings of low single storey scale. The residential character of the immediate area is domestic scaled well articulated two storey townhouse developments and single storey dwellings.

The proposal is unacceptable in terms of building length and articulation. The building addressing Burns Road has a building length of greater than 29 metres of two storey built form that has no substantial articulation and results in a building bulk that is uncharacteristic of the area. The side elevations are highly visible elements due to the orientation of

adjoining lots, and insufficient consideration has been given to these facades and additionally to the existing development pattern of the immediately adjoining properties within the area.

The proposal is unacceptable in terms of building bulk and scale. The design of the proposal does not reflect the residential character of the proposed use. Architectural elements of the design (such as the rear stair element) create a sense of scale and use that is incongruous within its context and with the intended use and the anticipated development outcomes of the R2 zone.

The proposal does not provide adequate pedestrian safety. The proposed driveway will service 10 parking spaces for the proposed boarding house along with 4 dwellings on neighbouring properties. The driveway design does not provide sufficient space for two way passing traffic, nor does it provide a footpath. The reduced parking requirement for a boarding house anticipates pedestrian and public transport use. A dedicated footpath within the development should be provided for safe pedestrian movement from Cambridge Street to Burns Road, to allow residents to safely access public transport, particularly having regard for the potential for vehicular conflict in two way traffic.

The internal communal room in building 1 (Burns Road) is inadequate in size for the number of boarding rooms and is further constrained by being a thoroughfare. The communal room should have good passive surveillance by occupants of the boarding house including the site manager.

The proposed 4.5 metre front setback to Burns Road is inadequate and inconsistent with the 6 metre local setback controls for Category B roads (Burns Road) and the existing prevailing setback pattern of low density residential development on Burns Road.

The site is in proximity (directly opposite) a listed heritage site (I48) at 2 Burns Road. The applicant has failed to identify this heritage item in proximity to the site and has not adequately demonstrated that the proposal will not result in impacts to the heritage item.

A thorough assessment of the proposed development's impact on the built environment has been undertaken in terms of *WLEP 2013* and the submissions received and it is considered the potential built environment impacts are unreasonable.

#### **b) Natural environment**

The proposed development does not demonstrate satisfactory stormwater, drainage and erosion control and that it is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. Further consideration in relation to flood affectation of the site is required by the applicant.

The proposal is considered unsatisfactory in relation to impacts on the natural environment.

#### **c) Economic impacts**

The application is not supported based on likely impacts of the development however the economic impacts of the development are not raised in reasons for refusal.

#### **d) Social impacts**

The potential social impacts of the proposal have been considered having regard for the Social Impact Assessment submitted with the application and the submissions received against the proposal. The application has been reviewed by Council's Social Planner.

It is acknowledged that boarding houses are an important source of accommodation and the need for affordable and low cost housing on the Central Coast is high and as a result generally the provision of a mix of affordable housing is considered to be of social benefit rather than social impact in circumstances where it is well managed, well designed and well located.

A Plan of Management for the ongoing use of the boarding house has not been provided. As such the application does not provide sufficient information to allow assessment of the impacts to the amenity and safety of residents and neighbours as a result of the ongoing use.

The submitted Social Impact Assessment (SIA) has not included any community consultation. Council received 44 submissions objecting to the development during the Development Application notification period. The SIA generally identifies issues that are consistent with those raised in public submissions however does not provide for any mitigation against the perceived impacts.

Due to the strong community objection, lack of community consultation, lack of mitigations to address community concerns and lack of a Plan of Management, the application is considered to provide insufficient information to determine the likely social impacts of the development.

#### **s. 4.15 (1)(c) of the EP&A Act: Suitability of the site for the development**

For the reasons identified in the above assessment and contained within Council's reasons for refusal, it is considered that the site is not suitable for the proposed development.

#### **s. 4.15 (1)(e) of the EP&A Act: The public interest**

For the reasons identified in the above assessment and contained within Council's reasons for refusal and having regard for the matters raised in public submissions, the proposal is not considered to be in the public interest.

#### **Other matters for consideration**

##### *Contributions*

Contributions would apply were the application supported.

**Conclusion and recommendation**

On the basis of the assessment under the heads of consideration in Section 4.15 of the *Environmental Planning and Assessment Act 1979*, the proposal is recommended for refusal for the reasons outlined in Attachment 1.

**Reasons for decision**

The reasons for the decision as recommended under the assessment of this application are as follows:

- The proposal is not consistent with the objects of the *Environmental Planning and Assessment Act 1979* in that it does not promote the orderly and economic use and development of the land.
- The proposal is considered unsatisfactory under the heads of consideration set out in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- The proposal is considered unsatisfactory with regard to Wyong Local Environmental Plan 2013 with regard to zone objectives, heritage conservation and essential services.
- The proposal results in unsatisfactory impacts to the streetscape and neighbouring properties.
- There is insufficient information provided to determine all likely significant impacts.
- The proposal is not in the public interest, having regard for the matters raised in submissions received in relation to the proposal.

**DELEGATIONS**

In accordance with Council's adopted *Policy for Determining Development Applications Subject to Significant Public Objections*, a business update was provided to Councillors and no call up request was received. On this basis, Council staff retain delegation to refuse the subject development application.

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application have no pecuniary interest to disclose in respect of the application.



Janice Wheeler  
**Senior Development Planner**  
**DEVELOPMENT ASSESSMENT**

**Assessing Officer**



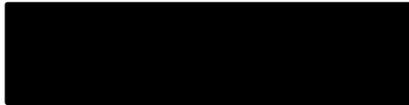
Emily Goodworth  
**Section Manager Major Development**  
**Applications**  
**DEVELOPMENT ASSESSMENT**

**Reviewing Officer**

The staff authorised to determine the application have no pecuniary interest to disclose in respect of the application.

Refused:

**Date:** 15 April 2020



Andrew Roach  
**Unit Manager**  
**DEVELOPMENT ASSESSMENT**

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**Attachments**

**Attachment 1 – Reasons for refusal**

**Attachment 2 – Wyong Development Control Plan 2013 Chapter 2.4 – Multiple Dwelling Residential**

**Attachment 3 - Clause 29 SEPP ARH 2009**

**Attachment 4 - Ausgrid response dated 28/11/2019**

**Attachment 1 - Reasons for refusal****The proposal is not consistent with the objects of the *Environmental Planning and Assessment Act 1979*.**

1. The proposal includes structures located within a right of carriageway and is not consistent with the objects of the *Environmental Planning and Assessment Act 1979* in that it does not promote the orderly and economic use and development of the land.

Particulars

The site has right of carriageway burdens imposed over the property by virtue of the 88B attached to DP 875531, which specifies that Lots 17, 18 and 19 in DP706878 are burdened by a right of carriageway of variable width affecting the whole of the land. These rights of carriageway benefit Lots 10 and 11 in DP 875531. The proposed structures over the land would impede the right of carriageways that exist over the land.

**The proposal is not consistent with the R2 Low Density zone objectives of *Wyong Local Environmental Plan 2013*.**

2. The development does not comply with the objectives of the R2 zone of *Wyong Local Environmental Plan 2013*. In particular, the development does not provide for the housing needs of the community within a *low density* residential environment and does not maintain and enhance the *residential amenity and character* of the surrounding area

Particulars

- a) The proposed development is not consistent with the objectives of the R2 Low Density Residential zone which are:
  - *To provide for the housing needs of the community within a low density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  - *To maintain and enhance the residential amenity and character of the surrounding area.*
  - *To provide a residential character commensurate with a low density residential environment.*
- b) The application has not demonstrated that the proposed boarding house is commensurate with a low density residential environment and maintains and

enhances the residential amenity and character of the surrounding area. The development has not been designed in a manner that is in accordance with applicable development control plans and that respects the amenity of the area.

- c) The residential character in the area surrounding the site is domestic scale well articulated two storey townhouse developments and predominantly single storey dwellings.
- d) The proposed built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use.
- e) The proposed development is excessive in density having regard for the low density zone.

**The proposal does not satisfy the provisions of Clause 7.9 of Wyong Local Environmental Plan 2013**

- 3. The proposal is inadequate in the provision of essential services including vehicle access and storm water.

Particulars

- a) The design of the access driveway and internal circulation roadway does not meet the requirements of AS2890.1, in particular Section 3.2.2 and Wyong Development Control Plan 2013 – Chapter 2.11 – Parking & Access Clause 4.3, d. The width of both the access driveway and circulation roadway for at least 6 metres from the property boundary does not meet the required minimum of 5.5 metres.
- b) The proposal has not provided passing opportunities at least every 30 metres as per clause 3.2.2 of AS2890.1. The proposed single lane width is not supported by Council's Traffic Engineer.
- c) A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken, to demonstrate the functionality of the driveway design.
- d) The proposal does not provide a 5 metres wide right of access from the public road to each Ausgrid asset, as required by Ausgrid.

- e) Owners consent has not been provided for adjoining land owners at 11, 11A and 13-15 Burns Road that are impacted by battering of the internal roadway formation within the private property to the west as shown on the storm water plans.
- f) A natural overland flow path that conveys flows from upstream properties is proposed to be filled and diverted along the western boundary. Details and modelling of the 1% AEP event have not been provided to allow an assessment of any adverse impacts on adjoining land owners. Details of stormwater connection and management of adjoining properties to the west has not been provided.
- g) On-site stormwater detention has not been adequately detailed and is required having regard for the location of the development in the local catchment and known downstream overland flooding issues.

**Inadequate information to determine the likely impacts of the development as required by Clause 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979***

- 4. The application does not provide sufficient information to determine the likely impacts of the development. The development application has not adequately addressed key matters for consideration as follows:

Particulars

- a) Heritage impact assessment The site is in proximity (directly opposite) a listed heritage site (I48) at 2 Burns Road. The applicant has failed to identify this heritage item in proximity to the site and has not demonstrated that the proposal is consistent with the objectives of Clause 5.10 being summarised as to conserve environmental heritage, and the significance of items and conservation areas including fabric, setting and views.
- b) The submitted Social Impact Assessment (SIA) has not included any community consultation and does not provide for any mitigation against the perceived impacts of the community.
- c) A Plan of Management for the ongoing use of the boarding house has not been provided. As such the application does not provide sufficient information to allow assessment of the impacts to the amenity and safety of residents and neighbours as a result of the ongoing use.
- d) Building 1 is a Class 3 building under the Building Code of Australia (BCA) and is therefore subject to the energy efficiency provisions of Section J of the BCA. The

BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.

- e) Insufficient information has been provided by the applicant to demonstrate that the site is not within an accessible area and as such not subject to the provisions of the State Environmental Planning Policy (Affordable Rental Housing). The land is located approximately 150 metres from a suitable bus stop that provides a connection to Ourimbah station. The frequency of the service outside of peak times has not been adequately addressed.
- f) A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken, to demonstrate the functionality of the driveway design.

#### **The proposed development results in unacceptable amenity impacts**

- 5. The proposal results in amenity impacts to neighbouring properties, the streetscape and the immediately surrounding area. The proposal results in amenity impacts for intended residents of the boarding house. These impacts include relationship and character of neighbouring lots, privacy, bulk and scale relationship, setback and landscaping, provision of adequate access, pedestrian safety.

#### Particulars

- a) The proposal does not have adequate regard for the existing prevailing development pattern of immediately adjoining properties and does not provide a satisfactory residential outcome in the context of the orientation of development and single dwelling character on adjoining lots. The proposal does not give sufficient regard to privacy of adjoining properties.
- b) The setback of the proposed driveway to neighbouring properties does not provide for any opportunity for landscaping screen planting to provide amenity between the proposed boarding house and existing neighbouring dwellings.
- c) The proposed development does not provide a safe pedestrian route between neighbouring dwellings and Burns Road.
- d) The proposed aesthetic of the development does not adequately reflect the residential character of the intended use or the residential character of the area.

- 
- e) The internal communal room in building 1 (Burns Road) is inadequate in size for the number of boarding rooms and is further constrained by being a thoroughfare.
  
  - f) The proposed 4.5 metre front setback to Burns Road is inadequate and inconsistent with the 6 metre local setback controls for Category B roads (Burns Road) and the existing prevailing setback pattern of low density residential development on Burns Road, and compromises landscape amenity.

**Attachment 2 – Wyong Development Control Plan 2013 Chapter 2.4 – Multiple Dwelling Residential**

Requirement	Proposal	Comply?
<b>2.0 Context</b>		
Submission of a suitable site analysis to be provided with the development application (s2.1.1)	A site analysis has been submitted however is inadequate	No
Contextual analysis submitted addressing economic, social, environmental and urban design context (s2.1.2)	Sufficient contextual analysis forms part of the statement of environmental effects	No
<b>3.0 Scale</b>		
Building height is defined as the vertical distance between natural ground level and the highest point of the building. Compliance with building height map. (s3.1.1)	N/A no LEP height control (7.47m)	N/A
Ceiling height vertical distance from natural ground level at any point within a building to the top-most ceiling of the building. R1 zone shall not exceed two-storeys and 7m in height. (s3.1.2)	5.7m	Yes
Minimum of 25% of site area to be soft landscaping, excluding all hardstand areas (s3.2)	>25%	Yes
<b>4.0 Built Form</b>		
<b>4.1 Construction and Appearance of Development</b>		
Scale, function and visual appearance to be compatible with objectives of the zone and be of high architectural quality. (s4.1.1)	The development fails to achieve an appropriate scale having regard for the relationship to neighbouring properties.	No
Buildings facades to be articulated in length and height, monotonous and unbroken lengths of wall >10m in length and >3m in height not permitted. Visual interest to be provided for two storey designs. (s4.1.1b)	The proposal incorporates an unarticulated façade length of 29m and a building height of 7m at a distance of 1.5m from the east property boundary (Building 1). This is an unacceptable built form outcome, particularly considering the development pattern relationship between the site and the adjoining properties.	No
Garages shall not dominate the street elevation(s) or presentation of the development. (s4.1.1)	At grade carparking is located centrally within the site.	N/A
Street number(s) shall be clearly identifiable for the development. (s4.1.1)	N/A	N/A
Roof design to be related to the built form and size and scale of the building. (s4.1.2)	The very large skillion roof forms are inconsistent with a residential architecture appropriate to development in an R2 zone.	No
Roof top gardens, terraces, decks and enclosures shall be suitably set back from the building edge		

to maintain privacy of adjoining sites.		
Existing buildings to be suitably upgraded in terms of architectural features and form, roof form, external building materials and colours, location and orientation and dwelling curtilage. (s4.1.3)	No retention of existing buildings	N/A
Internal finishes, bathrooms and kitchen facilities are to be upgraded in existing buildings. (s4.1.3)	No retention of existing buildings	N/A
<b>4.2 Cut and Fill</b>		
Cut and fill considerations (s4.2)	Retaining structures have not been identified.	No
<b>4.3 Building Lines</b>		
<b>Multi Dwelling Housing and RFB – Maximum 2 storeys (s4.3.2)</b>		
Setback areas shall be suitably landscaped to enhance the appearance of the development and soften hardstand areas of the site.	Insufficient landscaping provided within setback areas, particularly to the driveway and Burns Road.	No
Front setback: Category A: 7.5m Category B: 6.0m Category C: 4.5m or 6.0m	4.5m to Burns and Cambridge	No
Side setbacks: 0.9m	1.49m minimum east and 4.0m west average side setbacks	Yes
Rear setback: 4.5m	n/a	N/A
Garages: 6.0m when direct access from road OR 7.5m for Category A roads.	n/a	N/A
Corner Allotments: 3.0m on side street.	n/a	N/A
<b>4.4 Transport Needs</b>		
<b>4.4.1 General Requirements</b>		
Car parking within setbacks to Category A roads not permitted.	n/a	N/A
Car parking visible from street, surface to have decorative finish and screened.	Car parking is not visible from street	Yes
Parking within side or rear building setback shall be landscaped.	Car parking is not adequately landscaped.	No
One resident space shall be enclosed.	n/a	N/A
Vehicles to enter and leave in a forward direction.	Vehicles can leave in a forward direction	Yes
Consideration given to separate access on corner allotments.	n/a	N/A
<b>4.4.2 Resident Parking</b>		
One bedroom unit: 1 car space Two bedroom unit: 1.2 car spaces Three or more bedrooms unit: 1.5 car spaces (s4.4.2)	n/a	N/A
Visitor parking: 1 space / 5 units or part thereof (s4.4.3)	n/a	N/A
Bicycle facilities to be provided for RFBs rate of 1 / 3 units. (s4.4.4)	n/a	N/A
<b>4.5 Vehicular Access Design</b>		
Minimum driveway pavement widths:-	3m driveway. The driveway is not	No

3m – 1-4 dwellings 3.5m – 5 or more dwellings 5.5m for first 6m of driveway when to a Category A road.	adequate to meet the demands of the proposal and that of neighbouring properties, and does not meet the requirements of Ausgrid.	
Driveways not to be continuous straight lines and be offset by landscaping. (s4.5.2)	Driveway is straight.	No
Driveways offset from any side boundary by 2m at front of boundary and may taper back to 0.5m at the from building line.	Driveway is not offset	No
Impact of ground level parking to be minimised.	Insufficient landscape setbacks to ameliorate impacts of large hardstand driveway and parking areas.	No
Garages should be located behind the façade of the building to not dominate the streetscape.	No garages.	N/A
Garages visible from the street shall not exceed 50% of the lineal frontage of the building.	No garages	N/A
Basement parking see section 4.5.3 for requirements.	n/a	N/A
Pedestrian access design see section 4.6 for requirements.	The driveway is a shared vehicle and pedestrian zone is not supported for a pedestrian reliant use.	No
<b>5.0 Density</b>		
R1 not mapped 0.6:1. R3 as specified under WLEP 2013 maps	Not mapped under WLEP. R2 zoning. Proposed FSR – 0.29:1	N/A
<b>Development Bonuses</b>		
Refer to clauses 4.3 and 4.4 of the WLEP 2013.	n/a	N/A
<b>6.0 Amenity</b>		
<b>6.1 Private Open Space</b>		
<b>6.1.1 General requirements</b>		
Courtyards shall not exceed a maximum grade of 1:14.	n/a	N/A
Wherever a dimension is less than the required minimum (ie 2m for balconies or 4.5m for courtyards) it shall not be counted.	n/a	N/A
Ground level private open space may be provided in up to two locations for each dwelling if comply with minimum dimensions.	Ground level POS is in one location.	N/A
<b>6.1.2 Multiple Dwelling Housing</b>		
Minimum area 45m <sup>2</sup> with a minimum dimension of 4.5m at ground level accessible from living area. They will not be exclusively located within front setback.	There is no relationship between internal and external communal open space.	N/A
Patios, decks, balconies etc may only be counted as courtyard area if not enclosed by the line of the roof of the building.	n/a	N/A
Ground level courtyards maybe located within front building setback area on Category A roads.	n/a	N/A
Ground level courtyards maybe located within front building setback area on Category B roads only where solar access is optimised.	n/a	N/A

Ground level courtyards are not permitted within the front building setback area on Category C roads.	n/a	N/A
<b>6.1.6 Developments other than single dwellings above shops or commercial premises</b>		
Each dwelling to have min 10m <sup>2</sup> with min dimension of 2m and 20m <sup>2</sup> / dwelling as communal open space with min dimension of 5m.	n/a	N/A
<b>6.2 Communal Open Space</b>		
<b>6.2.1 General Requirements</b>		
Minimum 25% of site at ground level to be soft landscaping	>25%	Yes
Spaces to be landscaped and include facilities	n/a	N/A
Communal areas not to be provided in front setback without demonstrated need	n/a	N/A
Roof top open space for RFBs only where in addition to ground level requirements.	n/a	N/A
A building for communal use should be provided.	n/a	N/A
Open space shall be located to increase the potential for residential amenity.	n/a	N/A
<b>6.3 Solar Access</b>		
<b>6.3.1 General Requirements</b>		
At least 75% of each required open space area on adjoining properties shall receive at least 3 hours unobstructed sunlight between the hours of 9am and 3pm on June 21.	Satisfactory impacts to neighbouring properties.	Yes
Dwellings should be orientated to allow optimum solar access for internal living areas.	n/a	N/A
Buildings shall be designed to minimise adverse impact by wind velocities, intensities and directions on the amenity of the development and surrounding areas.	Satisfactory orientation	Yes
A weather protected entrance shall be provided to each dwelling.	Weather protection provided to building entrances	Yes
Consideration should be given to the provision of natural light and ventilation for excavated car parking areas.	n/a	N/A
<b>6.3.2 Multi Dwelling Housing</b>		
At least 75% of each required private and communal open space area, courtyard, balcony etc shall receive at least 3 hrs unobstructed sunlight between the hours of 9am to 3pm on June 21.	Adequate solar access	Yes
<b>6.3.4 Shadow Diagrams</b>		
Developments that are 2 storeys in height or greater shall provide shadow diagrams based on a survey of the site and adjoining development, showing shadow casting at 9 am, 12 noon and 3 pm on June 21 (winter solstice). The shadow	Acceptable impacts to neighbouring properties.	Yes

diagrams must show the impact of shadowing from the proposed development, fencing, cut and fill as well as existing development, on the proposed development and adjoining properties.		
In assessing the impact of shadow on an adjoining property, Council shall have regard for the standards stated above in Section 6.3.1.	Acceptable impacts to neighbouring properties.	Yes
Where a development does not comply with the required solar access requirements under 6.3.1, additional information in the form of elevational shadow diagrams shall be submitted to show the impact of the shadowing on affected properties.	n/a	N/A
<b>6.4 Privacy</b>		
<b>6.4.1 Visual Privacy</b>		
Direct overlooking of internal living areas and private open space to surrounding dwellings shall be minimised.	The proposal generates impacts to all surrounding properties	No
This section has details of requirements for windows within proximity of living areas or balconies of adjacent dwellings as well as first floor level.	Acceptable	Yes
Refer to table 5 of s6.4.1 for recommended building separation distances.	-	-
<b>6.4.2 Acoustic Privacy</b>		
Site layout should separate active recreational areas, parking areas, vehicle access ways and service equipment areas from bedroom areas of dwellings.	Yes	Yes
Development adjacent to high levels of uncontrollable external noise shall minimise the entry of that noise through building design and external wall treatment.	n/a	N/A
<b>6.5 Views</b>		
Developments should be designed to minimise view loss from adjoining and adjacent properties.	Acceptable view relationship	Yes
A visual analysis illustrating the impacts of the proposed may be required for developments which have the potential to obstruct views.	n/a	N/A
Measures are to be used to maintain views including setbacks, gaps between buildings, etc.	n/a	N/A
<b>7.0 Services</b>		
<b>7.1 Services</b>		
All applications shall provide details of the proposed method of sewerage disposal.	Acceptable	Yes
All sites to provide adequate services.	The application does not provide a services plan. Insufficient information has been provided in relation to managing neighbouring stormwater.	No

Details are to be provided of impacts on services.	No information has been provided in relation to services. A services plan the storm water management plan does not address dispersal and overland flow from neighbouring properties.	No
External attachments shall be fully integrated with façade design.	No information provided.	No
<b>7.2 Civil Works</b>		
Kerb and gutter shall be constructed.	Not proposed	No
<b>8.0 Stormwater Management</b>		
Concept stormwater management plan to be submitted with application.	Stormwater plan has been provided.	Yes
Evidence of agreement for easements over downstream properties is required.	Insufficient information provided.	No
<b>9.0 Landscape</b>		
<b>9.1 General requirements</b>		
A Landscape plan prepared by an approved consultant to be submitted with the development application. (s8.1.1)	The landscape plan shows limited landscaping on the west boundary of the site. It is considered that the landscape plan is inadequate and does not visually soften hardstand areas or the bulk of the building.	No
<b>9.1.2 Deep Soil Zones</b>		
A minimum 50% of required soft landscape area at ground level shall be a deep soil zone	>50% of soft landscaping is deep soil landscaping	Yes
<b>9.1.3 Planting on Structures</b>		
Planting on structures: see s9.1.3	n/a	N/A
<b>9.1.4 Street Trees</b>		
Two semi-advanced trees per 15 metre frontage to be provided, details to be provided as part of landscape plan.	No street trees are provided	No
<b>10.0 Sustainability</b>		
Sustainability is integral to the design process.	An incorrect BASIX certificate is provided.	No
<b>10.1 Waste Management</b>		
<b>10.1.1 General Requirements</b>		
All proposed development to comply with Chapter 3.1.		Yes
Developments to include suitably screened bin storage area.	A bin storage area that allows for bins to be wheeled to the street is provided. The waste management plan does not adequately address the waste management for adjoining sites.	Yes
Where waste bins collected from a point within the site, adequate space shall be provided to accommodate a rear-loading collection vehicle.	A vehicle cannot enter the Ausgrid easement due to clearance requirements.	N/A
Separate bin rooms shall be required for mixed/commercial/residential development.	n/a	N/A
<b>10.1.3 Ongoing Management</b>		
Ongoing management must be addressed in	A waste management plan has been	Yes

waste management plan.	submitted. Bins are to be wheeled to the street.	
<b>11.0 Safety and Security</b>		
<b>11.1 Crime Prevention</b>		
Pedestrian access shall be clearly defined.	A shared zone for the driveway also applies, this is not considered acceptable.	No
CPTED principles should be taken into account (s10.1)	Passive surveillance is achieved within the development	Yes
> 20 dwellings a formal Crime Risk Assessment may be required (s10.1)	n/a	N/A
<b>12.0 Social Dimensions</b>		
<b>12.1 Housing Choice</b>		
A variety of dwelling types is encouraged.	All double boarding rooms	N/A
10% of units in RFBs shall be designed as suitable adaption for occupation by disabled/aged persons.	One adaptable room is provided (out of 18 rooms).	No
<b>12.2 Facilities and Amenities</b>		
<b>12.2.1 Meeting Places</b>		
A meeting place for residents is encouraged	A meeting place is provided	N/A
<b>12.2.2 Laundries</b>		
An internal laundry shall be provided within each dwelling.	Laundries are not provided	N/A
<b>12.2.3 Drying Areas</b>		
Drying areas shall be provided in common open space areas.	A drying space is located in the communal area	Yes
<b>12.2.4 Car washing facility</b>		
Provision is to be made for a car washing facility for each development.	A car wash space has not been identified.	No
<b>12.2.5 Mail boxes</b>		
Provision of mailboxes for residents.	Mailboxes are located at the Burns street frontage	Yes
<b>12.2.6 Storage</b>		
Internal storage space is to be provided. 1-2 bedrooms: 3m <sup>2</sup> floor area 3 or more bedrooms: 6m <sup>2</sup> floor area.	Wardrobes and Linen presses provide storage within the dwellings. Wide hallways and inefficiencies allow sufficient space for further storage to be provided by occupants.	Yes
<b>13.0 Aesthetics</b>		
<b>13.1 Fencing</b>		
<b>13.1.2 General Requirements</b>		
Details of material, height, type and extent of all proposed fencing shall be shown on development application plans.	The application does not include details of fencing	No
Fences contribute to the amenity, beauty and useability of private open spaces through incorporating design features.	The application does not include details of fencing	No
Dividing fences shall not adversely affect flow of surface water or create flooding problems	n/a	N/A

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Courtyard fencing is to be of a decorative nature and 1.8m in height.	The application does not include details of fencing	No
Courtyard fencing in front setbacks may only be provided: <ul style="list-style-type: none"> <li>• On category A roads for noise attenuation.</li> <li>• On category B roads for solar access.</li> <li>• No closer than 1.5m from front boundary alignment, and setback to be suitably landscaped.</li> </ul>	The application does not include details of fencing	N/A
Decorative fencing may be provided along the front boundary with a maximum height of 1.2m.	n/a	N/A
<b>13.1.2 Corner Allotments</b>		
No courtyard fencing permitted within the setback area on side streets.	n/a	N/A
No structures of landscaping to be provided within sight lines.	n/a	N/A

### Attachment 3 - Clause 29 SEPP ARH 2009

Development standards within the SEPP that cannot be used to refuse consent. Within the merit based assessment of the proposal, consideration has been given to the standards of the SEPP relating to boarding houses as follows:

Development Standard	Requirement for Proposed Development	Proposed	Compliance
<p><b>Floor Space Ratio</b>            (1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</p> <p>(a) the existing maximum floor space ratio (FSR) for any form of residential accommodation permitted on the land, or</p> <p>(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or</p> <p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential</p>	<p>The site is not subject to an FSR standard under WLEP 2013.</p> <p>The highest form of residential development permitted under WLEP 2013 within the R2 Low Density Residential zone is a dual occupancy.</p> <p>The only provision relating to FSR in an R2 Low Density Residential zone is that which is specified within WDCP Chapter 2.3 – Dual Occupancy which states that the maximum permitted FSR for dual occupancy development is 0.5:1 where the site is not subject to a maximum FSR under WLEP 2013. This FSR can be used as a guide for the desirable bulk and scale of development anticipated in an R2 Low Density Residential zone.</p>	<p>The proposed FSR is 0.29:1</p>	<p>Yes</p>

<p>accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>			
<p><b>Building height</b> (2)(a) if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.</p>	<p>The site is not mapped as being subject to a maximum permitted building height under WLEP 2013.</p>	<p>The maximum proposed height of the building is 7.47 metres.</p>	
<p><b>Landscaped area</b> (b) if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</p>	<p>Landscape treatment within front setback to be compatible with the streetscape.</p>	<p>Burns Rd is a category B road (6m setback). Cambridge is a category C Rd (4.5m setback). The development only allows 4.5m to Burns Rd, and that setback is dominated by driveway etc.</p>	<p>NO</p>
<p><b>Solar access</b> (c) where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p>	<p>Communal living room to receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p>	<p>The proposal includes a north facing communal living room to the Burns Rd building which will receive over three hours of direct sunlight between 9am and 3pm in mid-winter, although north facing window openings are limited.</p>	<p>Yes</p>
<p><b>Private open space</b> (d) if at least the following private open space areas are provided (other than the front</p>	<p>A single open space area is required of at least 20 square metres with a minimum dimension of 3 metres.</p>	<p>A large communal open space area is proposed to the rear of the Burns Rd building beneath the electricity transmission</p>	<p>No</p>

<p>setback area):</p> <p>(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,</p>	<p>Private open space for a site manager is required.</p>	<p>easement.</p> <p>The open space area for the manager is predominantly side setback and receives insufficient solar access.</p>	
<p><b>Parking</b></p> <p>(e) (i) in the case of development in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>Based on the 18 rooms proposed, 3.6 car parking spaces are required (4 rounded to the nearest whole number) for an accessible area, and 7.2 car parking spaces are required (not accessible area).</p>	<p>A total of 10 car parking spaces are proposed which achieves compliance.</p>	<p>Yes</p>
<p><b>Accommodation size</b></p> <p>(f) if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p>	<p>Rooms are required to be 16 square metres in any other case.</p> <p>Each room is proposed to accommodate two persons.</p>	<p>The proposed room sizes range from 16.1m<sup>2</sup> to 18.3m<sup>2</sup>.</p>	<p>Yes</p>

(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or  (ii) 16 square metres in any other case.			
(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Private kitchen and bathroom facilities may be provided in boarding rooms but it is not required.	All rooms have private kitchen and bathroom facilities.	Yes

Clause 30 of SEPP ARH 2009 sets out additional standards for boarding houses as follows:

Development Standard	Requirement for Proposed Development	Proposal	Compliance
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:			
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	A communal living room is required.	The boarding house has 18 rooms (plus a boarding/manager) and a common area/BBQ outdoor recreation area is provided.	Yes
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,	No rooms to exceed 25 square metres in size.	No boarding house room exceeds 18.3m <sup>2</sup> .	Yes
(c) no boarding room will be occupied by more than 2 adult lodgers,	No rooms to be occupied by more than 2 adult lodgers.	All rooms are proposed to accommodate two lodgers.	Yes

<p>(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,</p>	<p>Adequate bathroom and kitchen facilities required in the boarding house.</p>	<p>Each room has these facilities.</p>	<p>Yes</p>
<p>(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,</p>	<p>N/A</p>	<p>The boarding house has a maximum proposed capacity of 36 lodgers. A managers residence is provided.</p>	<p>Yes</p>
<p>(f) (Repealed)</p>	<p>N/A</p>	<p>N/A</p>	<p></p>
<p>(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,</p>	<p>N/A</p>	<p>N/A</p>	<p></p>
<p>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</p>	<p>One bicycle parking space and two motorcycle spaces are required.</p>	<p>The proposal includes motorcycle/bicycle parking spaces.</p>	<p>Yes</p>
<p>(A) A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</p>	<p>Consent authority to consider compatibility with character of area.</p>	<p>The proposal is not considered to be compatible with the character of the local area.</p>	<p>No</p>

**Attachment 2 – Reasons for refusal of the Section 8.2 review application DA/993/2019**

1. The proposal includes structures located within a right of carriageway and is not consistent with the objects of the *Environmental Planning and Assessment Act 1979* in that it does not promote the orderly and economic use and development of the land. The proposed structures over the land would impede the right of carriageways that exist over the land.
2. The development does not comply with the objectives of the R2 zone of *Wyang Local Environmental Plan 2013*. In particular, the development does not provide for the housing needs of the community within a *low-density* residential environment and does not maintain and enhance the *residential amenity and character* of the surrounding area. The proposed built form does not respond to the existing prevailing residential character of the area, nor does it adequately respond to the residential nature of the proposed use.
3. The proposal does not satisfy the provisions of Clause 7.9 of *Wyang Local Environmental Plan 2013*. The proposal is inadequate in the provision of essential services including vehicle access and storm water.
  - The proposal has not provided passing opportunities at least every 30 metres as per clause 3.2.2 of AS2890.1. The proposed single lane width is not supported.
  - A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken.
  - The proposal does not provide a 5 metres wide right of access from the public road to each Ausgrid asset, as required by Ausgrid.
  - Owners consent has not been provided for adjoining land owners at 11, 11A and 13-15 Burns Road that are impacted by battering of the internal roadway formation within the private property to the west as shown on the storm water plans.
  - Details and modelling of the 1% AEP event have not been provided to allow an assessment of any adverse impacts on adjoining land owners from filling and diverting a natural overland flow path. Details of stormwater connection and management of adjoining properties to the west has not been provided.
  - On-site stormwater detention has not been adequately detailed and is required as there are downstream overland flooding issues.
4. Pursuant to Clause 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with number of boarding rooms permitted within the R2 low density residential zone as required by Clause 30AA of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

5. Inadequate information to determine the likely impacts of the development as required by Clause 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
  - The site is in proximity (directly opposite) a listed heritage site (I48) at 2 Burns Road. The applicant has not addressed the objectives of Clause 5.10 of *Wyong Local Environmental Plan*.
  - The Social Impact Assessment (SIA) did not include community consultation and does not provide for any mitigation against the perceived impacts of the community.
  - The Operational Plan of Management for the ongoing use of the boarding house is inadequate and does not provide confidence that the development will be well managed.
  - Building 1 is subject to the energy efficiency provisions of Section J of the BCA. The BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.
  - A turning path assessment for the largest design vehicle likely to access the site has not been undertaken, to demonstrate the functionality of the driveway design.
  
6. The proposal results in amenity impacts to neighbouring properties, the streetscape and the immediately surrounding area and impacts to intended residents of the boarding house.
  - Inadequate regard for the existing prevailing development pattern and privacy impacts of immediately adjoining properties.
  - Inadequate setback of the proposed driveway to boundaries with neighbouring properties and insufficient building and structural elements to reduce privacy impacts with neighbouring properties.
  - The proposed development does not provide a safe pedestrian route between neighbouring dwellings and Burns Road.
  - The proposed aesthetic of the development does not adequately reflect the residential character of the intended use or the residential character of the area.
  - There is insufficient information to adequately assess solar access is achieved to the communal room in building 1.

### Attachment 3 – State Environmental Planning Policy (Affordable Rental Housing) 2009

#### Clause 29

These development standards within Clause 29 of SEPP ARH can be used to refuse consent as they do not strictly apply to the subject site by virtue of the site not being within an accessible area.

Within the merit based assessment of the proposal, consideration has been given to the standards of the SEPP ARH relating to boarding houses as follows:

<b>Development Standard</b>	<b>Requirement for Proposed Development</b>	<b>Proposed</b>	<b>Compliance</b>
<p><b>Floor Space Ratio</b>            (1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</p> <p>(a) the existing maximum floor space ratio (FSR) for any form of residential accommodation permitted on the land, or</p> <p>(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or</p> <p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an</p>	<p>The site is not subject to an FSR standard under WLEP 2013.</p> <p>The highest form of residential development permitted under WLEP 2013 within the R2 Low Density Residential zone is a dual occupancy.</p> <p>The only provision relating to FSR in an R2 Low Density Residential zone is that which is specified within WDCP Chapter 2.3 – Dual Occupancy which states that the maximum permitted FSR for dual occupancy development is 0.5:1 where the site is not subject to a maximum FSR under WLEP 2013. This FSR can be used as a guide for the desirable bulk and scale of development anticipated in an R2 Low Density Residential zone.</p>	<p>The proposed FSR is 0.26:1</p>	<p>Yes</p>

<p>environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>			
<p><b>Building height</b> (2)(a) if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.</p>	<p>The site is not mapped as being subject to a maximum permitted building height under WLEP 2013.</p>	<p>The maximum proposed height of the building is 6.915 metres.</p>	<p>Yes</p>
<p><b>Landscaped area</b> (b) if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</p>	<p>Landscape treatment within front setback to be compatible with the streetscape.</p>	<p>Burns Rd is a category B road (6m setback). Cambridge is a category C Rd (4.5m setback). The development proposes landscape treatments to both road frontages of the site which is considered to be compatible with the streetscape. However, landscaping and landscaped structures will need to comply with Ausgrid requirements which are to be agreed to by the owner as per Ausgrid's advice.</p>	<p>Yes</p>

<p><b>Solar access</b> (c) where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p>	<p>Communal living room to receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p>	<p>The proposal includes a communal living room to the Burns Rd building 1 which has windows facing east and west only. The application has not submitted sufficient solar access plans to ascertain whether the communal room will receive over three hours of direct sunlight between 9am and 3pm in mid-winter.</p>	<p><b>No</b></p>
<p><b>Private open space</b> (d) if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,</p>	<p>A single open space area is required of at least 20 square metres with a minimum dimension of 3 metres.</p> <p>Private open space for a site manager is required.</p>	<p>A large communal open space area is proposed to the rear of the Burns Rd building beneath the electricity transmission easement.</p> <p>Private open space for manager provided.</p>	<p>Yes</p>
<p><b>Parking</b> (e) (i) in the case of development in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p>	<p>Based on the 18 rooms proposed, 3.6 car parking spaces are required (4 rounded to the nearest whole number) for an accessible area, and 7.2 car parking spaces are required (not accessible area).</p>	<p>A total of 10 car parking spaces are proposed which achieves compliance.</p>	<p>Yes</p>

(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,			
<p><b>Accommodation size</b></p> <p>(f) if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>Rooms are required to be 16 square metres in any other case.</p> <p>Each room is proposed to accommodate two persons.</p>	The proposed room sizes range from 16.5m <sup>2</sup> to 19.6m <sup>2</sup> .	Yes
(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Private kitchen and bathroom facilities may be provided in boarding rooms but it is not required.	All rooms have private kitchen and bathroom facilities.	Yes

### Clause 30 and 30A

Clause 30 and of SEPP ARH 2009 sets out additional standards for boarding houses as follows:

Development Standard	Requirement for Proposed Development	Proposal	Compliance
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:			

(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	A communal living room is required.	The boarding house has 15 rooms (plus a boarding/manager) and a common area/BBQ outdoor recreation area is provided.	Yes
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,	No rooms to exceed 25 square metres in size.	No boarding house room exceeds 19.6m <sup>2</sup> .	Yes
(c) no boarding room will be occupied by more than 2 adult lodgers,	No rooms to be occupied by more than 2 adult lodgers.	All rooms are proposed to accommodate two lodgers.	Yes
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Adequate bathroom and kitchen facilities required in the boarding house.	Each room has these facilities.	Yes
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	N/A	The boarding house has a maximum proposed capacity of 30 lodgers. A managers residence is provided within building 1 facing Burns Rd.	Yes
(f) (Repealed)			
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning	N/A	N/A	

<p>instrument permits such a use,</p> <p>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</p>	<p>One bicycle parking space and two motorcycle spaces are required.</p>	<p>The proposal includes motorcycle/bicycle parking spaces.</p>	<p>Yes</p>
<p>30(A) A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</p>	<p>Consent authority to consider compatibility with character of area.</p>	<p>The proposal is not considered to be compatible with the character of the local area.</p>	<p><b>No</b></p>



## CLAUSE 4.6 VARIATION REQUEST

<b>Property:</b>	17 Burns Road and 46 Cambridge Circle Ourimbah
<b>Proposal:</b>	Proposed 15 Room Boarding House and Manager's room over two (2) buildings accommodating thirty-eight (30) lodgers
<b>Lot No. Plan:</b>	Lots 17, 18 19 and 20 in DP 706878
<b>Site Area:</b>	2,247.3sqm
<b>Zoning:</b>	R2 – Low Density Residential under the Wyong Local Environmental Plan 2013
<b>Development Standard:</b>	Clause 30AA - State Environmental Planning Policy (Affordable Rental Housing) 2009

## BACKGROUND

This written request is made pursuant to Clause 4.6(3) of the Wyong Local Environmental Plan 2013 (the LEP) to provide justification to vary a development standard concerning the number of boarding rooms in the proposed development and relates to an amended and reduced proposal under a Section 8.2 review.

Clause 30AA of the State Environmental Planning Policy (Affordable Rental Housing) 2009 provides as follows:-

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

It is the onus of the applicant to address the matters under Clause 4.6(3) of the LEP which is addressed through this written request. Before granting consent, Council must be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is proposed to develop the existing vacant site with 15 boarding rooms. Eleven (11) rooms plus the manager's room are provided in Building 1 which faces Burns Road and four (4) rooms are provided in Building 2 facing Cambridge Circle.

On a whole of site basis, the variation to the development standard equates to 3 boarding rooms or 25%. Because both buildings are situated on separate lots and each building addresses a different street, on another view, it can be considered that the development is compliant with Clause 30AA.

For abundant caution, this request will assume a non compliance and it will be argued that the large site area and design of the development allow the site to support the proposed 15 rooms.

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CLAUSE 4.6 VARIATION – SECTION 8.2 REVIEW – MAY 2020

## IS THE STANDARD A DEVELOPMENT STANDARD?

A development standard is defined in s 1.4 of the Environmental Planning and Assessment Act 1979 (“EPA Act”) to mean:

“provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.”

The number of rooms controlled by Clause 30AA falls under subsection (e), therefore the control is a development standard and is subject to a request for a variation pursuant to Clause 4.6 of the LEP.

## CLAUSE 4.6 OF THE WYONG LOCAL ENVIRONMENTAL PLAN

Clause 4.6 of the Wyong LEP is a variations clause that is similar in effect to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1.

### 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

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- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
  - (c) clause 5.4,
  - (ca) clause 4.1A, 4.1C, 4.3(2A), 4.4(2A), 4.4(2B), 4.4(2D), 5.3, 6.1, 6.2 or 7.11,

## THE ONUS ON THE APPLICANT

Under Clause 4.6(3), it is the onus of the applicant to demonstrate:-

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

According to the relevant case law, common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in *Wehbe v Pittwater Council* (2007). The five tests under *Wehbe* are tabulated below. Only *one* of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

TESTS UNDER WEHBE	COMMENTS
<p>1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.</p>	<p>The objectives of the standard are not articulated in the SEPP. By way of background information, prior to the introduction of Clause 30AA, the Department of Planning &amp; Environment in November 2018, disclosed the intention of the foreshadowed change in the Explanation of Intended Effect consultation document. Page 8 of that document states:-</p> <p style="text-align: center;"><i>The intention of the proposed amendment is to ensure that the built form of boarding house development in the R2 zone is compatible with the built form of other development in the local area.</i></p> <p style="text-align: center;"><i>The proposed introduction of a maximum room number for boarding houses is considered to assist in ensuring that amenity impacts of boarding house development on adjoining and nearby properties, such as overlooking, overshadowing and car parking impacts, are able to be better managed.</i></p> <p>It is argued that a blanket provision does not have due regard to the individual circumstances of a particular case where there may be grounds for a different outcome.</p> <p>The objectives of the standard are considered to be achieved by the development for the following reasons.</p>

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The site has special characteristics including two street frontages, a large overall area and a large area that cannot be developed with buildings. Even with maximised building footprints, the development as a whole is of a very low site density of 0.26:1 and may readily support 15 rooms over two buildings. This site density is comparable with the intensity of established development in the locality.

The number of rooms in a boarding house is immaterial if the resulting built form of the development is compatible with the built form of other development in the local area.

The visual catchment which incorporates the subject site is characterised by an eclectic mix of one and two storey single dwellings, multi dwelling housing and commercial uses. An example of a nearby commercial use exists opposite the site in the form of a large and visually dominant warehouse style building used as a hardware store. (Refer to Figures 4, 5 and 6). This makes a poor contribution to the streetscape but is nonetheless part of the local character.

There can be little criticism of Building 2 which faces Cambridge Circuit. This is the smaller of the two buildings and will be situated next to No. 44 Cambridge Circuit. It is two storeys in height and contains 4 boarding rooms. Its compatibility with the environment is clearly evident.

Building 1 faces Burns Road and is the larger of the 2 buildings. This building will accommodate 11 rooms and a manager’s room. As viewed from Burns Road, the building will present a two storey built form with a width of 14m. This is entirely compatible with the variety of built forms found in Burns Road.



Figure 1: 2D representation of Building 1 to Burns Road.

In summary, the proposed buildings result is a built form that properly address each street frontage and allows for appropriate and compliant parking, landscaping and communal use for the boarding house development. The development provides compliant parking and satisfactory solar access and privacy impacts. The objectives of the standard are achieved notwithstanding the number of rooms.

At this point is it is appropriate to discuss the meaning of compatibility.

Clause 30A requires a consent authority to consider whether the design of the development is compatible with the character of the local area.

## CLAUSE 4.6 VARIATION – SECTION 8.2 REVIEW – MAY 2020



Figure 2: 3D representation of the front elevation to Burns Road.

Case law has held that the test in Clause 30A is “one of compatibility not sameness” (*Gow v Warringah Council [2013] NSWLEC 1093 (15 March 2013)*). Compatibility is widely accepted to mean “capable of existing together in harmony” (*Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*).

It has also been held that in assessing ‘compatibility’ both the existing and future character of the local area needs to be taken into account (*Sales Search Pty Ltd v The Hills Shire Council [2013] NSWLEC 1052 (2 April 2013)* and *Redevelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029*).

In *Redevelop Projects Pty Ltd v Parramatta City Council [2013] NSW LEC 1029*, Commissioner Morris concluded that the ‘local area’ includes both sides of the street and that the ‘visual catchment’ is the minimum area to be considered in determining compatibility.

The visual catchment which incorporates the subject site is characterised by an eclectic mix of one and two storey single dwellings, multi dwelling housing and commercial uses.

The buildings and land uses in the visual catchment incorporate a variety of architectural styles ranging from post war austerity to modern dwellings and multi dwelling housing to warehouse building typology opposite. There is a dwelling which is a heritage item, at No. 2 Burns Road. The dwelling is 100m from the subject site and there is no visual relationship between the item and the site due to the separation distance and the intervening development. Refer to Figure 8.

For the above reasons, the locality is not as sensitive to change as might be the case in a more homogenous built environment and compatibility is more readily achieved.

Further, the surrounding locality exhibits not only a variety of built forms and heights as previously mentioned but also diverse site densities. It is not possible to estimate the site densities of any particular development as this information is unavailable. However, importantly, the proposed site density of 0.26:1 is well in conformity with the expectations of the R2 Low Density Residential Zone.

In considering the design approach for the boarding house, it was considered appropriate to implement a more traditional built form and materiality to each street frontage. The facades are more analogous to

CLAUSE 4.6 VARIATION – SECTION 8.2 REVIEW – MAY 2020

dwelling houses when viewed from the street and incorporate face brick, render, elements of sheet cladding and pitched tiled roofs. The external expression to the streetscape is appropriate in terms of architecture, height, bulk and scale.

The resulting buildings are considered to be designed appropriately and will sit comfortably in their settings in Burns Road and Cambridge Circuit, remembering that the test is one of compatibility, not sameness. A building can look different and be *compatible* with the general local context. In fact, the development will make a better contribution to both streetscapes than presently exists where the ‘gap’ in both streets is pronounced and analogous to a ‘missing tooth’.

The other elevations are open to a more architectural treatment as they are not generally visible from the street and are preferred to large expanses of unbroken brickwork, for example.

The built form is therefore considered to be compatible with the surrounding built environment in the R2 zone and is consistent with the envisaged future character of the local area in the visual catchment. It is worthy of noting that the site and surrounding areas are identified in the draft Ourimbah Land Use Strategy for potential medium density housing. Refer to Figure 3 below.

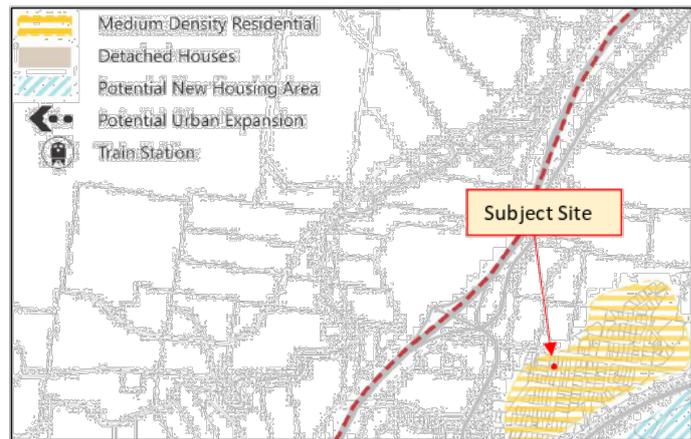


Figure 3: Extract from draft Ourimbah Land Use Strategy noting the subject site and surrounds identified for potential medium density residential housing.

The future character is guided by the zone objectives and development standards of the WLEP 2013. In this regard, there are no specific development standards applying to the development under the WLEP. Under the Wyong DCP, the maximum building height for dwellings if not specifically mapped by the WLEP 2013 is 10m or two storeys unless site slope facilitates part three storey elements.

The height of development will be 6.9m which is well below the 10m limit. The proposal is also well under the DCP site coverage control of 30%. The proposed site coverage will be 14.6%. While there is no FSR specified for the land, the proposed FSR will be 0.26:1. Having regard to the low intensity of site development, it cannot be said that the application seeks overdevelopment of the site. In terms of intensity of use, the proposal is in harmony with the vision of the Wyong Local Environmental Plan and DCP.

## CLAUSE 4.6 VARIATION – SECTION 8.2 REVIEW – MAY 2020

	<p><u>Conclusions</u></p> <p>Our conclusion is that the buildings will be compatible with the present character established by the development in the locality and the future character as envisaged under the WLEP 2013 zone objectives. The proposal is considered to satisfy the local character considerations of the SEPP (Affordable Housing) 2009 and therefore the objectives of the standard.</p> <p>Pursuant to Cl.4.6(4)(a)(i), compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case.</p> <p>Secondly, pursuant to Cl.4.6(4)(a)(ii), the matters preceding are considered to provide sufficient environmental planning grounds to justify contravening the development standard.</p> <p>It is worth pointing out that in <i>Four2Five Pty Ltd v Ashfield Council (2015)</i> Commissioner Pearson made a judgement that a Clause 4.6 variation requires identification of environmental planning grounds that are particular to the circumstances to the proposed development. In other words, simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.</p> <p>In a follow up judgement on further appeal, the Chief Judge, upheld the Four2Five decision but expressly noted that the Commissioner’s decision on that point (that she was not “satisfied” because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are “sufficient environmental planning grounds to justify contravening the development standard” is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.</p> <p>The application represents as an excellent example of how a site with constraints (electricity easement) may be successfully developed in the local context.</p>
<p>2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;</p>	<p>The objective of the development standard is considered to be relevant to the development.</p>
<p>3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;</p>	<p>The objective of the standard would not be defeated or thwarted if compliance was required.</p>
<p>4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence</p>	<p>The development standard has not been abandoned.</p>

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<p>compliance with the standard is unnecessary and unreasonable;</p>	
<p>5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</p>	<p>The zoning of the land is appropriate for the development standard.</p>

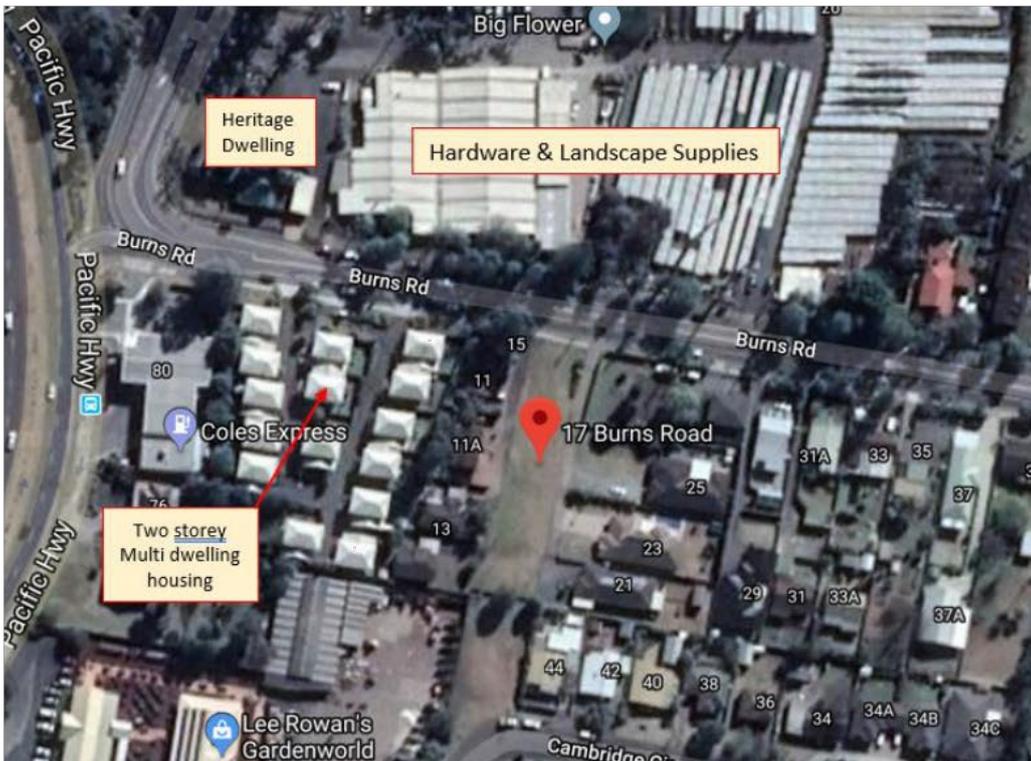


Figure 4: Aerial view of the subject site noting the local context.

CLAUSE 4.6 VARIATION – SECTION 8.2 REVIEW – MAY 2020



Figure 5: The adjoining property to the west, No. 11 Burns Road.



Figure 6: Directly opposite the site in Burns Road includes Mitre 10 hardware and building supplies.

## CLAUSE 4.6 VARIATION – SECTION 8.2 REVIEW – MAY 2020



Figure 7: Multi dwelling housing to the west at 1-9 Burns Road.



Figure 8: No. 2 Burns Road, heritage item located 100m west of the subject site. There is no visual relationship between the two properties due to the separation distance and intervening development.

## THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority does not have to directly form the opinion of satisfaction but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the

## CLAUSE 4.6 VARIATION – SECTION 8.2 REVIEW – MAY 2020

matters required to be demonstrated by Clause 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in Clause 4.6(3)(a) and (b) have been adequately addressed in the written request in order to enable the consent authority to form the requisite opinion of satisfaction. Refer to *Initial Action Pty Ltd v Woollahra Municipal Council* (2018).

In assisting the consent authority in its satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), we refer to the objectives for development within the zone in which the development is proposed to be carried out. The land is within the R2 Low Density Residential Zone. The zone objectives are:-

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maintain and enhance the residential amenity and character of the surrounding area.
- To provide a residential character commensurate with a low density residential environment.

The proposal is consistent with the zone objectives because the development provides the opportunity for affordable housing in a low density residential environment. The boarding house will be of a scale and appearance that is consistent with the development standards for the R2 low density zone. The built form will enhance the residential character envisaged by the objectives.

The development is designed with the intention of minimising the impact upon the amenity of adjoining residents as well as the amenity of the future residents of the development.

The boarding house will add to the variety of housing available to the local community, especially the academic community. Being in an area that has strong access to public transport as described under Section 4 of this report, the development will promote the use of public transport as a sustainable means of access and movement.

For the above reasons, it is considered that the development satisfies the zone objectives.

## CONCLUSION

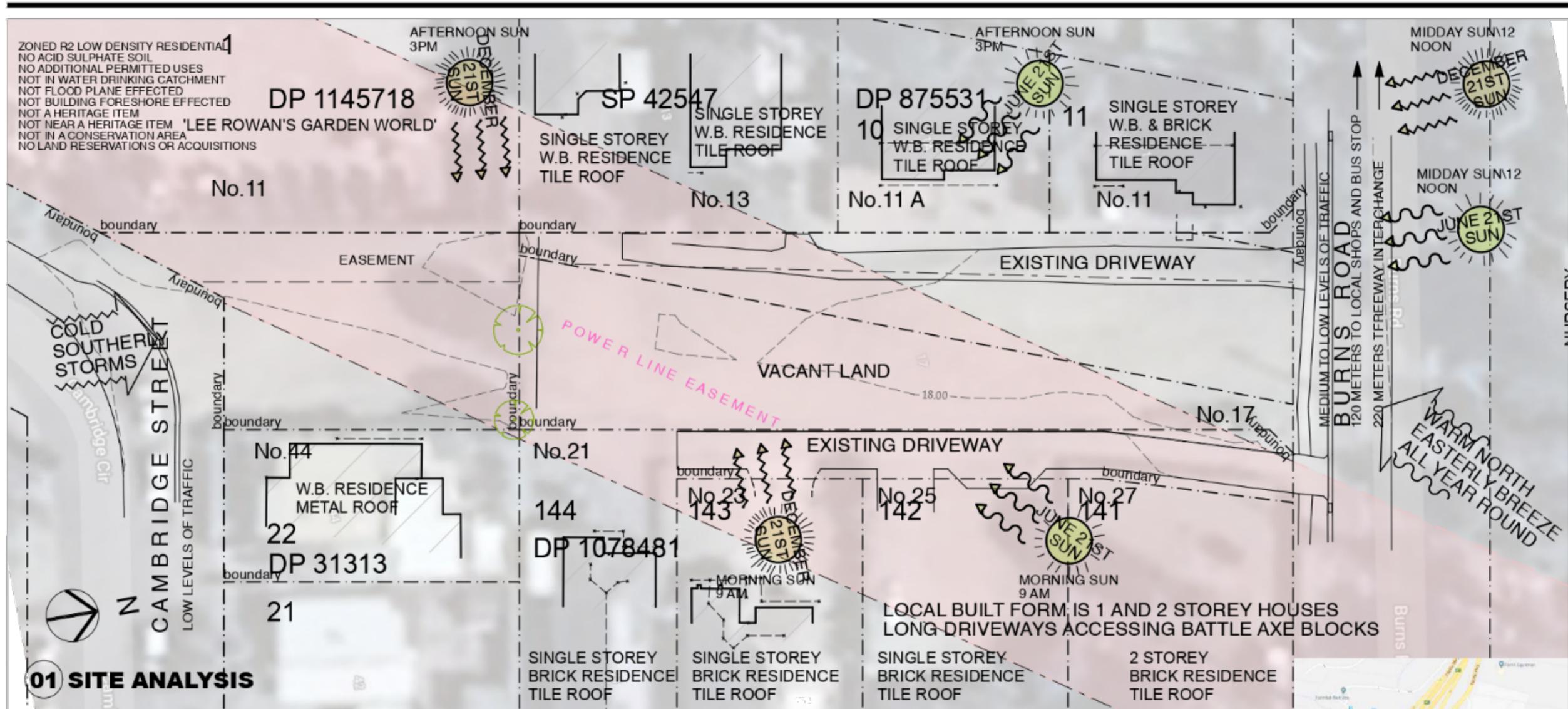
The proposal seeks a variance to the “number of boarding rooms” development standard to enable the development of the site in the manner proposed. The development standard is strictly numerical in nature and fails to take into consideration any site constraints or qualitative aspects of the development or of the particular circumstances of a site or locality that are environmental planning grounds to allow flexibility. Clause 4.6 of the Wyong LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to indirectly form the opinion that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 request demonstrates that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



Eugene Sarich  
Urbanesque Planning Pty Ltd



**01 SITE ANALYSIS**



**02 27 BURNS ROAD**



**03 17 BURNS RD**



**04 11 BURNS RD**



**05 CAMBRIDGE ST**



**06 LOCATION PLAN**

**Amendments**

A ISSUED FOR DA	6/08/19
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**Project Details**

**NEW BOARDING HOUSE AT**

**17 BURNS ROAD**  
**OURIMBAH NSW 2258**

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discrepancies to the Architect for a decision before proceeding with work.

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Job Number	1902	
Scale	As shown @ A3	

Drawing name

**SITE ANALYSIS**

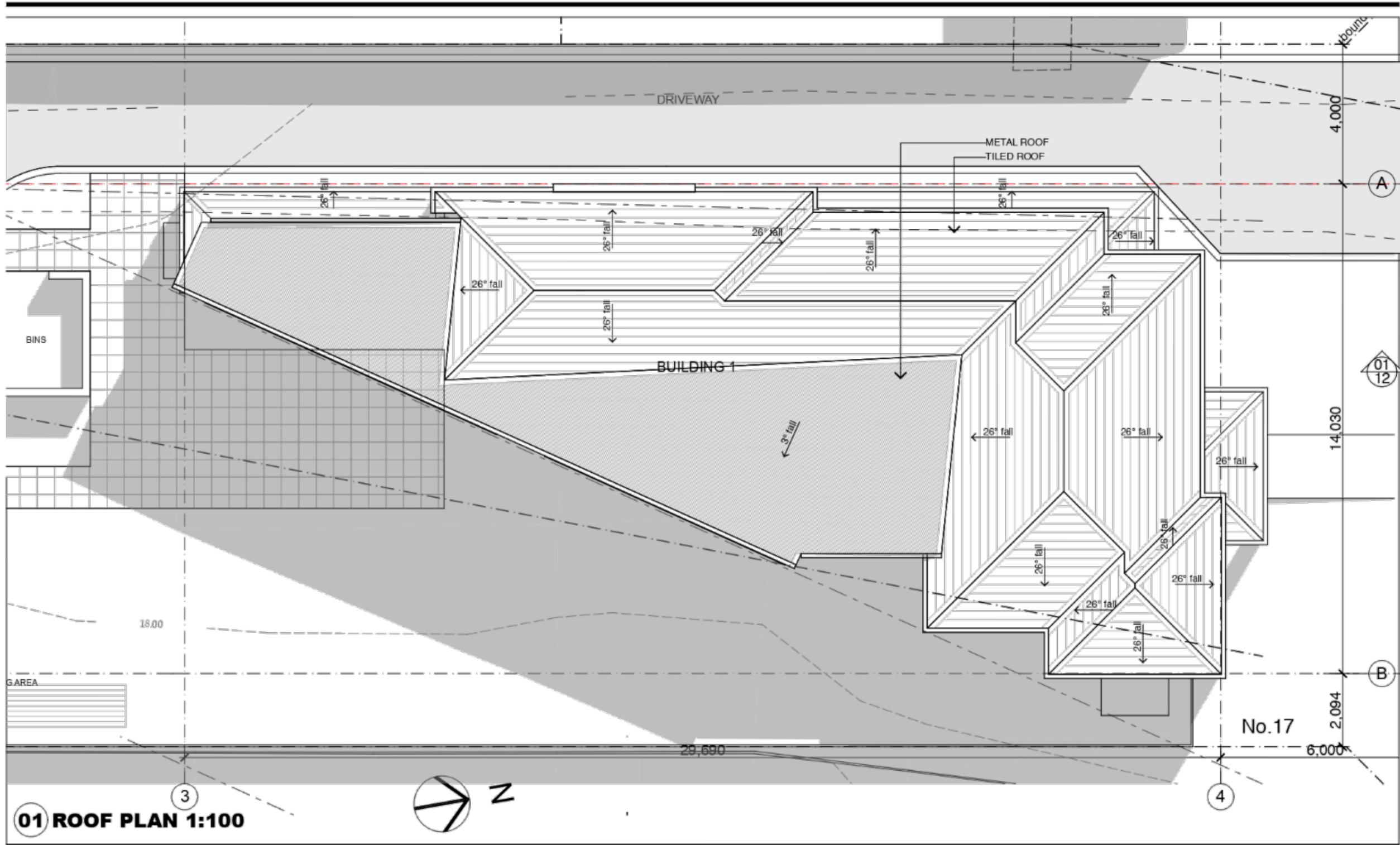
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Amendment

**A**





**01 ROOF PLAN 1:100**

Amendments	
A ISSUED FOR DA	06/08/19
B ROOM NUMBERS REDUCED	12/03/20

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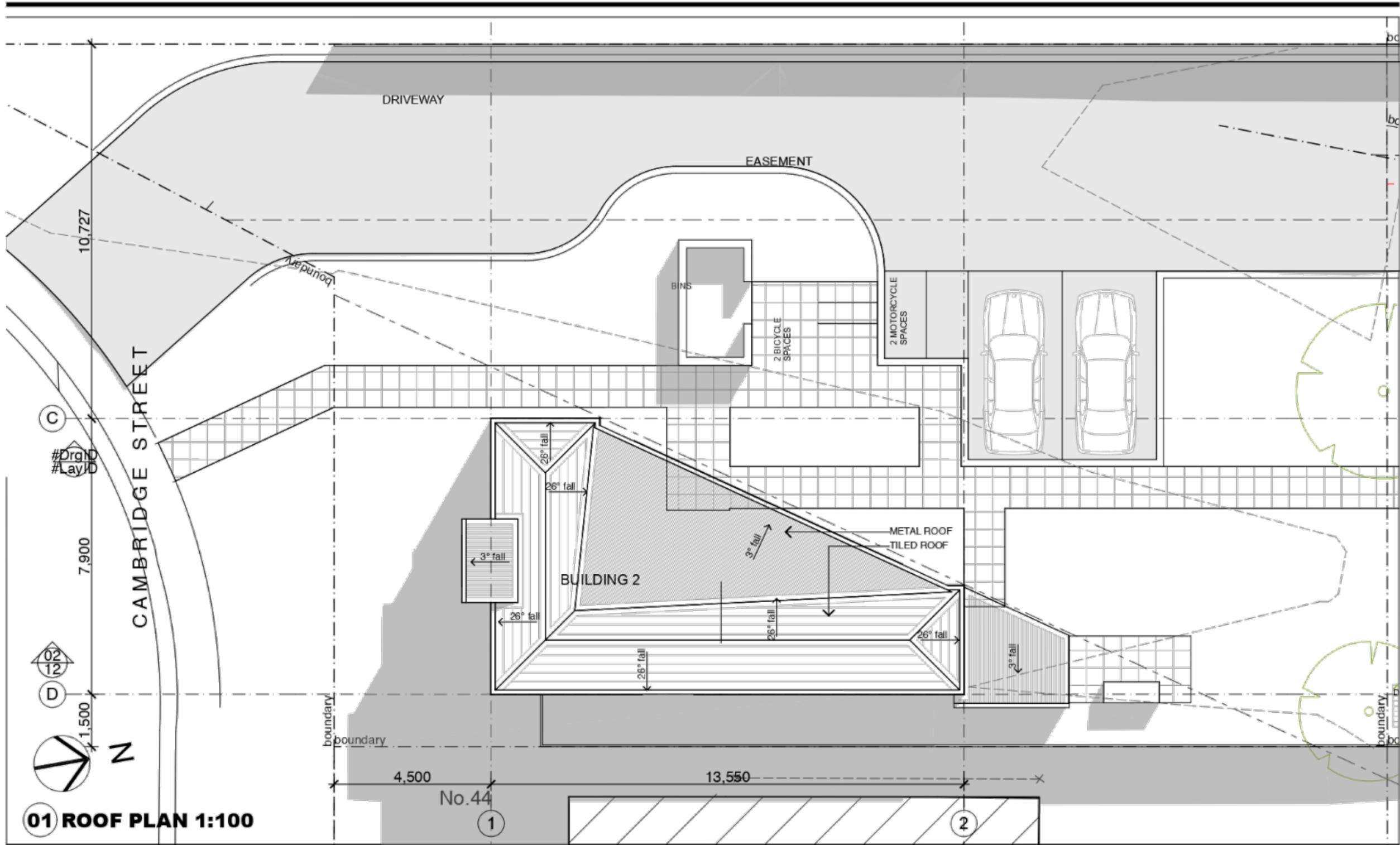
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**BURNS ROAD**

Drawing Number  
**DA-04**

Amendment  
**B**



**01 ROOF PLAN 1:100**

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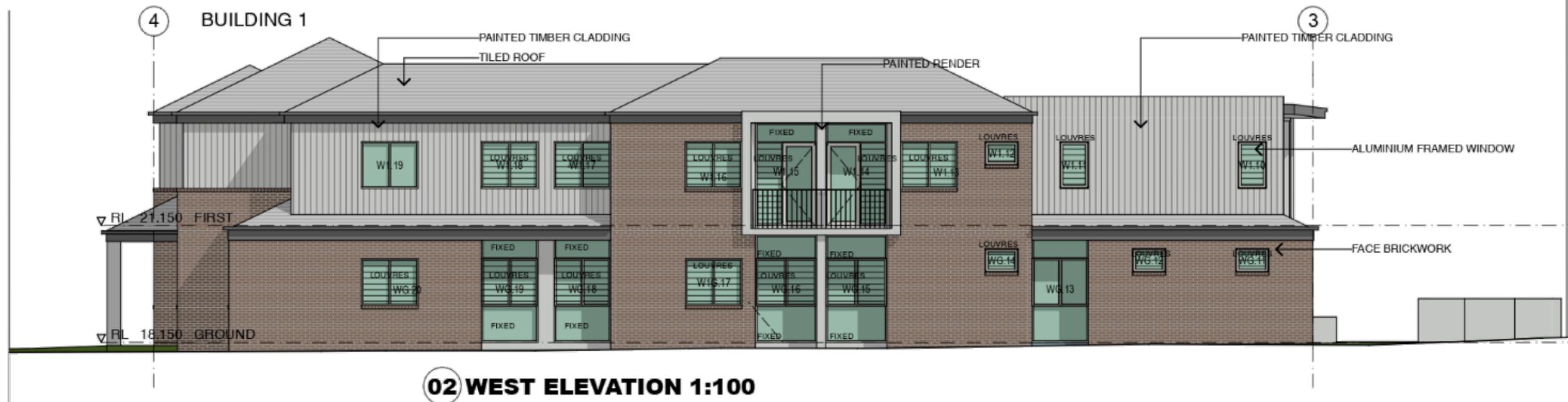
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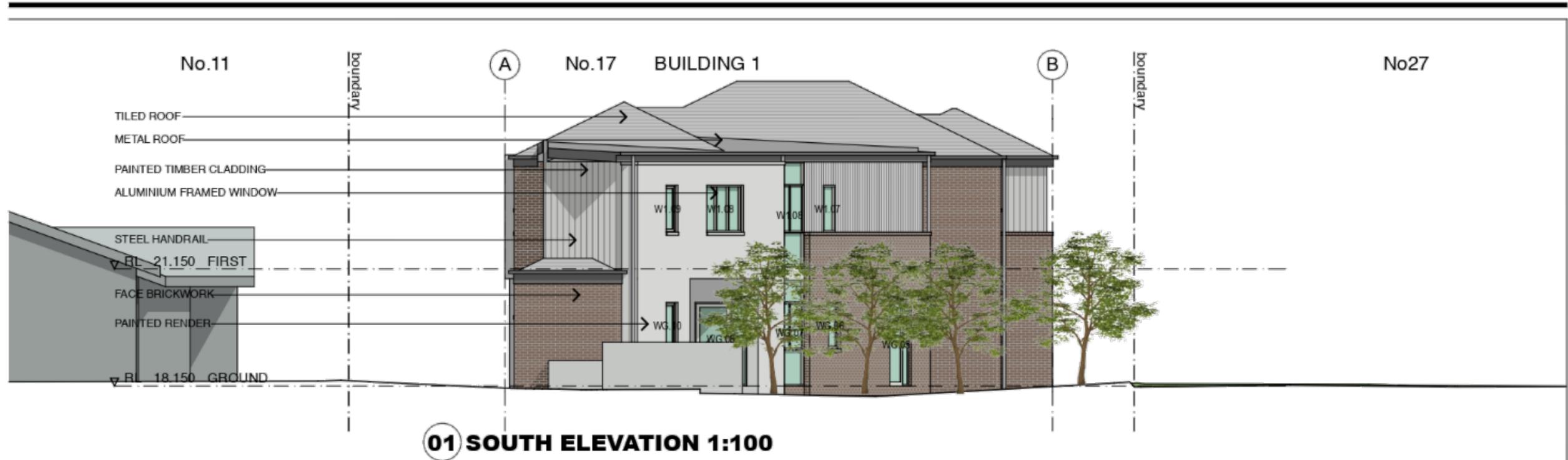
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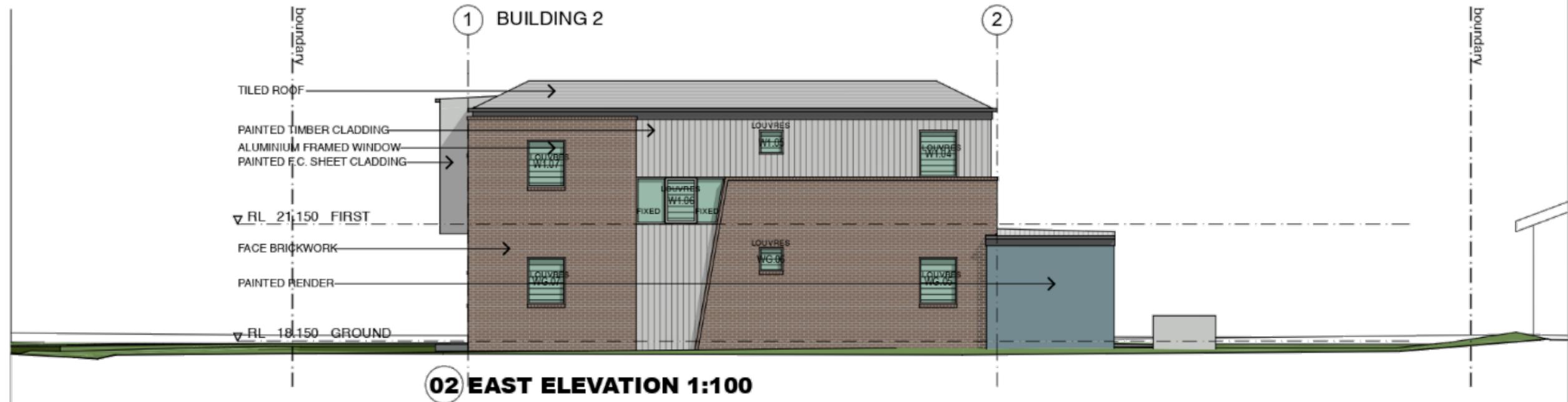
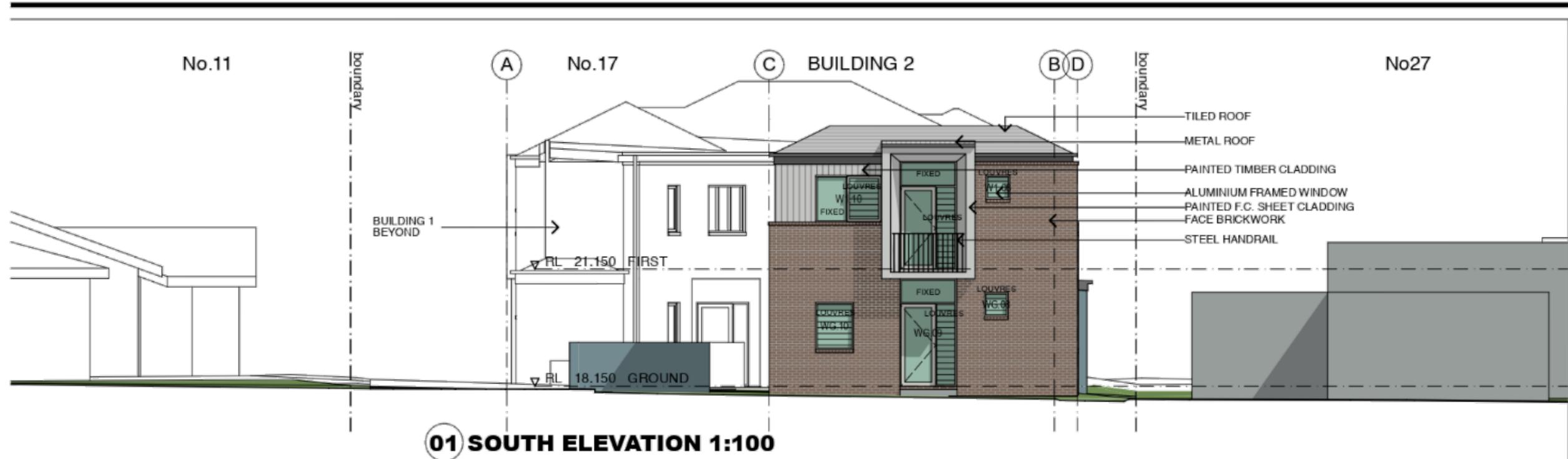
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Drawing Number <b>DA-07</b>	Amendment <b>A</b>



<p><b>Amendments</b></p> <table border="1"> <tr> <td>A</td> <td>ISSUED FOR DA</td> <td>06/08/19</td> </tr> <tr> <td>B</td> <td>ROOM NUMBERS REDUCED</td> <td>12/03/20</td> </tr> </table>	A	ISSUED FOR DA	06/08/19	B	ROOM NUMBERS REDUCED	12/03/20	<p><b>Architect</b></p> <p><b>Fortey + Grant Architecture</b>          Studio 3/Level 3, 35 Buckingham Street          Surry Hills NSW 2010          mob: 0401 822 223          email: james@fgarah.com.au</p>	<p><b>Project Details</b></p> <p><b>NEW BOARDING HOUSE AT</b></p> <p><b>17 BURNS ROAD</b>  <b>OURIMBAH NSW 2258</b></p>	<p><small>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discrepancies to the Architect for a decision before proceeding with work.</small></p> <table border="1"> <tr> <td>Drawn JG</td> <td>Approved JG</td> <td>Date Printed 12/03/2020</td> </tr> <tr> <td>Job Number 1902</td> <td colspan="2">Scale As shown @ A3</td> </tr> </table>	Drawn JG	Approved JG	Date Printed 12/03/2020	Job Number 1902	Scale As shown @ A3		<p>Drawing name <b>BUILDING 1 NORTH AND EAST ELEVATIONS</b></p> <p>Drawing Number <b>DA-08</b></p> <p>Amendment <b>B</b></p>
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<p><b>Amendments</b></p> <table border="1"> <tr> <td>A</td> <td>ISSUED FOR DA</td> <td>06/08/19</td> </tr> <tr> <td>B</td> <td>ROOM NUMBERS REDUCED</td> <td>12/03/20</td> </tr> </table>	A	ISSUED FOR DA	06/08/19	B	ROOM NUMBERS REDUCED	12/03/20	<p><b>Architect</b></p> <p><b>Fortey + Grant Architecture</b>          Studio 3/Level 3, 35 Buckingham Street          Surry Hills NSW 2010          mob: 0401 822 223          email: james@fgarah.com.au</p>	<p><b>Project Details</b></p> <p><b>NEW BOARDING HOUSE AT</b></p> <p><b>17 BURNS ROAD</b>  <b>OURIMBAH NSW 2258</b></p>	<p><small>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discrepancies to the Architect for a decision before proceeding with work.</small></p> <table border="1"> <tr> <td>Drawn</td> <td>Approved</td> <td>Date Printed</td> </tr> <tr> <td>JG</td> <td>JG</td> <td>12/03/2020</td> </tr> <tr> <td>Job Number</td> <td colspan="2">1902</td> </tr> <tr> <td>Scale</td> <td colspan="2">As shown @ A3</td> </tr> </table>	Drawn	Approved	Date Printed	JG	JG	12/03/2020	Job Number	1902		Scale	As shown @ A3		<p>Drawing name</p> <p><b>BUILDING 1 SOUTH AND EAST ELEVATIONS</b></p> <p>Drawing Number</p> <p><b>DA-09</b></p> <p>Amendment</p> <p><b>B</b></p>
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JG	JG	12/03/2020																				
Job Number	1902																					
Scale	As shown @ A3																					



Amendments	
A ISSUED FOR DA	06/08/19
B ROOM NUMBERS REDUCED	04/03/20

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**NEW BOARDING HOUSE AT**

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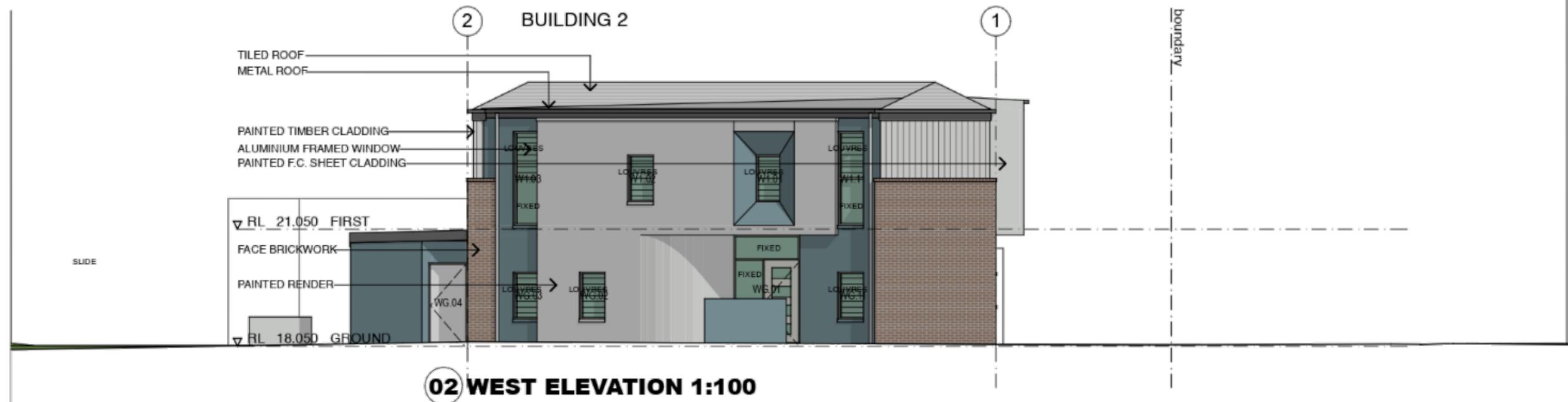
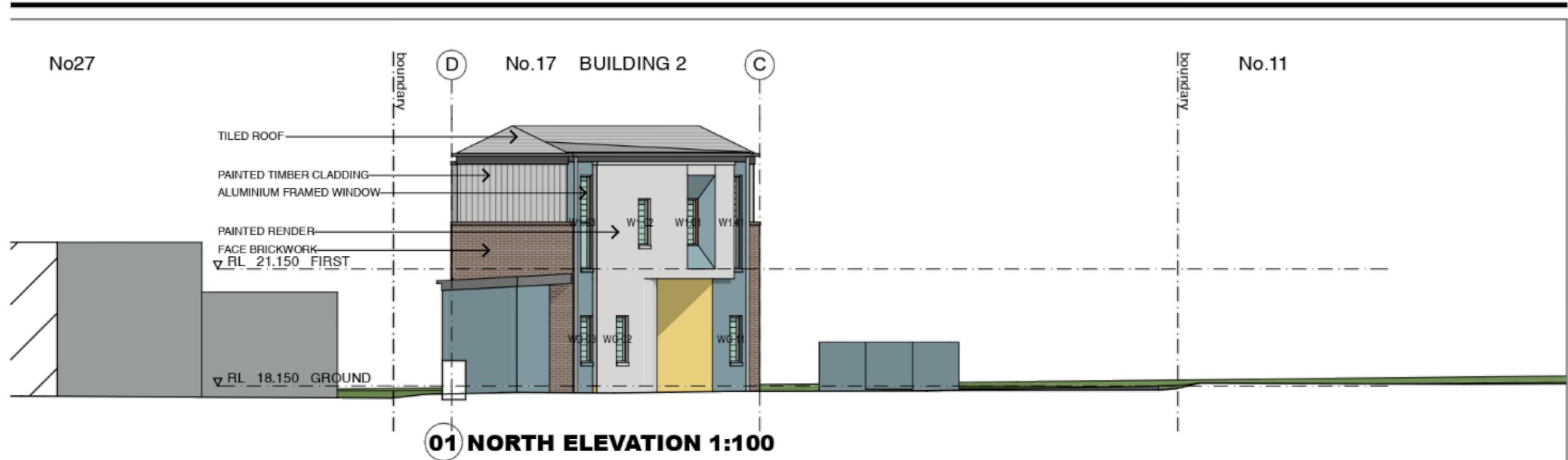
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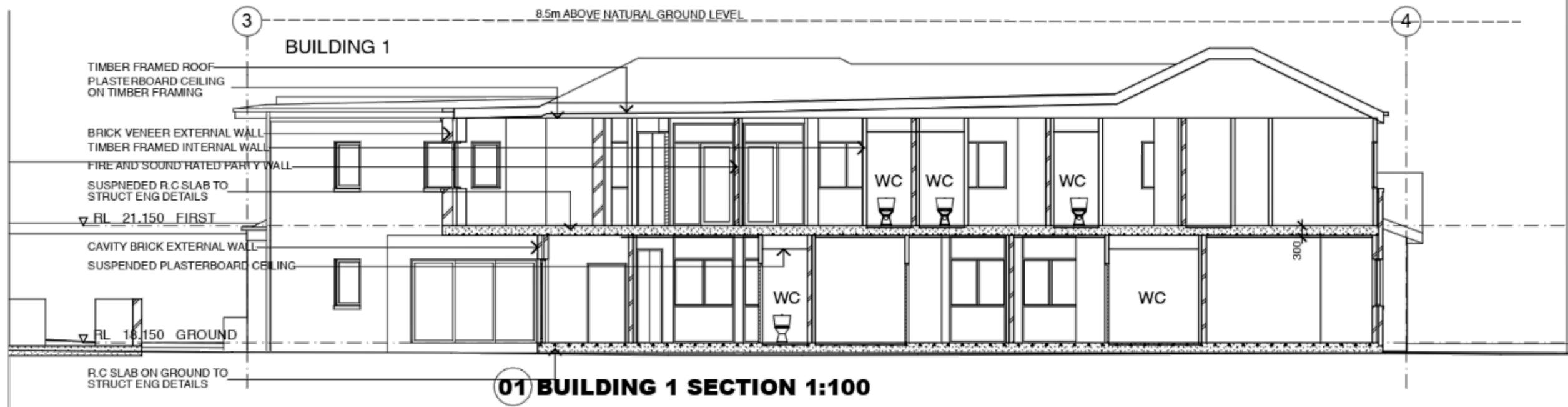
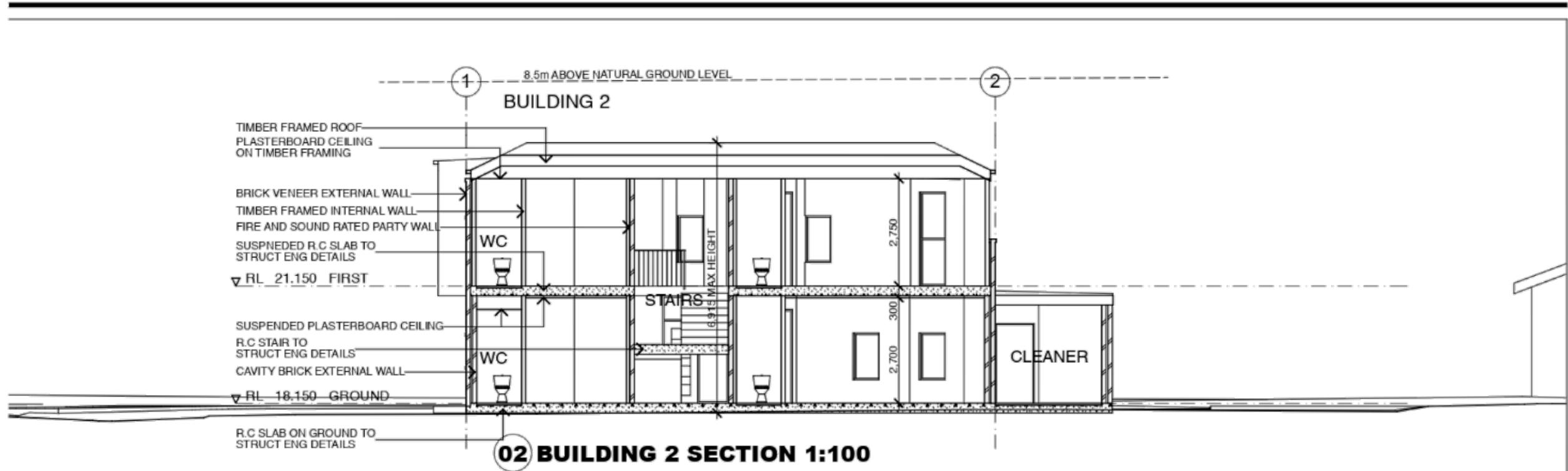
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**DA-10**

Amendment  
**B**



<p><b>Amendments</b></p> <p>A ISSUED FOR DA 06/08/19</p>	<p><b>Architect</b></p> <p><b>Fortey + Grant Architecture</b>          Studio 3/Level 3, 35 Buckingham Street          Surry Hills NSW 2010          mob: 0401 822 223          email: james@fgarah.com.au</p>	<p><b>Project Details</b></p> <p><b>NEW BOARDING HOUSE AT</b></p> <p><b>17 BURNS ROAD</b>  <b>OURIMBAH NSW 2258</b></p>	<p><small>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discrepancies to the Architect for a decision before proceeding with work.</small></p> <table border="1"> <tr> <td>Drawn JG</td> <td>Approved JG</td> <td>Date Printed 12/03/2020</td> </tr> <tr> <td>Job Number 1902</td> <td colspan="2">Scale As shown @ A3</td> </tr> </table>	Drawn JG	Approved JG	Date Printed 12/03/2020	Job Number 1902	Scale As shown @ A3		<p>Drawing name <b>BUILDING 2 NORTH AND WEST ELEVATIONS</b></p> <p>Drawing Number <b>DA-11</b></p> <p>Amendment <b>A</b></p>
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Amendments	
A ISSUED FOR DA	06/08/19
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**SECTIONS**

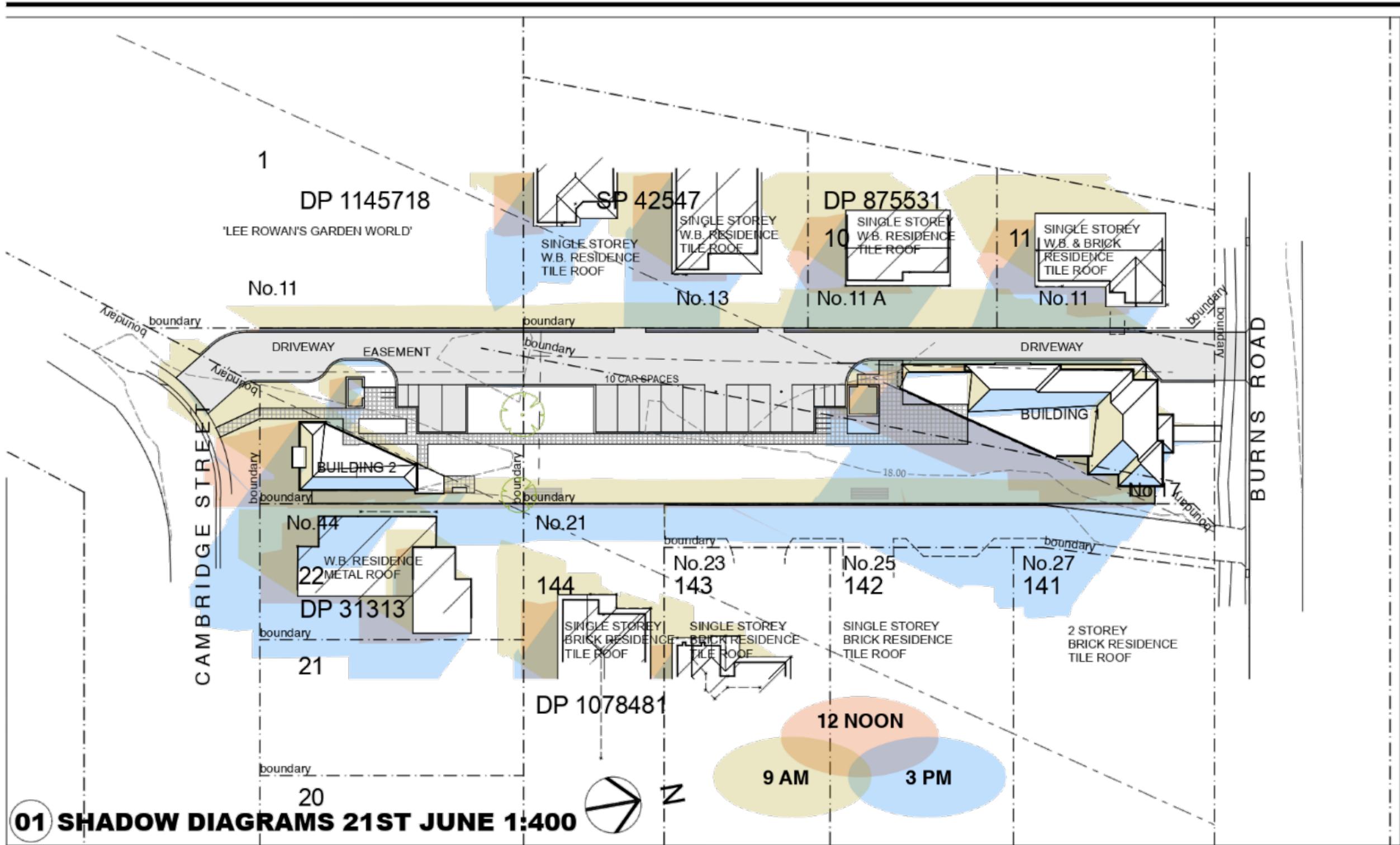
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**B**



**01 MATERIALS VIEW**

<p><b>Amendments</b></p> <table border="1"> <tr> <td>A</td> <td>ISSUED FOR DA</td> <td>06/08/19</td> </tr> <tr> <td>B</td> <td>ROOM NUMBERS REDUCED</td> <td>12/03/20</td> </tr> </table>	A	ISSUED FOR DA	06/08/19	B	ROOM NUMBERS REDUCED	12/03/20	<p><b>Architect</b></p>  <p><b>Fortey + Grant Architecture</b>          Studio 3/Level 3, 35 Buckingham Street          Surry Hills NSW 2010          mob: 0401 822 223          email: james@fgarah.com.au</p>	<p><b>Project Details</b></p> <p><b>NEW BOARDING HOUSE AT</b></p> <p><b>17 BURNS ROAD OURIMBAH NSW 2258</b></p>	<p><small>This drawing should be read in conjunction with all relevant contract documents, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discrepancies to the Architect for a decision before proceeding with work.</small></p> <table border="1"> <tr> <td>Drawn JG</td> <td>Approved JG</td> <td>Date Printed 12/03/2020</td> </tr> <tr> <td>Job Number 1902</td> <td colspan="2">Scale As shown @ A3</td> </tr> </table>	Drawn JG	Approved JG	Date Printed 12/03/2020	Job Number 1902	Scale As shown @ A3		<p>Drawing name <b>SCHEDULE OF EXTERNAL FINISHES</b></p> <p>Drawing Number <b>DA-13</b></p> <p>Amendment <b>B</b></p>
A	ISSUED FOR DA	06/08/19														
B	ROOM NUMBERS REDUCED	12/03/20														
Drawn JG	Approved JG	Date Printed 12/03/2020														
Job Number 1902	Scale As shown @ A3															



Amendments	
A ISSUED FOR DA	06/08/19
B ROOM NUMBERS REDUCED	12/03/20

**Architect**

**Fortey + Grant Architecture**  
 Studio 3/Level 3, 35 Buckingham Street  
 Surry Hills NSW 2010  
 mob: 0401 822 223  
 email: james@fgarah.com.au

**Project Details**

**NEW BOARDING HOUSE AT**

**17 BURNS ROAD**  
**OURIMBAH NSW 2258**

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discrepancies to the Architect for a decision before proceeding with work.

Drawn JG	Approved JG	Date Printed 12/03/2020
Job Number 1902	Scale As shown @ A3	

Drawing name  
**SHADOW DIAGRAMS 21ST JUNE**

Drawing Number  
**DA-14**

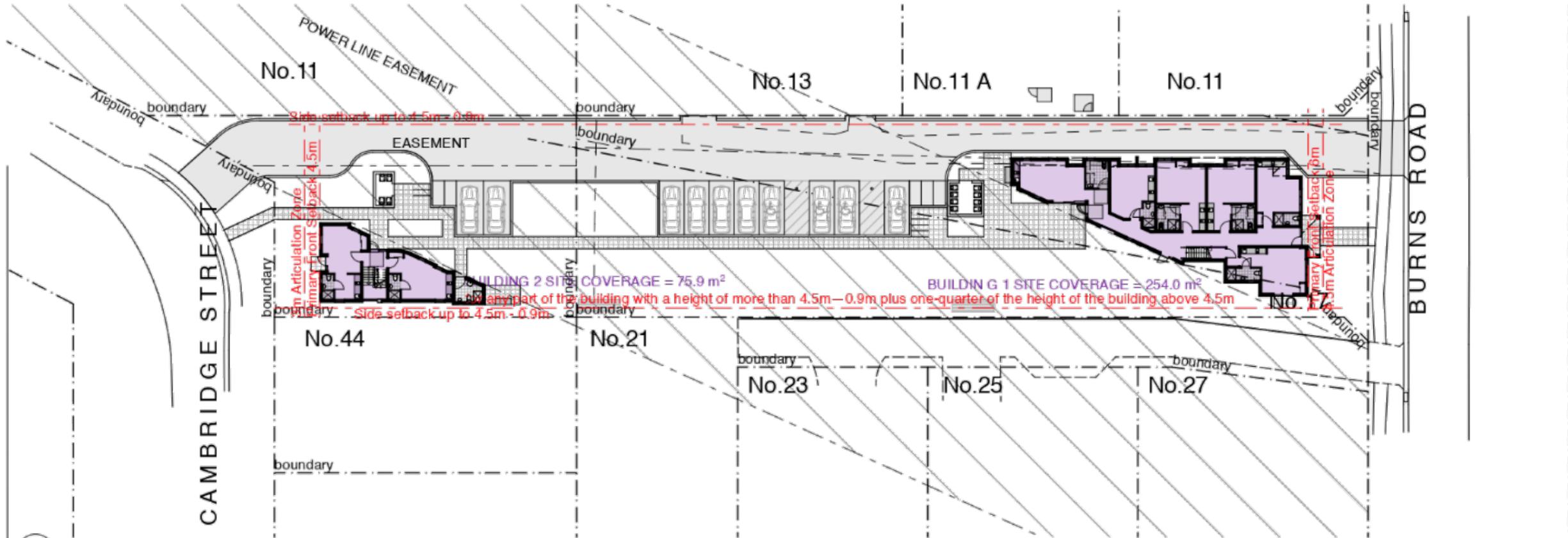
Amendment  
**B**

WYONG LEP 2013  
 ZONED R2 LOW DENSITY RESIDENTIAL  
 NO ACID SULPHATE SOIL  
 NO ADDITIONAL PERMITTED USES  
 NOT IN WATER DRINKING CATCHMENT  
 NOT FLOOD PLANE EFFECTED  
 NO FLOOR SPACE RATION REFER CLAUSE 4.4  
 NOT BUILDING FORESHORE EFFECTED  
 NO BUILDING HEIGHT LIMIT REFER CLAUSE 4.3  
 NOT A HERITAGE ITEM  
 NOT NEAR A HERITAGE ITEM  
 NOT IN A CONSERVATION AREA  
 NO LAND RESERVATIONS OR ACQUISITIONS  
 MIN LOT SIZE 450m<sup>2</sup>

WYONG DCP 2013  
 SITE AREA 2247.3m<sup>2</sup>  
 BUILDING HEIGHT MAX 10m  
 MAX BUILDING HEIGHT PROPOSED 6.9m  
 MAX ALLOWABLE STORIES = 2  
 NUMBER OF STORIES PROPOSED = 2  
 MAXIMUM OUTBUILDING HEIGHT 4.8m  
 NO OUTBUILDINGS PROPOSED.  
 MAX ALLOWABLE SITE COVERAGE 30% of 2247.3m<sup>2</sup> = 674.1m<sup>2</sup>  
 SITE COVERAGE PROPOSED = 329.9m<sup>2</sup>  
 MAX ALLOWABLE FLOOR AREA 0.5:1 = 11.23m<sup>2</sup> NOT ON LEP MAPS  
 FLOOR AREA PROPOSED = 583.6m<sup>2</sup> (0.26 FSR)

15 Rooms + Manager  
 9 CAR SPACES REQUIRED  
 10 CAR SPACES PROVIDED  
 3 BICYCLE SPACES REQUIRED  
 5 BICYCLE SPACES PROVIDED  
 3 MOTORCYCLE SPACES REQUIRED  
 5 MOTORCYCLE SPACES PROVIDED

20+ RESIDENTS : ON SITE CARETAKER REQUIRED  
 OVER 5 ROOMS : ONE COMMUNAL SPACE REQUIRED



**01 CALCULATIONS PLAN 1:400**

Amendments	
A ISSUED FOR DA	06/08/19
B ROOM NUMBERS REDUCED	04/03/20

**Architect**

**Fortey + Grant Architecture**  
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 email: james@fgarah.com.au

**Project Details**

**NEW BOARDING HOUSE AT**

**17 BURNS ROAD**  
**OURIMBAH NSW 2258**

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discrepancies to the Architect for a decision before proceeding with work.

Drawn JG	Approved JG	Date Printed 12/03/2020
Job Number 1902	Scale As shown @ A3	

Drawing name

**CALCULATIONS**

Drawing Number  
**DA-16**

Amendment  
**B**

LEGEND / FINISHES SCHEDULE

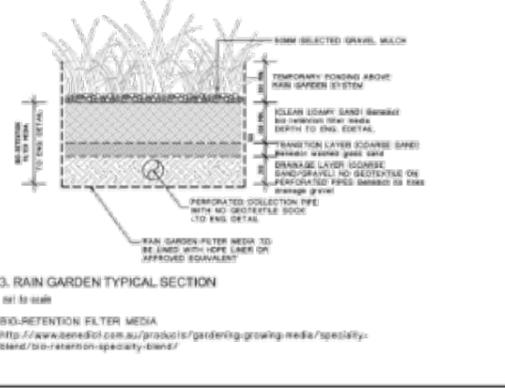
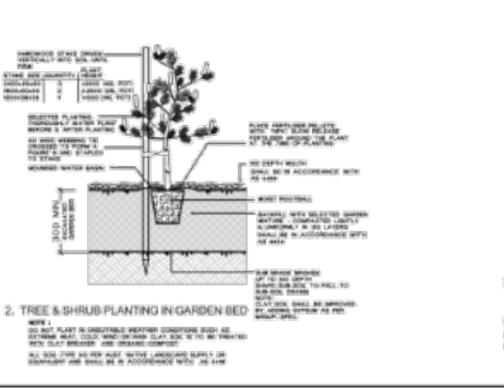
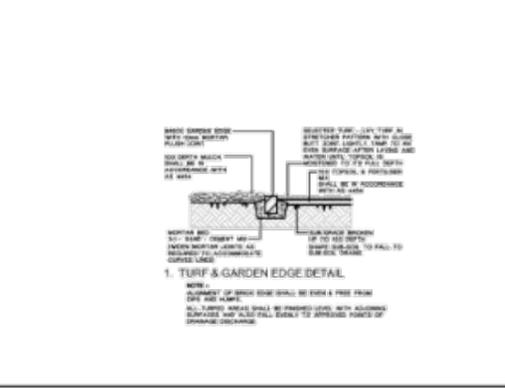
	EXISTING RL
	EXISTING TREE TO BE REMOVED
	EXISTING TREE TO BE RETAINED AND SHALL BE PROTECTED DURING CONSTRUCTION. TREE PLANNING SHALL BE IN ACCORDANCE WITH AS 4373
	PROPOSED TREES, SHRUBS & GROUND COVER (REFER NO. TO PLANT SCHEDULE)
	BOUNDARY FENCE
	MULCHED GARDEN BED - 100 WIDE MML REFER TO DETAIL 1 & 2
	SELECTED BRICK GARDEN EDGE OR AS SELECTED REFER TO DETAIL 1
	LAWN AREA OR WALTER BUFFALO REFER TO DETAIL 1
	PERMEABLE PEBBLE AREA SELECTED 100 DEPTH RIVER PEBBLES WITH WEED MAT UNDER
	DRIVEWAY / PATH SELECTED STENCILED OR COLOURED CONCRETE
	PATIO / TERRACE / PATH SELECTED TREES
	SELECTED LETTER BOX TO AUST POST REQUIREMENTS AND TO AS/NZS 4253:1994
	SELECTED AUTOMATIC BOLLARD - ELLUMINATION SHALL BE DESIGNED BY A QUALIFIED LIGHTING CONSULTANT AND IN ACCORDANCE WITH AS 4282 & AS 1949
	STORM WATER PIT REFER TO ENGINEER PLANS FOR DETAILS

ITEM	MATERIAL
SOIL	NOTE: ALL SOIL TYPE AS PER AUST. NATIVE LANDSCAPE SURVEY OR EQUIVALENT AND SHALL BE IN ACCORDANCE WITH AS 4479 AND AS 4554 FOR SOIL CONDITIONS AND COMPOSTS
LAWN AREA	NO QUALITY TOP SOIL
NATIVE GARDEN BED	NATIVE GARDEN MIX
EXOTIC GARDEN BED	ORGANIC GARDEN MIX
MULCH	SELECTED HARD WOOD CHIP SHALL BE IN ACCORDANCE WITH AS 4554 PROVIDE DECORATIVE GRAVEL TO ABOVE GROUND OSD GARDEN BED
PLANT MATERIAL	AS PER PLANT SCHEDULE REFER TO DETAIL 2 & 3
GARDEN EDGE	SELECTED PRESSED BRICK OR AS SELECTED REFER TO DETAIL 1
FENCE	1800 HIGH LAPPED & CAPPED TAMER FENCE OR 1800 HIGH COLOURBOND



REFER TO DRAWING ABOVE FOR CONTINUATION

REFER TO DRAWING BELOW FOR CONTINUATION



PROPOSED PLANT SCHEDULE

IN ACCORDANCE WITH AS 3303:2015

CODE	BOTANICAL NAME	COMMON NAME	APPROX MATURED HEIGHT	POT SIZE	QUANTITY
<b>GROUND COVER / BORDER</b>					
1	<i>Isotria medeolae 'Nana'</i>	Dwarf Isotria	0.5	150mm	25
2	<i>Lomandra 'Amara'</i>	Dwarf Lomandra	0.75	150mm	83
3	<i>Agapanthus orientalis</i>	Agapanthus	0.8	150mm	86
4	<i>Lilium monnei 'Just Right'</i>	Just Right Lilium	0.5	150mm	59
5	<i>Clivia tasmanica 'Destiny'</i>	Destiny Flax Lily	0.4	150mm	156
6	<i>Juncus verticillatus</i>	Common Rush	0.8	150mm	36
7	<i>Phormium tenax</i>	Korolyi Club Rush	0.5	150mm	83
8	<i>Phormium tenax 'Mist'</i>	Chocoma Mist	0.6	150mm	7
9	<i>Phormium tenax 'Tasmania'</i>	Woolloomoolook Tasmania	0.1	150mm	28
<b>LOW SHRUBS</b>					
11	<i>Westringia olivacea 'Aussie Box'</i>	Aussie Box Westringia	0.5	200mm	78
14	<i>Syzygium 'Standard'</i>	Lily Lilly Standard	3.0	200mm	4
15	<i>Correa reflexa</i>	Correa	1.5	200mm	42
17	<i>Syzygium australe 'Pomona'</i>	Lily Lilly Narrow	4	200mm	101
18	<i>Podocarpus laevis 'Purpurea'</i>	Purple-leaved Hop bush	2	200mm	34
19	<i>Asplenium 'Alyx's Magic'</i>	Lily Lilly	1.5	200mm	27
20	<i>Westringia frutescens</i>	Westringia	1.8	200mm	25
<b>TALL SHRUBS</b>					
24	<i>Gravillea 'Misty Pink'</i>	Gravillea	3	200mm	24
<b>FEATURE SHRUBS</b>					
31	<i>Coronilla alba 'Roya'</i>	Slender palm Shrub	3	200mm	16
32	<i>Gaillardia australis</i>	Tree fern	4	25 L	2
33	<i>Phormium tenax 'Purpurea'</i>	Dianella	1.2	200mm	3
36	<i>Coronilla 'Red Sensation'</i>	Red Sensation	1.2	25 L	3
38	<i>Cycas revoluta</i>	Sago Palm	1.8	25 L	3
37	<i>Stratfordia argentea</i>	Red of Paradise	1.2	25 L	3
40	<i>Asplenium variegatum 'variegatum'</i>	Variegated Shell Ginger	1.8	200mm	16
<b>TREES</b>					
41	<i>Tristania laurina 'Lucicola'</i>	Water gum	7	45 L	2
42	<i>Lagerstroemia indica 'Indian Summer'</i>	Crape Myrtle	7	45 L	4

NOTE: HEIGHT AND SPAN ARE INDICATIVE ONLY. SUBJECT TO ON-SITE ENVIRONMENTAL FACTORS. USE ONLY AS A GUIDE.

REV	DESCRIPTION	REVISION DATE
C	AMEND AS PER ARCH CHG	6-4-20
B	AMEND AS PER ARCH CHG	1-8-19
A	DA ISSUE	30-5-19

- NOTE:**
- As landscape works shall be carried out by members of the LANDSCAPE CONTRACTORS ASSOCIATION of AUSTRALIA.
  - Contractors must verify all dimensions at the site before commencing any work or making any shop drawings which must be approved before manufacturing.
  - Do not scale drawing, if in doubt - ASK
  - This drawing is to be read in conjunction with Architectural, Hydraulic and survey plans.
  - All existing trees to remain shall be protected as per arborist report & council requirements.
  - All pruning shall be in accordance with the AS 4373
  - Thoroughly eradicate weeds from all garden areas.
  - No variation to the works to be carried out without prior approval from owner.
  - All materials to be the best of their respective kinds and shall comply with approved outside type submitted or specified.
  - Substitution of plant species or varieties will not be permitted.
  - Unless otherwise specified or directed, all instructions are to be issued by the existing landscape designer.
  - All storm water outlets & surface run off shall be to hydraulic engineers detail.
  - Provide sub-surface drainage to garden beds & lawn areas where required - To be confirmed on site.
  - Refer to survey plan for position of all existing services.
  - Refer to Architectural elevations & Sections for existing and proposed ground lines.
  - All landscape works shall comply with all councils DA & CO conditions and all relevant 'AUSTRALIAN STANDARDS' and AUS SPEC NO.1 Specification (27)-Landscaping.
  - Irrigation system - if required shall be designed & installed in conformity with AS 2058, AS 2688, AS 4554, AS 2682-1985, AS 2686, AS 1990, water board and other relevant authority regulations.

**MAINTENANCE**

- All landscape works are to be maintained for a period of 12 months (or as required by council DA, Consent) by landscape contractor after final completion AND shall be maintained at all times in a suitable manner. Replace all plants which have failed with the same species. Plants to be maintained as specified depth. All plants and turf shall be watered on a regular basis to maintain moisture levels required for optimum growth. All garden areas are to be maintained free from weeds.

PROPOSED BOARDING HOUSE  
17 Burns Road  
Ourimbah

ARCHITECT:  
**Fortley + Grant Architecture**

landscape design  
**vision dynamics**  
8 Blaxland Road  
Kilgara NSW 2071  
PH: (02) 9490 9888 FAX: (02) 9490 9892  
M: 0400 000 000 W: www.visiondynamics.com.au

DRAWING TITLE  
**LANDSCAPE CONCEPT PLAN**

DRAWN BY: FF SCALE: 1:150 (A1) OR 1:300 (A3)  
DRAWN NUMBER: 19050 DA 1

DATE: 19/05/20  
REV: C

**Item No:** 3.2  
**Title:** DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and  
easement for car parking

**Department:** Environment and Planning

3 September 2020 Local Planning Panel Meeting

Reference: 011.2020.00057912.001 - D14155910  
Author: Diane Spithill, Town Planner  
Manager: Ailsa Prendergast, Section Manager, Development Assessment South  
Approver: Andrew Roach, Unit Manager, Development Assessment

### Summary

An application has been received for a strata subdivision (18 lots) of an approved cluster housing development.

The application has been examined having regard to the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application is required to be reported to the Local Planning Panel due to the variation in the proposed lot size which is greater than 10%.

<b>Applicant</b>	Narara Ecovillage Co-Operative Ltd
<b>Owner</b>	Narara Ecovillage Co-Operative Ltd
<b>Application No</b>	DA 57912/2020
<b>Description of Land</b>	Lot 36 DP 270882 No 14 Balgara Rise Narara and easement for car parking (two spaces) on Lot 49 DP 270882
<b>Proposed Development</b>	Strata Subdivision (18 Lots) and easement for car parking
<b>Site Area</b>	6,236m <sup>2</sup>
<b>Zoning</b>	R2 Low Density Residential
<b>Existing Use</b>	Cluster Housing Development
<b>Employment Generation</b>	No
<b>Estimated Value</b>	N/A

### Recommendation

- 1 That the Local Planning Panel assume the concurrence of the Secretary of Planning for the use of Clause 4.6 to vary the minimum lot size for strata subdivision development standard (clause 4.1A of the Gosford Local Environmental Plan 2014) to permit the proposed development.***
- 2 That the Panel grant consent to Development Application No. DA57912/2020 for strata subdivision (18 lots) of an approved cluster housing development on Lot:***

**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car parking (contd)**

***36 DP270882, 14 Balgara Rise and easement for two car parking spaces on Lot 49 DP270882, Narara, subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.***

**Precis:**

<b>Proposed Development</b>	Strata Subdivision of an existing Cluster Housing Development
<b>Permissibility and Zoning</b>	Subdivision is permissible with consent in the R2 Low Density Residential zone in accordance with the relevant provisions of <i>Gosford Local Environment Plan 2014</i> .
<b>Relevant Legislation</b>	<ul style="list-style-type: none"> <li>- <i>Environmental Planning &amp; Assessment Act 1979 - Section 4.15 (EP&amp;A 1979)</i></li> <li>- <i>State Environmental Planning Policy (Coastal Management) 2018</i></li> <li>- <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i></li> <li>- <i>Gosford Local Environment Plan 2014 (GLEP 2014)</i></li> <li>- <i>Gosford Development Control Plan 2013 (GDPCP 2013)</i></li> <li>- <i>Rural Fires Act 1997</i></li> </ul>
<b>Current Use</b>	Cluster Housing (Existing Use Rights) known as 'Narara Eco-Village' (now defined as multi dwelling housing)
<b>Integrated Development</b>	No
<b>Submissions</b>	Notification not required

**Variations to Policies**

Clause	4.1A
Standard	Minimum subdivision lot size for strata plan schemes in certain zones
LEP/DCP	<i>Gosford Local Environment Plan 2014</i>
Departure basis	83%

**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car  
parking (contd)**

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**Background - The Site and Surrounds**

The subject land is located on Lot 36 DP 270882 (No 14 Balgara Rise) Narara and is part of a wider site known as the 'Narara Ecovillage' (NEV). The property is situated on the corner of Balgara Rise and Kintay Lane. The site has an area of 6,236m<sup>2</sup> as indicated in the Deposited Plan 270882 (Refer Figure 3 - plan extract). An approved development ('cluster housing') is under construction (details below).

Previous development of the land was approved in 2014 for a 'cluster housing' development (Development Application Ref. DA44899/2013). At the time of lodgement of the application in 2013, the site was zoned *2(a) Residential* under the former *Gosford Planning Scheme Ordinance (GPSO)* and the development was classified as 'Cluster Housing' which was permissible. Cluster housing is no longer a defined use, and the development is now defined as 'Multi Dwelling Housing' which is not permitted under the current zoning. The development of the site (cluster housing) benefits from the existing approval and existing use right provisions (further details provided later in the report). This current application is for strata subdivision of a component of the previously approved development.

Surrounding development is comprised of vacant lots and as well as single and two-storey detached residential dwellings as part of the wider eco-village arrangement - some under construction and some recently completed. (Refer Figures 1 and 2 - Aerial Photographs).

The site is identified as "bushfire prone land" on Council's bushfire maps (i.e. vegetated areas to the west of the site). A *Bushfire Assessment Report*, prepared by Travers Bushfire & Ecology has been submitted in support of the current application, recommending the proposal comply with BAL - 12.5.

Given the identified bushfire prone status, under most circumstances subdivision of land for residential purposes would be Integrated Development as set out Division 4.8 of the *Environmental Planning & Assessment Act 1979*. However, the previous application for a community title subdivision was assessed as Integrated Development and general terms of approval were issued by the NSW Rural Fire Service for a Bushfire Safety Authority under Section 100B of the *Rural Fires Act 1997*. The provisions of the *Environmental Planning & Assessment Act 1979* and *Rural Fires Act 1997* (and associated Regulations) provide exemptions for such strata subdivisions where the previous residential approval was considered previously by the NSW Rural Fire Service. As a result of the development approval history the proposed strata subdivision is not Integrated Development. Further details are provided later in the report.

3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car parking (contd)



Figure 1: Aerial photograph showing residential portion of Narara Eco Village and subject site (in blue)

3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
 Narara Eco Village - 18 Lot Strata Subdivision and easement for car parking (contd)



Figure 2: Aerial Photograph showing location of subject site (Lot 36 DP 270882) outlined in blue.

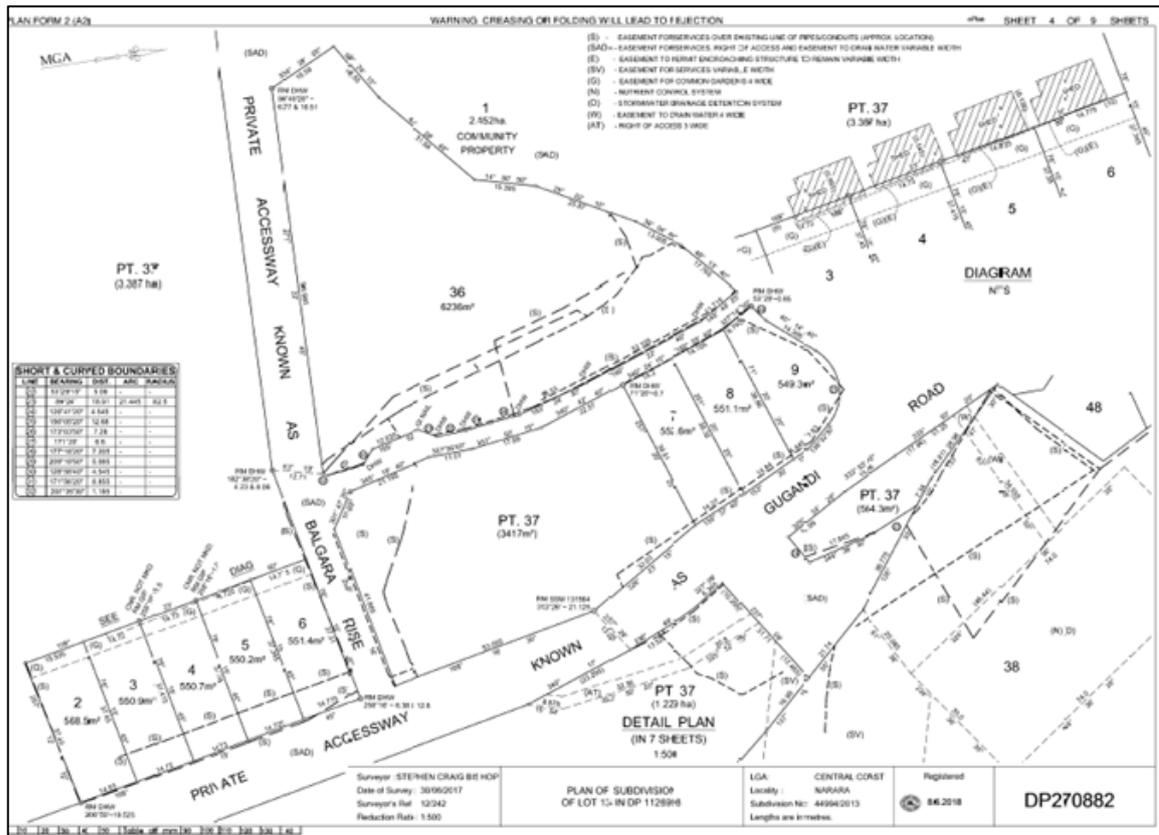


Figure 3: Extract of DP 270882 - Lot 36

**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car  
parking (contd)**

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**Relevant History**

***Background***

The 'Narara Eco Village' site comprises approximately 62.97 hectares that was previously zoned 5(a) *Special Use (Experimental Station)* under *Interim Development Order 122*. The site was occupied and operated as the Gosford Horticulture Research and Advisory Station (under the control of the NSW Department of Primary Industry). The zoning of the land was amended on 1 February 2008 to rezone the site to facilitate the future development and use of the land primarily for residential purposes.

The land was disposed of by NSW Department of Primary Industry and was acquired in September 2012 by a Co-Operative for the purposes of establishing an 'eco-village'. Since that time the site has been known as 'Narara Eco-Village' and provides opportunities for eco-friendly living and related community ventures.

***Previous Application 44994/2013 – Community Title Subdivision***

Development Application 44994/2013 - Community Title Subdivision (39 Lots), development, associated infrastructure and demolition of various structures and buildings was granted consent on 8 August 2014, subject to conditions.

This application is referred to as Stage 1 of an overall master plan for the site. The application included subdivision of the wider eco-village site and associated road and other infrastructure necessary to services the development.

This plan of subdivision has been registered with Land and Property Information Services (Deposited Plan 270882) and all infrastructure works have been completed.

The original consent has been amended on several occasions. The latest being Development Application 44994/2013- Part 6 granted consent on 19 October 2018 for a 49-lot community title subdivision.

***Previous Application 44899/2013 - Cluster Housing and Associated Infrastructure***

The current proposal (DA57912/2020) is for the strata subdivision of a 'Cluster Housing' development (18 units) previously approved under Development Application Ref. 44899/2013. This application is for 'Demolition of Existing Structures and Construction of 18 Cluster Houses and Associated Infrastructure and Landscaping' (on Lot 36 in the subdivision of Lot 13 DP:1126998, 25 Research Road) was approved on 7 April 2014. Lot 36 DP 270882 was subsequently registered and the development is currently under construction and nearing completion.

### **3.2 DA 57912/2020 - 14 Balgara Rise NARARA Narara Eco Village - 18 Lot Strata Subdivision and easement for car parking (contd)**

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At the time of lodgement of DA44899/2013, the site was zoned *2(a) Residential* under the former *Gosford Planning Scheme Ordinance (GPSO)* and the development was classified as 'Cluster Housing' which was permissible in the *2(a) Residential* zone.

The site is now zoned *R2 Low Density Residential* under the Gosford LEP 2014. Cluster housing is no longer a specifically defined use, and the development would now be defined as Multi Dwelling Housing. Multi dwelling housing is prohibited under the current *R2 Low Density Residential* zone under the Gosford LEP 2014. The previously approved cluster housing development has the benefit of 'existing use rights' as defined in *Section 4.65* of the *Environmental Planning & Assessment Act 1979*.

The proposed strata subdivision would have been complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, should it have occurred within 5 years of the date of the consent, being 7 April 2014. Heritage provisions also apply to the overall site. As such this SEPP does not apply and development consent is required to be obtained for the proposed strata subdivision.

#### **Other Site History**

In addition to those applications mentioned above, there are a range of other development applications across the site over the past decade, although not particularly relevant to the current subdivision proposal. This includes applications for various buildings of community use, infrastructure, assorted residential development, landscaping and the like.

#### **The Proposed Development**

The proposal is for the strata subdivision of an existing cluster housing development into 18 strata lots ranging from 93 m<sup>2</sup> to 173 m<sup>2</sup>

The Statement of Environmental Effects submitted in support of the application advises that:

*"Units 1 and 2 do not include allocated car parking spaces within the site. The proposal also includes an easements for car parking over existing constructed car parking spaces adjacent to the development on the eastern side of Kintay Lane (Part Lot 37 DP270882) for Units 1 and 2. The proposed Strata Title subdivision will formalise the approved (Cluster Housing) multi dwelling housing development and enable each dwelling to be contained within their respective lots with typical ownership and tenure arrangements for this type of development."*

The proposed strata subdivision location plan and approved site plan under Development Consent 44899/2013 part 2 is shown in Figures 4 and 5.



**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car  
parking (contd)**

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**Assessment:**

Having regard for the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 and other statutory requirements, the assessment has identified the following key issues, which are elaborated upon for the Panel's information

**Central Coast Council's Community Strategic Plan 2018-2028 'One - Central Coast'**

Central Coast Council's Community Strategic Plan 2018-2028 'One - Central Coast' is a 10-year plan developed by Council through engagement with the community to help set the strategies and activities that best achieve the community's desired outcomes for the future.

The proposed development is consistent with the relevant objectives in 'One- Central Coast' as once completed the Strata Subdivision of the completed cluster development will provide new housing to meet the diverse and changing needs of the community within the Narara eco village.

**State Environmental Planning Policies**

There are no State Environmental Planning Policies relevant to the strata application. Such planning instruments were previously considered in the assessment of the earlier community title and cluster housing applications.

**Gosford Local Environmental Plan 2014 - Permissibility**

The subject site - Lot 36 DP270882 is currently zoned *R2 Low Density Residential* under the provisions of the Gosford Local Environmental Plan 2014 (Gosford LEP 2014).

Clause 2.6 of *Gosford Local Environmental Plan 2014* stipulates the following requirements in relation to the subdivision of land:

*"(1) Land to which this Plan applies may be subdivided, but only with development consent.*

*Notes:*

- 1 If a subdivision is specified as exempt development in an applicable environmental planning instrument, such as this Plan or [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#), the Act enables it to be carried out without development consent.*
- 2 Part 6 of [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#) provides that the strata subdivision of a building in certain circumstances is complying development."*

The proposed development is for the strata title subdivision of Lot 36 DP 270882 comprising the approved and substantially constructed cluster housing development (18 units) into 18 strata lots.

**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car  
parking (contd)**

---

The proposed strata subdivision would have been complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, should it have occurred within 5 years of the date of the consent, being 7 April 2014 (expiring on 7 April 2019). Heritage provisions also apply to the site. As such, this SEPP does not apply and development consent is required to be obtained for the proposed strata subdivision.

***Approval of Cluster Housing Development (Subject of Subdivision Application)***

The housing development which is subject of the current subdivision application was approved under Development Application Ref. Consent 44899/2013. This consent was granted on 7 April 2014 for a 'cluster housing' development as defined under the provision of the former *Gosford Planning Scheme Ordinance*.

At the time of lodgement of DA44899/2013, the site was zoned *2(a) Residential* under the former *Gosford Planning Scheme Ordinance (GPSO)* and the development was classified as 'Cluster Housing' which was permissible in the *2(a) Residential* zone.

The site is now zoned *R2 Low Density Residential* under the Gosford LEP 2014. Cluster housing is no longer a specifically defined use, and the development is now defined as Multi Dwelling Housing. Multi dwelling housing is prohibited under the *R2 Low Density residential* zone under the Gosford LEP 2014. As such if physically/lawfully commenced, the proposal would enjoy existing use rights under the provisions of Sections 4.65 to 4.68 of the *Environmental Planning and Assessment Act 1979* and Part 5 of the *Environmental Planning and Assessment Regulations 2000*. In this instance, the approved residential development (cluster housing) has the benefit of existing use rights.

The current application is for a strata subdivision of the approved cluster housing development. The proposed development is defined as "subdivision" which is permissible in the zone with Council consent.

**Gosford Local Environmental Plan 2014 – Minimum Lot Size**

Clause 4.1A of the GLEP 2014 stipulates the minimum subdivision lot size for strata plan schemes in certain rural, residential, recreation and environment protection zones.

- (1) *The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*
- (2) *This clause applies to land in the following zones that is used, or proposed to be used, for residential accommodation or tourist and visitor accommodation:*

(a) *Zone RU1 Primary Production,*

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- (b) Zone RU2 Rural Landscape,
- (c) Zone RU5 Rural Village,
- (d) Zone R2 Low Density Residential,**
- (e) Zone RE1 Public Recreation,
- (f) Zone E2 Environmental Conservation,
- (g) Zone E3 Environmental Management.
- (h) (Repealed)

- (3) *The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the [Strata Schemes \(Freehold Development\) Act 1973](#) or [Strata Schemes \(Leasehold Development\) Act 1986](#)) is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

Clause 4.1A refers to minimum lot size for strata plan scheme in certain rural, residential and environment protection zones, including the R2 zone where the minimum lot size is 550m<sup>2</sup>. The proposed lots sizes vary between 93m<sup>2</sup> and 176m<sup>2</sup>, resulting in a maximum exceedance of 457m<sup>2</sup> or 83%.

The proposed lot size is compared to the Gosford LEP 2014 requirement in the table below:

<b>Development Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance with Controls</b>	<b>Variation %</b>	<b>Compliance with Objectives</b>
4.1A - Minimum subdivision lot size for strata plan schemes in certain rural, residential, recreation and environment protection zones	R2- Low Density zone 550m <sup>2</sup>	93m <sup>2</sup> to 176m <sup>2</sup>	No - see comments below	83%	Yes - see comments below

**Gosford Local Environmental Plan 2014 – Clause 4.6 Exceptions to Development Standards**

The objectives of Clause 4.6 of Gosford LEP 2014 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances*

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The proposal seeks a variation to the minimum subdivision lot size control under Clause 4.1A of the GLEP 2014. The applicant requests a variation to this development standard as permitted under Clause 4.6 of GLEP 2014.

**Applicants Justification for Varying the Minimum Subdivision Lot Size Development Standard**

The application is accompanied by a written request under Clause 4.6 of GLEP 2014 for variation to the minimum subdivision lot size development standard as follows:

*"The request for variation has 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] NSW LEC 118.*

**Relevant Development Standard**

*Clause 4.1A of the GLEP 2014 sets a minimum subdivision lot size for strata plan schemes, of not less than the minimum size shown on the Lot Size Map in relation to that land. The site is identified as having a minimum lot size of 550sqm on the Lot Size Map.*

**Extent of Variation to Development Standard**

*The proposed lots sizes vary between 93sqm and 147sqm, resulting in a maximum variation to the development standard of 457sqm or 83%.*

**Reason for the Variation**

*The variation is submitted to allow for the proposed strata subdivision, which will formalise the approved multi dwelling housing development and enable each dwelling to be contained within their respective lots and allow for typical ownership and tenure arrangements for this type of development.*

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

*Compliance with the 550sqm Minimum subdivision lot size for strata plan schemes requirement is considered to be unreasonable or unnecessary in the circumstances of this application, for the following reasons:*

- *Strict observance of the minimum strata lot size area requirements is unreasonable in this instance is given that the development relates to multi dwelling housing development, which was permissible at the time of approval/ construction.*

- *The proposed strata subdivision will simply formalise the approved multi dwelling housing development and enable each dwelling to be contained within their respective lots and typical ownership and tenure arrangements for this type of development.*
- *The proposed strata subdivision would be permissible and not cause any variation under the previous planning instrument, that the multi-unit development was approved under, being the Gosford Planning Scheme Ordinance (GPSO).*
- *The proposed strata subdivision would also be permissible and not cause any variation under the Draft CCC LEP controls.*
- *The subdivision would have been able to be progressed as complying development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 should it have occurred within 5 years of the original consent.*

*In Wehbe v Pittwater Council [2007] NSWLEC 827 the Chief Justice outlined a number of ways an objection to a development standard can demonstrate that compliance with the standard is unreasonable or unnecessary, including by establishing that compliance with the development standard is unreasonable or unnecessary because the objectives of the standard are achieved notwithstanding non-compliance, which is relevant in this case and is addressed below.*

*The sole objective of Clause 4.1A of the GLEP 2014 is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlement. The proposed strata subdivision of an already approved and partially constructed multi dwelling housing development of 18 units under DA 44899/2013 will not result in any fragmentation of land or additional dwelling entitlements and is consistent with the objectives of this standard.*

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

*There are sufficient environmental planning grounds to justify the variation to the minimum subdivision lot size for strata plan schemes development standard in this case, and with particular reference to the objectives of the Environmental Planning and Assessment Act 1979 as detailed below:*

- *The proposal will promote the orderly and economic use and development of land (Objective 1.3(c) of the Act) by allowing for each dwelling to be contained within their' respective lots and typical ownership and tenure arrangements for this type of development.*
- *The proposal does not include any further development nor change the density/occupancy of the site. In this unique circumstance the proposal is to simply create separate titles for already approved and partially constructed dwellings that were approved by Council under*

*DA 44899/2013. The multi dwelling housing development has been built in accordance with the conditions of consent and meet the relevant BCA provisions for Class 2 buildings. As such the dwellings were designed and constructed to be delineated for separate ownership via strata subdivision as permitted when approved and built.*

- *The strata subdivision would not place any further demands on public and private infrastructure and will not have any physical, environmental or visual impact on the subject site, occupants, neighbouring dwellings the character of the street and wider area.*

Is the proposal in the public interest, being consistent with the objectives of the development standard and the objectives of the R2 Low Density General Residential Zone?

*Consistency of the proposal with the objectives of the standard are addressed above. The objectives of the R2 Low Density General Residential Zone are as follows:*

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is compatible with the desired future character of the zone.*
- *To encourage best practice in the design of low-density residential development.*
- *To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.*
- *To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.*

*The proposed strata subdivision is consistent with the objective of the R2 zone as:*

- *The creation of an additional strata lots caters for the community needs by providing the opportunity to provide a separate land tenure and housing options that caters for the needs a growing population whilst maintaining a low density development within a low density residential zone.*
- *The proposal would not result in any impacts to the amenity of neighbouring properties public domain and is consistent with the desired character of the locality.*
- *The design of the multi dwelling housing was approved under Development Application 44899/2013 and is appropriate for the site.*

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- *The subject site includes the essential utilities, including reticulated water, sewer, power and telecommunications without placing any additional demands on services and infrastructure.*

Conclusions

*In conclusion, this written request demonstrates that the variation to the development standard is an appropriate response to the approved development on the site, and that compliance with the standard is unreasonable and unnecessary in the circumstances of the case. 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."*

In accordance with clause 4.6(4), development consent must not grant consent for a development that contravenes a development standard unless:

- 1 *The consent authority is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated in clause 4.6(3).*

*Comment:* The clause 4.6 submitted by the Applicant has addressed why strict compliance with the development standards is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the contravention. Council is satisfied that the matters required to be demonstrated in subclause 4.6(3) have been adequately addressed for the variation to the minimum lot size for the subdivision standard.

- 2 *The consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

*Comment:* The objective of the clause is to achieve efficient use of land in certain zones and localities. This is achieved allowing strata subdivision of a cluster development to take place providing alternative housing ownership.

The proposal is consistent with objectives in GLEP 2014 as follows:

- Notwithstanding the size of the lot is below the development standard, the proposal will allow for residential development which will not unduly impact on the characteristics of the land nor the amenity enjoyed by adjoining landowners

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The proposed development is consistent with the objectives for the *R2 Residential zone* as follows:

- The proposal provides for additional housing for the local community and will increase housing choice in the area.
- The development is consistent with the future character of the area.
- The development will not adversely impact upon the provision of services to the area
- The proposed development is of a satisfactory nature given the pattern of development and redevelopment taking place in the area.
- The proposal will result in future development having a positive contribution to the streetscape.

The assessment of the proposal against the objective of the development standard and confirms that the proposal complies with these objectives.

3 *The concurrence of the Secretary has been obtained.*

*Comment:* Planning Circular PS 18-003 issued 21 February 2018 states that Council may assume the concurrence of the Secretary of the NSW Department of Planning Industry & Environment when considering exceptions to development standards under clause 4.6. The Council (through the Local Planning Panel) is therefore empowered to determine the application.

Council is satisfied that the Applicant has demonstrated compliance with the development standard and the zone objectives such that the proposal is in the public interest.

This assessment has been carried out having regard to the relevant principles identified in the following case law:

- 1 *Wehbe v Pittwater Council [2007] NSWLEC 827*
- 2 *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*
- 3 *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
- 4 *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248*

This assessment concludes that the clause 4.6 variation of GLEP 2014 provided having regard to clause 4.1B of GLEP 2014 is well founded and worthy of support.

*Assessment Comment*

The lots in a new strata plan are generally non-compliant with the minimum lot size for Torrens title lots on the relevant lot size map, because the strata lots contain no conventional curtilage and are therefore much smaller. The variation to the minimum allotment size allows for the proposed strata subdivision, which will formalise the approved cluster housing

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development and enable each dwelling to be contained within their respective lots and allow for typical ownership and tenure arrangements for this type of development – as initially intended when the 'cluster housing' development (now under construction) was approved.

The proposal is consistent with the objectives of clause 4.6(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and 4.6(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The proposal will not result in any additional physical or environmental impacts to the site or its surroundings or result in any change to the intensity of development previously approved under Development Consent 44899/2013 and is considered to be consistent with the objectives of the R2 zone within the context of the Narara Eco village site and surrounds.

Accordingly, the Clause 4.6 exception to the minimum lot size development standards is supported.

**Gosford Local Environmental Plan 2014 – Clause 5.10 Heritage Conservation**

The ecovillage site as a whole contains a number of listed heritage items which were considered in the assessment of the original Community Title Subdivision and subsequent cluster development applications, including the application for cluster housing on this site.

The subject site for the cluster development contains no listed heritage items.

In addition, this proposed application is for strata subdivision only, and does not include any additional construction, works, infrastructure or physical construction that would have the potential to impact on any heritage item.

**Draft Central Coast Local Environmental Plan 2018**

The *Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP 2018)* was exhibited until 27 February 2018. The draft plan is being considered by Council before being sent to the State Government for its notification. A review of the Draft CCLEP 2018 reveals that the proposed zoning of the subject site remains the same.

**Gosford Development Control Plan 2013 - 3.5 Residential Subdivision**

The objectives of the Gosford Development Control Plan 2013 with respect to residential subdivision are set out in Chapter 3.5.1.3 as follows:

- 1 To ensure that residential land developed for subdivision is done so in an efficient and orderly manner.

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- 2 To ensure that all lots created are satisfactorily serviced by infrastructure.
- 3 To maximise development potential of residential land whilst retaining any significant environmental characteristics that may occur on the land.
- 4 To encourage a variety of allotments to cater for differing housing needs.

In addition, Clause 3.5.8.2 of the DCP provides requirements for strata subdivision.

The proposed subdivision is consistent with the objectives of the DCP, ensuring orderly development of lands, the lots are satisfactory serviced (and, the form of development on the lots is known and considered to be appropriate). The proposed subdivision assists in the provision of a variety of lots to serve local needs.

Refer commentary for Clause 4.6 variation to minimum lot size for strata subdivision in R2 - low density residential zone - GLEP 2014 section of report. The strata subdivision is substantially in accordance with the approved development plans under DA 44899/2013, does not create any issues in terms of access and services and will not interfere with the existing or likely future amenity of the neighbourhood. As such, the site is considered suitable for the proposed development.

**Gosford Development Control Plan 2013 – Chapter 7.1 Car Parking**

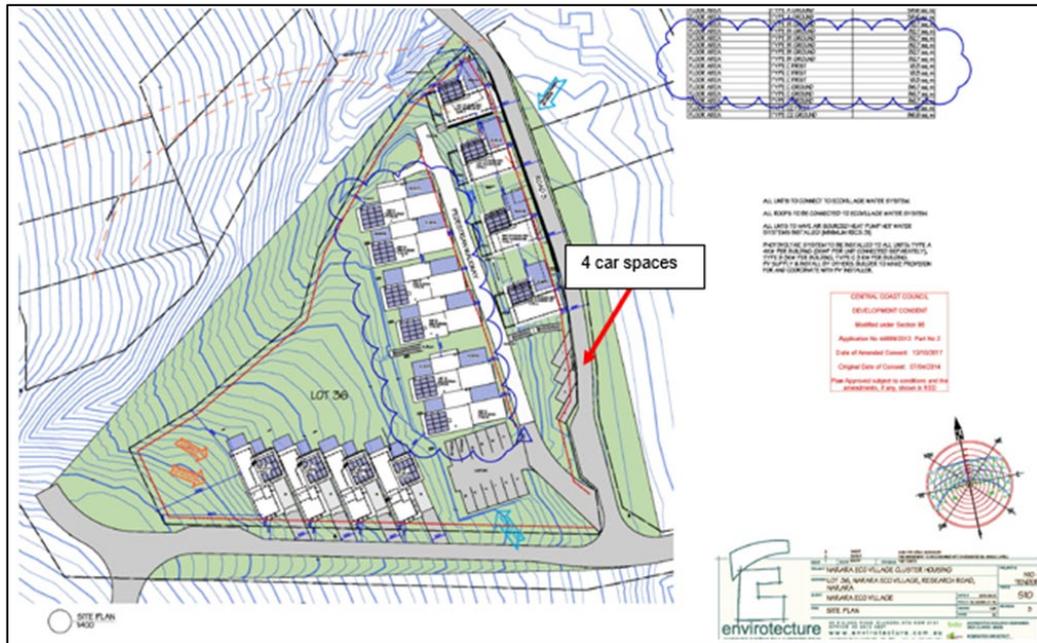
The Statement of Environmental Effects advises:

*"Units 1 and 2 do not include allocated car parking spaces within the site. The proposal also includes easements for car parking over existing constructed car parking spaces adjacent to the development on the eastern side of Kintay Lane (Lot 37 DP270882) for Units 1 and 2."...*

*While four car parking spaces were originally proposed and approved along the eastern boundary on Kintay Lane, under Development Application 44899/2013, during the detailed design and construction certification process it was determined only two compliant spaces could fit within this area. This has necessitated the use of two car parking spaces on the opposite side of Kintay Lane, which are not allocated to any Lots within the wider subdivision, to provide the additional two car parking spaces for the Cluster Houses."*

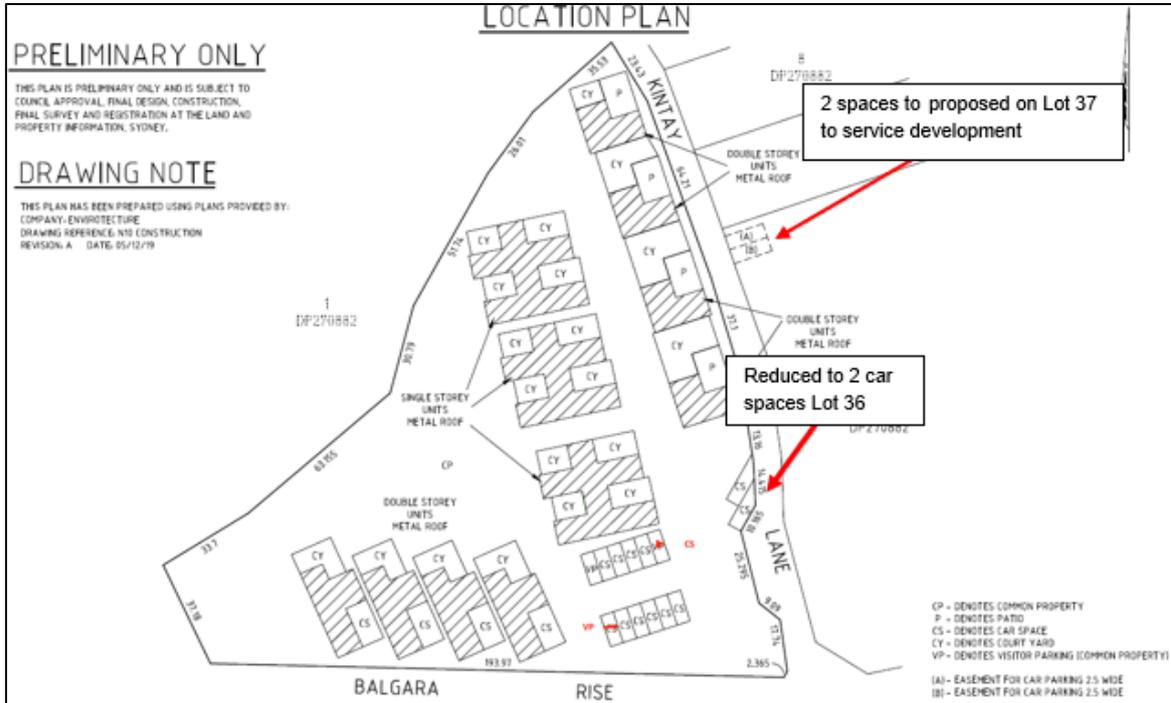
The amended consent plans - DA 44899/2013 - Part 2 for the cluster housing development made provision for eighteen resident and two visitor spaces within Lot 36 as indicated on the consent plan.

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**Figure 6: Consent Site plan (DA 44899/2013) showing 4 open car spaces approved on eastern boundary**

The proposed strata plan of subdivision - Location Plan indicates two car parking spaces are to be legally created as easements for parking on the residue of Lot 37 (now renumbered Lot 48).



**Figure 7: Location strata plan showing 2 spaces instead of 4**

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Such changes are not indicated in the previous consent for cluster housing as amended. Aerial photography provided with the application indicates that these two spaces have already been constructed on Lot 37 (Now renumbered Lot 49 following further amendment to subdivision).

No objections are raised to the provision of two car parking spaces on lot 49. This change will require submission of a S4.55 amendment to DA44899/2013 related to the cluster housing development, prior to registration of the subdivision certificate (Proposed **Condition No 3.4**).

These two off site spaces may be better suited for offsite visitor parking rather than resident use as 18 spaces (i.e. 1 space for each unit) can be accommodated within Lot 36 containing the cluster housing development.

More recently (i.e. after the application was lodged) Lot 37 DP270882 has been subdivided to change the allotment where the two car parking spaces are located to Lot 49 P270882 under the Community Land Development Act, registered on 7.4.2020. The community title subdivision under DP 270882 now comprises 50 lots.

In relation to the proposed easements for car parking, it is recommended that each of these be a minimum of 3m wide to facilitate vehicle maneuvering into and out of the car parking spaces and to ensure adequate clearances are provided around these easements in relation to potential future structures that could be proposed on Lot 49 DP270882 near these easements. DA44899/2013 will be required to be amended to reflect this change (Proposed **Condition No 3.5**).

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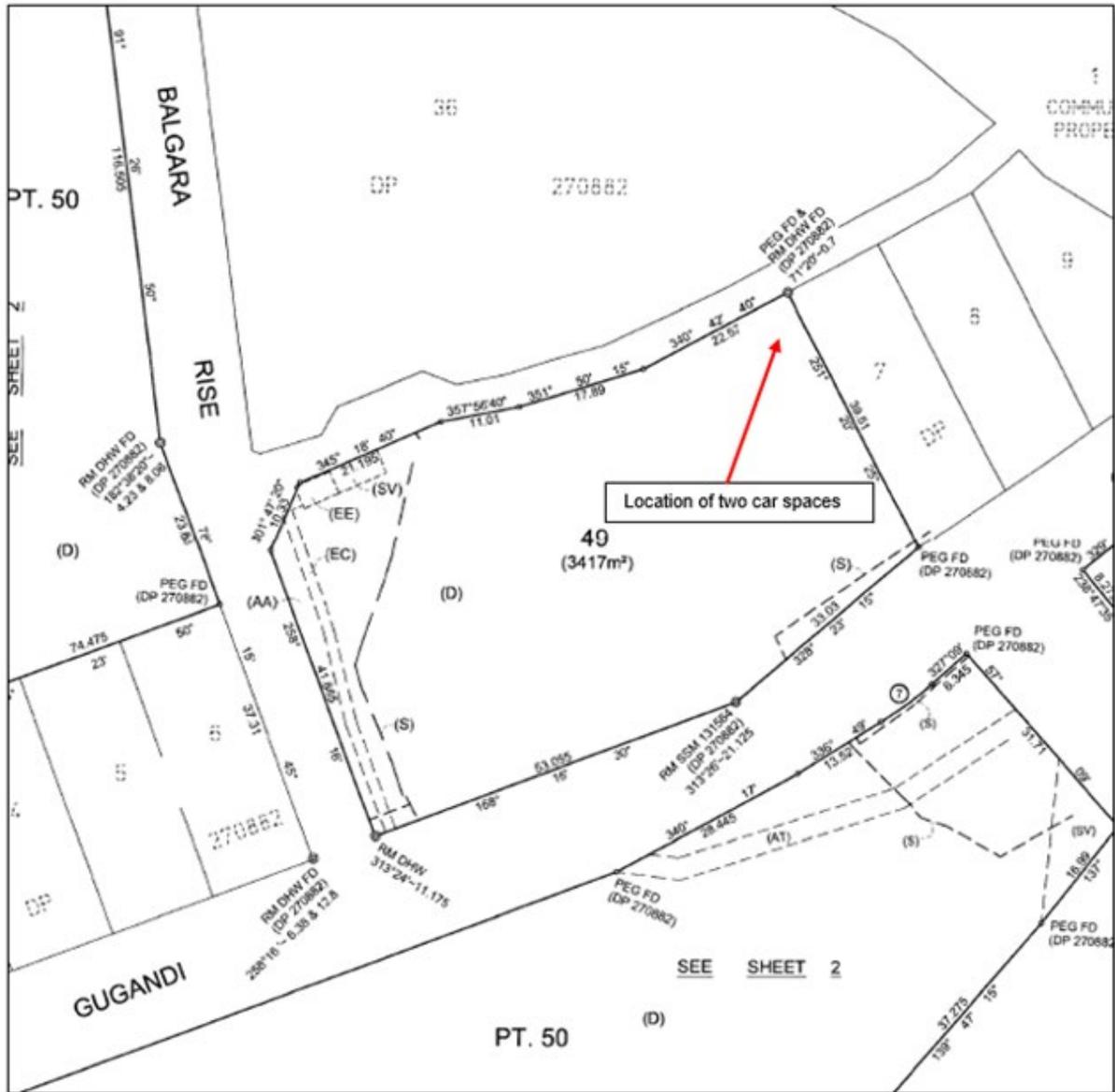


Figure 8: Extract of DP relocation of proposed two car parking spaces on adjoining land being Lot 49 DP270882

**Bushfire Prone Land**

The site is identified as "bushfire prone land" on Council's bushfire maps (i.e. vegetated areas to the west of the site).

Subdivision applications in bushfire prone areas will be required to obtain a Bushfire Safety Authority from the NSW Rural Fire Service, pursuant to Section 100B of the *Rural Fires Act 1997*.

However, Clause 5.1.2 of *Planning for Bush Fire Protection November 2019* advises the following in relation to strata subdivision of existing buildings (residential subdivisions)

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*"A BFSA is required for the strata subdivision of a building except where a development consent has been granted in accordance with s4.14 of the EP&A Act. Consideration should be given as to whether the arrangement will lead to increased densities and vulnerability of future residents. Emergency planning is critical and should be implemented prior to formal adoption of the strata arrangements. The performance criteria within Chapter 5 of this document must be applied to the building.*

*A property management plan should be prepared and upgrading for ember protection should be considered. Arrangements must be established in a Community Management Statement (e.g. body corporate by-laws) that addresses fire management strategies for the development and takes into account the following: continued management of APZs, water supplies and fire trails; a right of carriageway for fire management purposes; approved hazard reduction proposals that involve the land; consultation between the Strata Executive and the appropriate fire agency to confirm contact details and legalities involved with permissions for fire management works on the land together with any other community engagement advice for the occupants; and preparation of a Bush Fire Survival Plan for each household."*

In addition, Clause 4.14 of the *Environmental Planning & Assessment Act 1979* stipulates the following:

*4.14 Consultation and development consent—certain bush fire prone land (cf previous s79BA)*

*(1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land (being land for the time being recorded as bush fire prone land on a relevant map certified under section 10.3(2)) unless the consent authority—*

*(a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled *Planning for Bush Fire Protection* prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*

*(b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.*

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And, Clause 45 - of the *Rural Fires Regulation 2013* - Development excluded from requirements for bush fire safety authority states:

- (1) Pursuant to section 100B (5)(a1) of the Act, the following development is excluded from the operation of section 100B:
- (b) strata subdivision of a building, but only if development consent for the erection of the building was granted in accordance with section 4.14 (formerly 79BA) of the *Environmental Planning and Assessment Act 1979*.

**Whether the Subdivision is Integrated Development**

Under the provisions of the *Environmental Planning & Assessment Act 1979*, proposals that are for subdivision of land that could be utilised for residential purposes would be 'Integrated Development' as set out in Division 4.8 of the Act, as they would require a Bushfire Safety Authority (BSA) under Section 100B of the *Rural Fires Act 1997*.

However, Section 100B(5) of the *Rural Fires Act 1997*, provides certain exemptions from the requirement – including, for example, internal alterations to an existing building. Section 100B(5)(a1) provides that the *Rural Fires Regulation 2013* can exempt certain developments from the requirements.

Clause 45(b) of the *Rural Fires Regulation 2013* specifically excludes the following development types from the need to obtain a Bushfire Safety Authority (BSA):

*'Strata subdivision of a building, but only if development consent for the erection of the building was granted in accordance with section 4.14 of the [Environmental Planning and Assessment Act 1979](#)'*

Given that Development Consent was issued for the 'cluster housing' development (Development Application Ref. DA44899/2013) and that the application for such housing was referred to the Rural Fire Service in accordance with Section 4.14 of the *Environmental Planning & Assessment Act 1979* (see further details below), the current strata subdivision application is not required to be referred to the Rural Fire Service as Integrated Development.

**Further Bushfire Assessment Comment**

The cluster development (18 houses) on Lot 36 was approved under DA44899/2013 which was simultaneously assessed in conjunction with the then 39-lot community title subdivision (DA44994/2013) of the Narara eco village site.

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The community title subdivision was approved subject to compliance with the General Terms of Approval for the issue of a Bushfire Safety Authority (BSA) by the NSW Rural Fire Service (RFS).

The cluster development was not classified as "integrated development", however conditions of consent were imposed consistent with the general terms of approval issued for the community title subdivision.

The original application and subsequent amendment (DA44899/2013 Part 2) for the cluster development were accompanied by a Bushfire Assessment report, prepared by John Travers Bushfire and Ecology (TBE) Ref: A16075B: NVD/JT, dated 21 July, 2016. The part 2 application was referred to the RFS which sought in part to alter the RFS conditions and amend access arrangements. The RFS raised no objection to the change in access arrangements subject to the recommendations set out in Appendix 1 Condition 2.7(b) in the letter prepared by Travers Bushfire & Ecology. dated 21 July 2016.

The current application for a strata subdivision (DA57912/2020) is accompanied by an updated Bushfire Assessment Report, prepared by Travers Bushfire & Ecology a qualified consultant in bush fire risk assessment. BPAD-Level 3-15195 (FPA)

The Bushfire Assessment Report prepared by Travers Bushfire & Ecology (letter dated 6 February 2020) has provided the following advice:

*"The revised bushfire assessment supports the 45m APZ and BAL 12.5 construction standard as determined in the previous assessment. This revised bushfire assessment supports the proposed strata subdivision of the approved cluster house development. The conditions associated with the development are listed in Attachment 1."*

The bushfire conditions of consent associated with the approved cluster housing development remain unchanged. The development has been completed to comply with such requirements. The strata subdivision makes no further changes to bushfire requirements including maintenance of asset protection zones.

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**Attachment 1 – Council Conditions**

<b>Council Condition</b>	<b>Suggested revised condition</b>
<b>Prior to the issue of any construction certificate</b>	
<p><b>Condition 2.5</b> All dwellings (as depicted within Schedule 1 – Bushfire Protection Measures Ref: A16075_BF001, dated 21/07/2016 of the Bushfire Assessment report prepared by Travers Bushfire and Ecology dated 21 July 2016) located within 100m of the bushfire prone vegetation shall be constructed to a minimum Bushfire Attack Level (BAL) 12.5 as prescribed by AS3959 - 2009 - Construction of buildings in bushfire prone areas, except where such requirements are inconsistent with the general terms of approval for a Bushfire Safety Authority, issued by the NSW Rural Fire Service and referred to under conditions 7.1 to 7.4 of Development Consent 44994/2013, which shall prevail.</p> <p>Furthermore, the development is to incorporate additional construction requirements that are contained in subsection A3.7 – Additional Construction Requirements, of the document produced by the NSW Rural Fire Service and known as Addendum: Appendix 3 - Planning for Bushfire Protection 2010. Details demonstrating compliance with this condition are to be incorporated within the documentation associated with any construction certificate.</p>	No changes required
<p><b>Condition 2.7 (b)</b> Vehicular access roads within the Cluster Housing precinct shall be constructed to comply with the performance criteria of Section 4.1.3(1) of Planning for Bushfire Protection 2006 with a minimum pavement width of 3.5 metres for the one-way roads. Parking Bays shall be designed and constructed clear of the road pavement and complying Passing Bays (20m long x 2.0m wide) provided in the locations shown on the Site Plan prepared by Envirotecure (project no. N10, revision 10, dated 23.06.2016).</p>	No changes required
<p><b>Condition 2.7 (f)</b> A fire-fighting water supply shall be provided to the Cluster Housing precinct with Hydrant spacing, sizing and pressure complying with the specifications of Australian Standard A.S. 2419.1 - 2005 and have a flow rate of 10 litres / second. Hydrant locations shall be delineated by blue markers placed on the hydrant side of the centreline of the road pavement.</p>	No changes required
<b>Prior to the issue of any occupation certificate</b>	
<p><b>Condition 5.7.</b> Prior to the issue of any Occupation Certificate the Principal Certifying Authority must be furnished with a written statement from a recognised Bushfire Consultant certifying that all recommendations of the Bushfire Assessment, prepared by Travers bushfire &amp; ecology (TBE) Ref: A16075B: NVD/JT, dated 21 July, 2016, have been complied with, except where such requirements are inconsistent with the general terms of approval for a Bushfire Safety Authority, issued by the NSW Rural Fire Service and referred to under conditions 7.1 to 7.4 of Development Consent 44994/2013, which shall be complied with.</p>	No changes required
<p><b>Condition 5.8.</b> Prior to the issue of any Occupation Certificate an instrument under the Conveyancing Act 1919 must be created on the Certificate of Title establishing a restrictive covenant detailing that Lot 36, land extending west towards the E2 zone (as depicted within Schedule 1 – Bushfire Protection Measures prepared by Travers bushfire &amp; ecology (Ref: A16075_BF001, dated 21/7/2016) and all land within 100m to the north, south and east of Lot 36 is to be maintained as an inner protection area. The restriction shall ensure the owner continually maintains the inner protection area in accordance with RFS guidelines Standards for Asset Protection Zones (RFS, 2005), with landscaping to comply with Appendix 5 of PBP. The restriction is to be created at the applicants cost with the Council having the sole authority to release or modify.</p>	No changes required

**Likely Impacts of the Development:**

***Built Environment***

The proposed built form is considered acceptable in the context of the site and the proposed works are consistent with the original approval and the zoning of the site.

***Economic Impacts***

The proposal provides for an alternative homeownership to the existing development.

### ***Social Impacts***

The proposed development is considered acceptable and satisfactory in terms of Social Impacts.

### ***Access and Transport***

There is no change to the access or transport links due to this proposal.

### **Internal Consultation**

#### ***Development Engineer***

Supported subject to condition.

### **Ecologically Sustainable Principles:**

Development Application No 44994/2013 community title subdivision and DA44899/2013 cluster housing development proposal were previously assessed having regard to ecologically sustainable development principles and is considered to be consistent with such principles. The proposed strata subdivision raised no significant planning issues noting the site is utilized as an ecovillage.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

### **Climate Change**

The potential impacts of climate change on the proposed development have been considered as part of this application.

This assessment has included consideration of such matters as: potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope/combat/withstand these potential impacts.

The proposed development is considered satisfactory in relation to climate change.

**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car  
parking (contd)**

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**Development Contribution Plan**

The subject site is subject to the Central Coast Regional Section 7.12 Development Contribution Plan 2019, where developments not covered by a section 7.11 contribution plan under any other contributions plan adopted by the Council under the *Environmental Planning & Assessment Act 1979*, are subject to section 7.12 contributions. The proposal is for a strata subdivision with minor site works and with cost of construction works estimated at \$0 on the application form. In accordance with clause 1.5 of the plan, a levy will not be imposed if the cost of carrying out the development is \$100,000 or less. As such, the development is exempt from development contributions.

**Planning Agreements**

The original development of the Narara eco village site was subject to a voluntary planning agreement. The proposed development for strata subdivision does not impact on the VPA and is not subject to a current planning agreement/draft planning agreement.

**Public Submissions**

The proposed development did not require notification in accordance with the provisions of Gosford Development Control Plan 2013.

**Political Donations**

During assessment of the application there were no political donations declared by the applicant, applicant's consultant, owner, objectors and/or residents.

**Suitability of the Site for the Development**

The proposal for a strata subdivision has no physical impacts on the immediate locality (i.e. Narara Eco Village). The built form was previously considered to be suitable in the assessment of the cluster development approved under Development Consent 44899/2013.

**The Public Interest**

The public interest is best served by approval of the proposed development.

**Conclusion**

This application has been assessed against the heads of consideration of Section 4.15 of the *Environmental Planning & Assessment Act 1979* and all relevant instruments and policies.

The proposal to strata the existing cluster housing development does not impact on the streetscape or character of the locality. The proposal provides for the housing needs of the

**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car  
parking (contd)**

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community through separate title and owner /occupier opportunities and is not considered to impact on the built environment, alter the existing subdivision pattern or impact on existing infrastructure or services.

The potential constraints of the site have been assessed and it is considered that the site is suitable for the proposed development. The proposed development is not expected to have an adverse social, environmental or economic impact.

Clause 4.1A of *Gosford Local Environmental Plan 2014* stipulates a minimum lot size for strata plan scheme in certain rural, residential and environment protection zones, including the R2 zone. The minimum lot size is 550m<sup>2</sup>. The proposed lots sizes vary between 93m<sup>2</sup> and 176m<sup>2</sup>, resulting in a maximum exceedance of 457m<sup>2</sup> or 83%. The application is accompanied by a Section 4.6 variation to the minimum lot size development standard which is considered to be well founded for reasons identified in the report. In this regard, the written request demonstrates that the variation to the development standard although significant in numerical terms is an appropriate response to the approved development on the site without any physical impacts. 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 R2 zone.

Accordingly, the application is recommended for approval pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

**Attachments**

- |          |   |           |
|----------|---|-----------|
| <b>1</b> | CONDITIONS DA57912  | D14131506 |
| <b>2</b> | PUBLIC Plans - Subdivision 14 Balgara Rise, NARARA DA57912 Part 1 | D13813898 |
| <b>3</b> | Bushfire Report 14 Balgara Rise, NARARA DA57912 Part 1            | D13813899 |

## Conditions

### 1. PARAMETERS OF THIS CONSENT

#### 1.1 Approved Plans and Supporting Documents

Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

**Survey Plans by: Thomas F Campbell CM D13813898**

Plan of Subdivision of Lot 36 DP 270882 and Easement for Car Parking within Lot 37 DP270882.				
Drawing	Description	Sheets	Issue	Date
Ref:1923_SP(Draft)_R2_200130	Location Plan	1 of 3	A	05.12.2019
Ref:1923_SP(Draft)_R2_200130	Ground Floor Plan	2 of 3	A	05.12.2019
Ref:1923_SP(Draft)_R2_200130	First Floor Plan	3 of 3	A	05.12.2019

Supporting Documentation:

Title	Prepared by	Date
Bushfire Assessment Letter CM D13813899	Travers Bushfire & Ecology	06.02.2020

- 1.2** Carry out all building works in accordance with the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate.

### 2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

- 2.1** All conditions under this section must be met prior to the issue of any Construction Certificate.
- 2.2** No activity is to be carried out on-site until the Construction Certificate has been issued, other than:
1. Site investigation for the preparation of the construction, and / or
  2. Implementation of environmental protection measures, such as erosion control and the like that are required by this consent
  3. Demolition

- 2.3** Assessment of the development against the provisions of Planning for Bush Fire Protection (2006) (NSW) has determined a Bush Fire Attack level (BAL) of 12.5

Submit to the Accredited Certifier for approval construction details showing that the development complies with this Bush Fire Attack Level (BAL) as prescribed by Australian Standard AS 3959-2009: Construction of buildings in bush fire prone areas and additional measures as contained within Appendix 3 of the PBP Guidelines 2010 produced by the NSW Rural Fire Service.

### **3. PRIOR TO ISSUE OF ANY SUBDIVISION CERTIFICATE**

- 3.1** All conditions under this section must be met prior to the issue of any Subdivision Certificate.
- 3.2** Complete the building and the development of the site in accordance with the conditions of Council's consent in relation to DA 44899/2013.
- 3.3** Contact Council's Land Information Officer or email [ask@centralcoast.nsw.gov.au](mailto:ask@centralcoast.nsw.gov.au) for the allocation of street addressing for inclusion on Deposited Plan / Strata Plan.
- 3.4** Submit a section 4.55 application to amend Development Consent DA 44899/2013 to reflect the revised car parking arrangement (i.e. deletion of two spaces within Lot 36 DP 27082 ) and creation of an easement for car parking (two car spaces provided on Part Lot 39 DP 27082) to service the development. Proposed easements for car parking are to be a minimum of 3m wide to facilitate vehicle manoeuvrability into and out of the car parking spaces and to ensure adequate clearances are provided around these easements in relation to potential future structures that could be proposed in Lot 37 near these easements. Obtain consent for the revised car parking arrangement prior to the issue of a Subdivision Certificate.
- 3.5** Include on the Deposited Plan (DP) an Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants must be defined by bearings and distances shown on the plan. The plan and instrument must:
- a. Create two easements for parking, each with a minimum width of 3m within Lot 37 DP 270882 to benefit Lot 36 DP 270882.

Note: Standard wording, acceptable to Council, for covenants can be obtained by contacting Council Subdivision Certificate Officer.

### **4. ONGOING OPERATION**

- 4.1** Implement the required Asset Protection Zone to the perimeter of the asset. The Asset Protection Zone must be fuel managed to maintain fuel loadings as detailed within Planning for Bush Fire Protection Guidelines 2006 (NSW).

## 5. PENALTIES

- 5.1** Failure to comply with this development consent and any condition of this consent may be a criminal offence. Failure to comply with other environmental laws may also be a criminal offence.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

### **Warnings as to Potential Maximum Penalties**

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and / or custodial sentences for serious offences.

## ADVISORY NOTES

- Discharge of sediment from a site may be determined to be a pollution event under provisions of the Protection of the Environment Operations Act 1997. Enforcement action may commence where sediment movement produces a pollution event.
- The following public authorities may have separate requirements in the following aspects:
  - a. Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments
  - b. Jemena Asset Management for any change or alteration to the gas line infrastructure
  - c. Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements
  - d. Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure
  - e. Central Coast Council in respect to the location of water, sewerage and drainage services
- Carry out all work under this Consent in accordance with SafeWork NSW requirements including the Workplace Health and Safety Act 2011 No 10 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or

assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

- Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

PLAN FORM 1 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

SHEET 1 OF 3 SHEETS

# LOCATION PLAN

## PRELIMINARY ONLY

THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND AND PROPERTY INFORMATION, SYDNEY.

## DRAWING NOTE

THIS PLAN HAS BEEN PREPARED USING PLANS PROVIDED BY:  
 COMPANY: ENVIROTECHTURE  
 DRAWING REFERENCE: N10 CONSTRUCTION  
 REVISION: A DATE: 05/12/19



CP - DENOTES COMMON PROPERTY  
 P - DENOTES PATIO  
 CS - DENOTES CAR SPACE  
 CY - DENOTES COURT YARD  
 VP - DENOTES VISITOR PARKING (COMMON PROPERTY)  
 (A) - EASEMENT FOR CAR PARKING 2.5 WIDE  
 (B) - EASEMENT FOR CAR PARKING 2.5 WIDE

SURVEYOR Name: THOMAS F CAMPBELL Date: Reference: 19323_SP(Draft)_R2_200130	PLAN OF SUBDIVISION OF LOT 36 DP270882 & EASEMENT FOR CAR PARKING WITHIN LOT 37 DP270882	LGA: CENTRAL COAST Locality: NARARA Reduction Ratio 1:500 Lengths are in metres.	Registered	S.P.
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PLAN FORM 1 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

SHEET 2 OF 3 SHEETS

# GROUND FLOOR

## PRELIMINARY ONLY

THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND AND PROPERTY INFORMATION, SYDNEY.

## DRAWING NOTE

THIS PLAN HAS BEEN PREPARED USING PLANS PROVIDED BY:  
 COMPANY: ENVIROTECHTURE  
 DRAWING REFERENCE: N10 CONSTRUCTION  
 REVISION: A DATE: 05/12/19



P - DENOTES PATIO  
 CS - DENOTES CAR SPACE  
 CY - DENOTES COURT YARD  
 VP - VISITOR PARKING (COMMON PROPERTY)

SURVEYOR Name: THOMAS F CAMPBELL Date: Reference: 19323_SP(Draft)_R2_200130	PLAN OF SUBDIVISION OF LOT 36 DP270882 & EASEMENT FOR CAR PARKING WITHIN LOT 37 DP270882	LGA: CENTRAL COAST Locality: NARARA Reduction Ratio 1:500 Lengths are in metres.	Registered	S.P.
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PLAN FORM 1 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

SHEET 3 OF 3 SHEETS

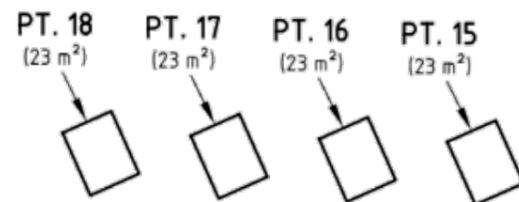
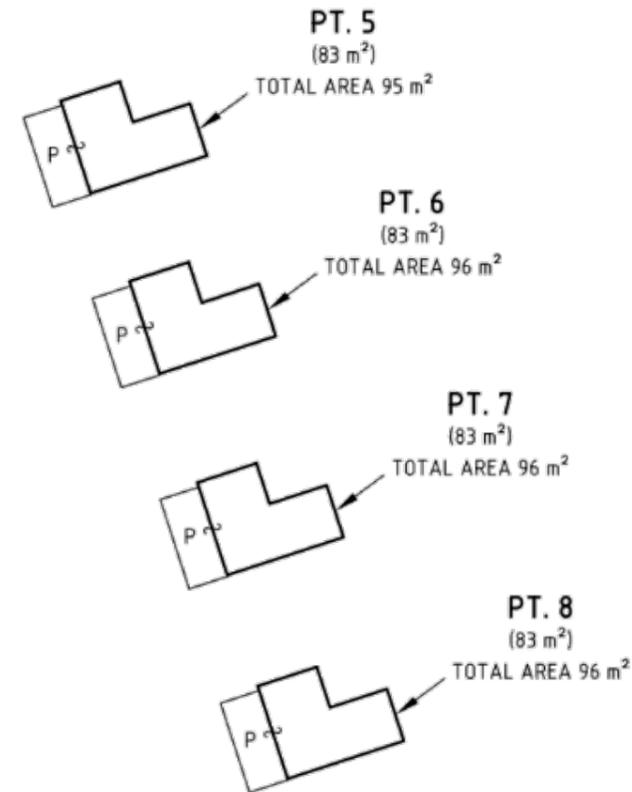
# FIRST FLOOR

## PRELIMINARY ONLY

THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND AND PROPERTY INFORMATION, SYDNEY.

## DRAWING NOTE

THIS PLAN HAS BEEN PREPARED USING PLANS PROVIDED BY:  
 COMPANY: ENVIROTECHTURE  
 DRAWING REFERENCE: N10 CONSTRUCTION  
 REVISION: A DATE: 05/12/19



P - DENOTES PATIO

SURVEYOR Name: THOMAS F CAMPBELL Date: Reference: 19323_SP(Draft)_R2_200130	PLAN OF SUBDIVISION OF LOT 36 DP270882 & EASEMENT FOR CAR PARKING WITHIN LOT 37 DP270882	LGA: CENTRAL COAST Locality: NARARA Reduction Ratio 1:500 Lengths are in metres.	Registered	S.P.
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Our Ref: 18NEC05: NVD  
Council Ref: DA44994/2013 Part 4

Thursday 6<sup>th</sup> February, 2020

John Talbott  
Narara Ecovillage Co-operative  
33 Gugandi Road  
NARARA NSW 2250



**Attention:** Mr John Talbott

Dear John

**Re: Strata subdivision of Cluster Houses  
Lot 36 DP 270882, 14 Balgara Rise, Narara**

*Travers bushfire & ecology* prepared a Section 96 Bushfire Assessment for the Cluster House development on 21/7/2016. Subsequently consent from the former Gosford Council (now Central Coast Council), was granted on 13 October 2017 (DA 44899/2013 Part 2). Construction of the infrastructure / services and road carriageway has been completed, with the cluster houses partially constructed.

This assessment has been undertaken to provide a review of the bushfire assessment in support of the proposed strata subdivision of the approved cluster houses. A review of the conditions, in relation to bushfire is summarised within attachment 1 of this assessment along with a statement confirming compliance.

#### **Development proposal**

The following Figure 1 depicts the approved cluster housing design located within Lot 36. This current proposal seeks an approval for a strata subdivision of units (currently under construction).



**Figure 1 – Approved design**

ABN 85 624 419 870  
PO Box 7138  
Kariong NSW 2250

38A The Avenue  
Mt Penang Parklands  
Central Coast Highway  
Kariong NSW 2250

t: 02 4340 5331  
e: [info@traverseecology.com.au](mailto:info@traverseecology.com.au)  
[www.traverseecology.com.au](http://www.traverseecology.com.au)

**Bushfire Assessment**

A fire danger index (FDI) of 100 has been used to calculate bushfire behaviour on the site is based on its location in the Greater Sydney region, Table 1 provides a summary of the bushfire attack assessment.

The following revised bushfire assessment supports the 45m APZ and BAL 12.5 construction standard as determined in the previous assessment. This is based on a forest vegetation on an upslope of 10 degrees. This is an alternative solution approach using Method 2 of AS3959 (using an upslope of 10 degrees).

**Table 1 – Bushfire attack assessment**

Aspect	Vegetation formation within 140m of development	Effective slope of land	APZ provided	Building construction standards (PBP 2019)
West	Forest	10 degrees upslope	45	BAL 12.5 (45-<100)
North, south and east	Managed land	N/A	>100m	BAL level determined above

**FPA FLAMESOL**

Cluster House (Narara Ecovillage)

**Bushfire Attack Level calculator - AS3959-2009 (Method 2)**

Inputs		Outputs	
Fire Danger Index	100	Rate of spread	1.5 km/h
Vegetation classification	Forest	Flame length	13.98 m
Surface fuel load	25 t/ha	Flame angle	78
Overall fuel load	35 t/ha	Panel height	13.67 m
Vegetation height	n/a	Elevation of receiver	6.83 m
Effective slope	-10	Fire intensity	27,210 kW/m
Site slope	0	Transmissivity	0.772
Distance to vegetation	45 m	Viewfactor	0.133
Flame width	100 m	Radiant heat flux	7.07 kW/m <sup>2</sup>
Windspeed	n/a	Bushfire Attack Level	BAL-12.5
Heat of combustion	18,600 kJ/kg		
Flame temperature	1,090 K		

Rate of Spread: McArthur, 1988; Modelling  
 Flame length: Douglas & Mah, 1980  
 Flame angle: Douglas & Mah, 2008  
 Radiant heat flux: AS/NZS 3959:2009

**Building Protection**

Building construction standards for the proposed future dwellings (located within 100m of hazardous vegetation) are to be applied in accordance with BAL 12.5 AS3959 Construction of buildings in bushfire prone areas (2009) with additional construction requirements as listed within Addendum Appendix 3.7 of *Planning for Bushfire Protection 2006*.

This is consistent with the previous assessment / approval.

**Access & water supply**

Adequate access by fire fighters is supported via the surrounding approved road to the south and east of the Cluster housing. Strategic fire hydrant locations allow fire trucks to park in passing bays and connect safely to hydrants whilst allowing residents to evacuate. All houses within 70m of a hydrant will provide for a clear unobstructed path between the most distant external part of the proposed dwelling and the road / hydrant that supports the operation use of emergency fire fighting vehicles.

This is consistent with the previous assessment / approval.

**Conclusion**

This revised bushfire assessment supports the proposed strata subdivision of the approved cluster house development. The conditions associated with the development are listed in Attachment 1.

Should you require further information please do not hesitate to contact the undersigned on 4340 5331 or [info@traverseecology.com.au](mailto:info@traverseecology.com.au).

Yours faithfully



Nicole van Dorst  
BA Sc. / Grad Dip / BPAD-Level 3-23610 (FPA)  
Manager, bushfire services – **Travers bushfire & ecology**

Attachment 1 – Council conditions / compliance  
Schedule 1 – Bushfire Protection Measures

## Attachment 1 – Council Conditions

Council Condition	Suggested revised condition
<p>Prior to the issue of any construction certificate</p> <p><b>Condition 2.5</b> All dwellings (as depicted within Schedule 1 – Bushfire Protection Measures Ref: A16075_BF001, dated 21/07/2016 of the Bushfire Assessment report prepared by Travers Bushfire and Ecology dated 21 July 2016) located within 100m of the bushfire prone vegetation shall be constructed to a minimum Bushfire Attack Level (BAL) 12.5 as prescribed by AS3959 - 2009 - Construction of buildings in bushfire prone areas, except where such requirements are inconsistent with the general terms of approval for a Bushfire Safety Authority, issued by the NSW Rural Fire Service and referred to under conditions 7.1 to 7.4 of Development Consent 44994/2013, which shall prevail.</p> <p>Furthermore, the development is to incorporate additional construction requirements that are contained in subsection A3.7 – Additional Construction Requirements, of the document produced by the NSW Rural Fire Service and known as Addendum: Appendix 3 - Planning for Bushfire Protection 2010. Details demonstrating compliance with this condition are to be incorporated within the documentation associated with any construction certificate.</p>	No changes required
<p><b>Condition 2.7 (b)</b> Vehicular access roads within the Cluster Housing precinct shall be constructed to comply with the performance criteria of Section 4.1.3(1) of Planning for Bushfire Protection 2006 with a minimum pavement width of 3.5 metres for the one-way roads. Parking Bays shall be designed and constructed clear of the road pavement and complying Passing Bays (20m long x 2.0m wide) provided in the locations shown on the Site Plan prepared by Envirotecure (project no. N10, revision 10, dated 23.06.2016).</p>	No changes required
<p><b>Condition 2.7 (f)</b> A fire-fighting water supply shall be provided to the Cluster Housing precinct with Hydrant spacing, sizing and pressure complying with the specifications of Australian Standard A.S. 2419.1 - 2005 and have a flow rate of 10 litres / second. Hydrant locations shall be delineated by blue markers placed on the hydrant side of the centreline of the road pavement.</p>	No changes required

Council Condition	Suggested revised condition
Prior to the issue of any occupation certificate	
<p><b>Condition 5.7.</b> Prior to the issue of any Occupation Certificate the Principal Certifying Authority must be furnished with a written statement from a recognised Bushfire Consultant certifying that all recommendations of the Bushfire Assessment, prepared by Travers bushfire &amp; ecology (TBE) Ref: A16075B: NVD/JT, dated 21 July, 2016, have been complied with, except where such requirements are inconsistent with the general terms of approval for a Bushfire Safety Authority, issued by the NSW Rural Fire Service and referred to under conditions 7.1 to 7.4 of Development Consent 44994/2013, which shall be complied with.</p>	No changes required
<p><b>Condition 5.8.</b> Prior to the issue of any Occupation Certificate an instrument under the Conveyancing Act 1919 must be created on the Certificate of Title establishing a restrictive covenant detailing that Lot 36, land extending west towards the E2 zone (as depicted within Schedule 1 – Bushfire Protection Measures prepared by Travers bushfire &amp; ecology (Ref: A16075_BF001, dated 21/7/2016) and all land within 100m to the north, south and east of Lot 36 is to be maintained as an inner protection area. The restriction shall ensure the owner continually maintains the inner protection area in accordance with RFS guidelines Standards for Asset Protection Zones (RFS, 2005), with landscaping to comply with Appendix 5 of PBP. The restriction is to be created at the applicants cost with the Council having the sole authority to release or modify.</p>	No changes required

**Item No:** 3.3  
**Title:** Planning Proposal - 239 Debenham Road North,  
Somersby  
**Department:** Innovation and Futures

**Central Coast**  
Local Planning Panel

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3 September 2020 Local Planning Panel Meeting

Reference: F2020/02502 - D14157150  
Author: Michael Bowman, Strategic Planner  
Manager: Shari Driver, Unit Manager, Strategic Planning  
Approver: Ricardo Martello, Executive Manager Innovation and Futures

**Summary**

Planning Proposal for 239 Debenham Road North, Somersby will be considered by Council on 28 September 2020. This Proposal is referred to the Local Planning Panel for advice prior to the reporting of the matter by Council staff to the Elected Council.

I would like you to refer you to Attachment 1 *"Report to prepare Planning Proposal No 239 Debenham Rd North Somersby"* to the LPP on 3 September 2020, seeking the Local Planning Panel review and comment in satisfaction of Ministerial Direction dated 27 September 2018, so that the Local Planning Panel comments may be included in the report to Council on 28 September 2020.

If the Elected Council's decision is to forward the Planning Proposal for a Gateway determination, then the Panel's advice shall also be forwarded to the Minister.

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**Attachments**

- |          |   |           |
|----------|---|-----------|
| <b>1</b> | Request to prepare Planning Proposal No 239 Debenham Road North, Somersby | D14098929 |
| <b>2</b> | Summary - PP 99 No 239 Debenham Rd Somersby                               | D13865971 |
| <b>3</b> | Strategic Assessment - PP 99 No 239 Debenham Rd Somersby                  | D13865972 |



**Item No:** 0.0  
**Title:** Request to prepare Planning Proposal No 239  
Debenham Road North, Somersby  
**Department:** Innovation and Futures

28 September 2020 Ordinary Council Meeting

Reference: F2010/00500 - D14098929  
Author: Michael Bowman, Strategic Planner  
Scott Duncan, Section Manager, Land Use and Policy  
Manager: Scott Duncan, Section Manager, Land Use and Policy  
Executive: Ricardo Martello, Executive Manager Innovation and Futures

### Report Purpose

The purpose of this report is to consider a request to prepare a Planning Proposal to amend *Gosford Local Environmental Plan 2014 (GLEP 2014)* or *draft Central Coast Council Local Environmental Plan* (if in effect) for Lot 1 DP 261507 (part of No. 239 Debenham Road North), Somersby.

This report recommends that Council prepare a Planning Proposal and request a Gateway Determination from the Department of Planning, Industry and Environment (DPIE).

### Recommendation

- 1 That Council, pursuant to Section 3.33 of the Environmental Planning and Assessment Act, 1979, prepare a planning proposal to amend the Gosford Local Environmental Plan 2014 or the Central Coast Local Environmental Plan (whichever is in effect at the time), by rezoning that part of Lot 1 DP 261507 (part of No. 239 Debenham Road, Somersby) fronting Debenham Road North (about 2/3 of site area) from RU2 Rural Landscape to IN1 General Industrial and to rezone the residue land to E2 Environmental Conservation (with a dwelling prohibition).**
- 2 That Council, pursuant to Section 3.34 of the Environmental Planning and Assessment Act, 1979, forward the Planning Proposal to the Minister requesting a Gateway Determination.**
- 3 That Council request delegation for Council to finalise and make the draft Local Environmental Plan, pursuant to Section 3.36 of the Environmental Planning and Assessment Act 1979.**



The subject land is mostly vegetated. The land's gradient increases up slope to the east towards the M1 Pacific Motorway (M1). The site is now vacant. Historically the land was part of a much larger lot that was partly quarried before the M1 was built and divided the land. Surrounding lands uses include:

- East - M1 Motorway;
- West - Somersby Business Park (SBP) lies and the land is zoned IN1 General Industrial;
- North - land zoned RU2 – Rural Landscape utilised for rural-residential living (i.e. dwelling-house and outbuildings)

The land is currently zoned RU2 Rural Landscape under *Gosford Local Environmental Plan 2014 (GLEP 2014)* (Figure 2). The draft *Central Coast Local Environmental Plan (dCCLEP)* proposes to retain the current zoning of the site.

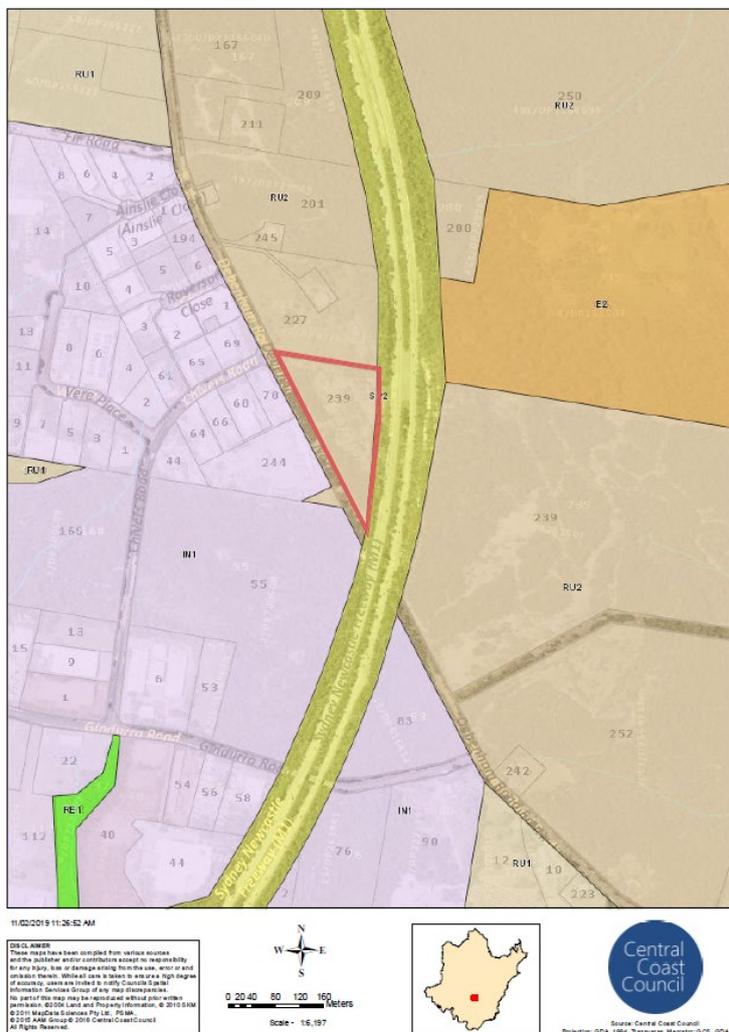


Figure 2 – Existing locality zonings – subject site outlined in red

**The Proposal**

The proposal is to rezone part of the land to IN1 General Industrial (approximately 1.5 ha). The area to be rezoned to IN1 General Industrial lies generally below 247 metres Australia Height Datum (AHD), has frontage to Debenham Road North and lies across the road from land zoned IN1 located within the Somersby Business Park (SBP).

The residual land is to be zoned E2 Environmental Conservation (about 0.7 ha) which will also be supported with a specific LEP provision which prohibits dwellings. The portion of the site proposed to be rezoned E2 Environmental Conservation will also include a provision for it to be held in the same ownership with a parcel of land zoned IN1 General Industrial and include a requirement for a conservation management plan to be prepared. Figure 3 provides an indicative draft zoning plan.

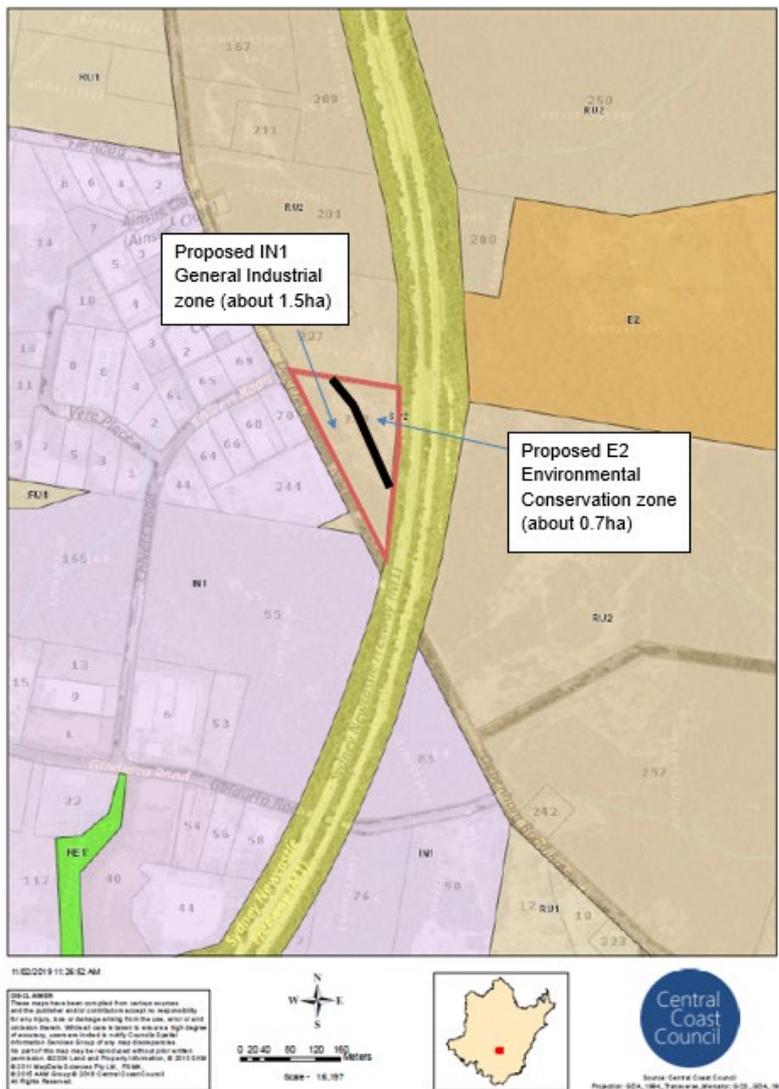


Figure 3 – Proposed zoning plan (site edged in red)

The intended outcome of the proposal is to facilitate part of the site to be used for employment purposes or for multiple employment uses through the subdivision of the land. Additionally, the more elevated and steeper land adjacent to the M1 is to be conserved under the E2 Environmental Conservation zoning which will retain native vegetation on the steeper parts of the site and will also contribute towards the achievement of broader habitat corridor plans in the local area.

### Assessment

The Planning Proposal was originally lodged on 31 October 2017. After detailed review and discussions with Council staff the applicant amended the proposal numerous times. As a result of these protracted discussions, the current Planning Proposal has been developed for approximately 1.5 hectares of IN1 Industrial General and 0.7 hectares of E2 Environmental Conservation zoned land.

The request to prepare a Planning Proposal is supported by a planning report and preliminary investigations regarding matters such as Aboriginal heritage, archaeology, ecological, economics, bushfire, traffic, water cycle management, onsite effluent and visual impact.

Assessment of the request has been informed by internal consultation and assessment against relevant strategic and statutory requirements to determine whether the proposed rezoning should proceed to request a Gateway Determination.

Council's assessment has identified the proposal has strategic merit on the basis that:

- The proposal is consistent with actions in the *Central Coast Regional Plan (CCRP) 2036* and aligns specifically with *Goal C: A growing and competitive region*;
- The site is adjacent to the CCRP's *Southern Growth Corridor* (i.e. Council's adopted '*Somersby to Erina Corridor Strategy*'), which is designated as a priority location for future jobs, services and business growth within the southern half of the region;
- The proposal will create a small amount of employment land which can be serviced, opposite the existing Somersby Business Park. The proposal is in many ways just a fine tuning of the zoned boundaries of existing industrial park boundaries, based on the detailed assessment work that has confirmed the suitability of the subject land for industrial purposes.
- The proposal is consistent with the relevant growth strategies, planning priorities and actions within the Council adopted Interim *Local Strategic Planning Statement*.

Although the site is small, based upon the State Government's *Employment Lands Development Program* report statistics, the subject rezoning could be expected to generate approximately 75 jobs (average) once it is fully developed.

There is no evidence of any items of European heritage on the land that would require an investigation. A check of mapping held by Council shows no Aboriginal cultural heritage sites on the land, however, as some sites are known to exist in the locality, an Aboriginal Cultural Heritage Assessment will be required to support the proposal, as a post Gateway requirement.

The applicant's planning report states that a search of the Environmental Protection Authority's Contaminated Land Records reveals no entries, notices, actions or management proposals issued under the Contaminated Lands Act for the subject land. A Stage 1 contaminated land assessment will be required of the applicant to be carried out post Gateway to determine consistency with SEPP No 55 - Remediation of Land and Ministerial Direction 2.6 - Remediation of Contaminated Land.

In addition to the abovementioned studies the applicant will also be required to undertake more detailed ecological and habitat corridor, geotechnical and bushfire assessments post Gateway Determination.

There is a strategic basis in the Central Coast Regional Plan to identify additional employment lands to meet forecast growth needs. The proposal is consistent with the Central Coast Regional Plan, as it will contribute to meeting identified needs, notwithstanding that it is only a small amount of land.

All services are available and can be extended to the proposed IN1 zoned area, which lies across the road from existing Somersby Business Park.

In undertaking planning investigations into the potential suitability of this site for employment purposes, a small area of land to the north of the subject land has also been identified for future investigation as part of the Central Coast Employment Land Study and Strategy (in preparation). For the above reasons the proposal will not set a precedent for other similar proposals, beyond this particular site.

### **Internal Consultation**

The rezoning request and supporting reports have been reviewed by staff and responses are summarised below. Some matters requiring more detailed investigation as a part of the progression of the proposal are discussed below.

### **Environmental Strategies**

The Environmental Strategies Section supports the rezoning of part of the site to E2 Environmental Conservation.

The site has high biodiversity values and ecological connectivity. The site contains suitable habitat for over twenty (20) different threatened species, hence a comprehensive flora and fauna survey will be carried out post Gateway by the applicant.

The proposed rezoning would result in the removal of native vegetation within the proposed industrial zone in order to provide drainage, services, driveways, buildings, car parking and the provision of bushfire asset protection areas (vegetation reduced). The following issues would need to be examined in more detail through the rezoning process:

1. The introduction of the *Biodiversity Conservation Act, 2016* (BC Act) introduced the concept of Serious and Irreversible Impact (SAIL) for species that meet one of four criteria outlined in s6.7 of the *Biodiversity Conservation Regulation, 2017*;
2. S7.1.6.2 of the BC Act requires that a consent authority must not grant development consent to a proposal that is likely to affect SAIL entities; and
3. Somersby Mintbush and *Hibbertia procumbens* both have the potential of occurring on the site and possibly meet the criteria for SAIL. If these species were recorded during the DA stage harm to these species would not be permitted.

### **Natural Assets**

Consultants engaged by Council recently prepared 'Corridor Mapping' for the Central Coast Local Government Area (LGA) on behalf of Council. The corridor map is overlaid on 2015 aerial photography and used Council's adopted 'Bells' vegetation mapping.

The corridor mapping in the vicinity of the proposed rezoning shows a potential gap connection and the rezoning of part of the land to E2 Environmental Conservation could assist with the future connection of core areas of habitat to land further to the north (i.e. north of the adjacent rural-residential living lot) with core habitat on the eastern side of the M1 and identifies the subject land as a wildlife corridor (Figure 4).

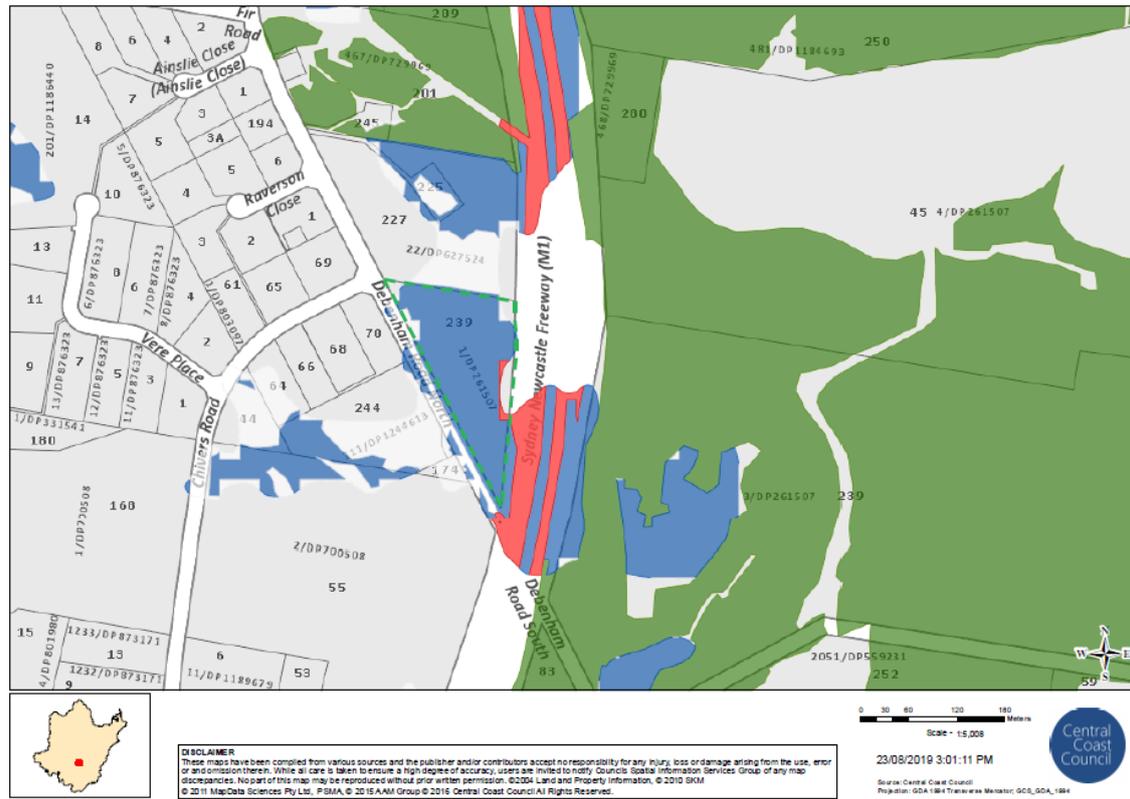


Figure 4 – Council's wildlife corridor map (blue = corridor, green = core habitat, red = corridor gap)

## Urban Planning and Development (Contributions)

No Contribution Plan under Section 7.11 applies to the Somersby Business Park or surrounding lands.

As at 22 May 2020, a Section 7.12 contribution plan applies to all parts of the Central Coast which are not subject to any other Section 7.11 or 7.12 Contribution Plan. Under this plan contributions are calculated as a flat rate percentage of the cost of development. The rate of the levy is 0.5% of the cost of development between \$100,001 - \$200,000, and 1% of the cost of development over \$200,001.

## Water Planning and Development

The land proposed to be rezoned to IN1 General Industrial is not located within Council's defined *Water / Sewer Service Area (WSSA)*. The defined WSSA was installed with capacity to service the zoned industrial land. The WSSA infrastructure (i.e. water, sewer, roads and drainage) was constructed for and funded by industrial land owners under the *Somersby Industrial Estate (SIE) Service Contribution Agreement* dated 29th August 1980.

Connection of the land proposed to be rezoned to IN1 General Industrial to Council's water supply system is feasible with necessary augmentation. A portion of the lot, i.e. above 244.7

metres Australia Height Datum (AHD), cannot be serviced with Council's minimum service level requirements due to insufficient pressure, however the remainder of the land can be serviced (which includes the majority of the lower elevation portion of the site which is proposed to be developed). It is feasible to connect the proposed IN1 zoned land to the existing 150 mm gravity sewer system.

Any future development will have to pay to the Water Authority any required specific downstream water and sewer augmentation contribution charges toward providing system capacity to enable connection of the land to Council's water and sewer reticulation systems. Future development on the land shall be subject to payment of a water and sewer headworks / augmentation contribution (as per the *Water Management Act 2000*) based upon equivalent tenements and relevant fees at the time.

### **Waste Services and Business Development**

There are no objections from a waste management perspective providing that:

- Any future road network / lot layout being designed to provide a street frontage / kerbside waste bin presentation opportunity;
- The road network must be designed to provide no dead ends requiring waste vehicle reversing with any cul-de-sac being designed to allow a 10.0 m long, dual rear axle Heavy Rigid Vehicle (HRV) to turn within the cul-de-sac in a single swept movement; and
- The road network to be capable of supporting a fully loaded residential waste collection vehicle.

These considerations will be applicable during the assessment of a future development application on the subject site.

### **Waterways and Coastal Protection**

The land is located at the upstream end of a tributary of Piles Creek which is a tributary of Mooney Mooney Creek.

There is no available flood study for this area which would define any flooding on this site. The property is located at the upstream end of the catchment and there appears to be no defined watercourses that cross the site that would fill during rainfall events and cause flooding to downstream or adjoining proposed development. It is considered that no formal flood study is required for the proposed development at this planning proposal stage.

Any increase in run-off should be retained on the site for all flood events up to the 100-year flood event. All development is to comply with Council's LEP and DCP requirements, particularly with regards to Water Cycle Management, so as not to increase run-off from the site from pre-development conditions. These considerations will be applicable during the assessment of a future development application on the subject site.

### **Development Engineering (Traffic)**

The proposed industrial properties will be accessed via Debenham Road North, immediately west of the M1 Pacific Motorway. The traffic assessment lodged in support of the proposed industrially zoned land, states that future development could generate an additional 12 trips for morning peak per 1,000 m<sup>2</sup> of industrial development. Gindurra Road and Wisemans Ferry Road have the capacity to cater for the increased industrial traffic generated from future development.

### **External consultation**

Government agency and public consultation requirements will be detailed in the Gateway Determination and conducted accordingly. It is anticipated that due to the existing development surrounding, and the location, that the following agencies may need to be consulted:

- Department of Family and Community and Justice (former NSW Rural Fire Service), regarding bushfire matters;
- Department of Transport (former Roads and Maritime Services and Transport for NSW), regarding transportation and road networking matters;
- Darkinjung Local Aboriginal Land Council and Guringai Tribal Link (also known as Wannangini), regarding Aboriginal heritage values; and
- Department of Planning, Industry and Environment (former Office Environment and Heritage and Department of Primary Industries), regarding primary industries and agricultural planning matters.

It expected that the Planning Proposal will be publicly exhibited for a period of 28 days.

### **Statutory compliance and strategic justification**

The planning proposal has been assessed having regard for relevant State Environmental Planning Policies (SEPPs), Ministerial Section 9.1 Directions and relevant guidelines set out within the regional and local plans, including the CCRP (see Attachment 2 – Strategic Assessment).

The proposal is generally consistent with the applicable Ministerial Directions and SEPPs.

### **Financial Impact**

Adoption of the staff recommendation has no budget implications for Council. The direct cost to Council is the preparation of the planning proposal and Council's fee has been paid for this service.

The rezoning of the land will provide further land for employment purposes and is expected to generate approximately 75 jobs (average) once it is fully developed, which will have a positive economic impact for the Central Coast economy.

### **Social Impacts**

It is considered that the subject proposal would result in positive social impacts through the provision of suitably located and serviceable employment lands, which increases the potential for more local business and employment opportunities.

The proposal is consistent with the Community Strategic Plan.

### **Environmental Considerations**

The proposed rezoning of the land will achieve some positive environmental outcomes by rezoning part of the site to E2 Environmental Conservation. The applicant will be required to prepare a Conservation Management Plan over this area.

The applicant will also be required to undertake more detailed ecological and habitat corridor, geotechnical and bushfire assessment work post Gateway Determination.

### **Interim Local Strategic Planning Statement**

Interim Local Strategic Planning Statement (LSPS) came into effect on 21 August 2020 after adoption by Council on 29 June 2020.

In summary, the proposal seeks to slightly expand the amount of industrially zoned land within the Somersby Business Park by rezoning an additional 1.5 hectares of land for employment purposes.

The proposal is consistent with the Interim LSPS. A more detailed assessment is provided in Attachment 2.

## **Link to Community Strategic Plan**

Theme 2: Smart

### **Goal C: A growing and competitive region**

C1: Target economic development in growth areas and major centres and provide incentives to attract businesses to the Central Coast.

Theme 3: Green

### **Goal C: A growing and competitive region**

F1: Protect our rich environmental heritage by conserving beaches, waterways, bushland, wildlife corridors and inland areas, and the diversity of local native species.

Theme 4: Responsible

### **Goal C: A growing and competitive region**

I1: Preserve local character and protect our heritage and rural areas including concentration of development along transport corridors and around town centres.

Theme 4: Responsible

### **Goal C: A growing and competitive region**

I3: Ensure land use planning and development is sustainable and environmentally sound and considers the importance of local habitat, green corridors, energy efficiency and stormwater management.

## **Risk Management**

There have been no risks identified at this stage to the natural and built environment associated with the proposed amendment to *GLEP 2014* or the *CCLEP*, with regard to seeking a Gateway Determination.

## **Conclusion**

The request to rezone the Somersby Road North part of the subject land (i.e. Lot 1 DP 261507) to IN1 General Industrial and part E2 Environmental Conservation is considered to have strategic merit and be capable for employment land use; subject to being supported by appropriate additional studies post Gateway Determination.

It is recommended that a Planning Proposal be prepared and forwarded to the Minister for Planning and Public Spaces for a Gateway Determination.

**Attachments**

- |          |  |           |
|----------|--|-----------|
| <b>1</b> | Summary - PP 99 No 239 Debenham Rd Somersby              | D13865971 |
| <b>2</b> | Strategic Assessment - PP 99 No 239 Debenham Rd Somersby | D13865972 |

# Proposal Summary

<b>Applicant</b>	Rod Wall – Coastal Design Link		
<b>Owner</b>	Enterprise Property CC P/L		
<b>Application Number</b>	PP/99/2017		
<b>Description of Land subject of planning proposal</b>	<p><i>Street Address:</i> Part of No. 239 Debenham Road North, Somersby</p> <p><i>Legal Description:</i> Lot 1 DP 261507</p>		
<b>Site Area</b>	2.227 hectares		
<b>Existing Use</b>	Vacant - mostly vegetated land without any structures, but with some portable containers		
<b>Proposed Amendments – Gosford Local Environmental Plan 2014 or Central Coast Local Environmental Plan</b>			
<b>Provisions</b>	<b>Existing Provision</b>	<b>Proposed Amendment</b>	<b>Outcome (Supported/Not Supported)</b>
<b>Zoning</b>	RU2 Rural Landscape	<p>Rezone street frontage part of land to IN1 zoning (about 1.5 ha).</p> <p>Remainder of property to rezone to E2 Environmental Conservation zoning (about 0.7 ha) without a dwelling right &amp; to be commonly owned with IN1 zone land.</p>	Supported
<b>Minimum Lot Size</b>	20 ha	Apply 4,000m <sup>2</sup> to land zoned IN1.	Supported



# Strategic Assessment

Lot 1 DP 261507 Debenham Rd North, Somersby (PP 99/2017)

Central Coast Regional Plan		
Direction	Applicable	Assessment/Comment
1. Grow Gosford City Centre as the region's capital	N/A	Not located within the region's capital.
2. Focus economic development in the Southern and Northern Growth Corridors	Yes	The proposal is consistent with this Direction. The proposal seeks to provide a small amount of additional employment lands immediately across the road from the Somersby Business Park (SBP). SBP is the gateway to the Southern Growth Corridor. The 'Somersby to Erina Corridor Strategy' was adopted by Council to implement the Southern Growth Corridor. Direction 6 of the corridor strategy aims to 'ensure the long-term success of Somersby Employment Area'. One action to implement is to prepare an Employment Lands Strategy, which is underway.
3. Support priority economic sectors	Yes	The proposal is consistent with this Direction. The proposal seeks to provide additional employment lands adjacent to the SBP. The SBP is the gateway to the Southern Growth Corridor, as per Council's adopted 'Somersby to Erina Corridor Strategy'.
4. Strengthen inter-regional and intra-regional connections for business	Yes	The proposal is consistent with this Direction. The proposal seeks to add to the provision of suitably located employment lands utilising existing road infrastructure and services.
5. Support new and expanded industrial activity	Yes	The proposal is consistent with this Direction. The proposal seeks to provide additional employment lands adjacent to the SBP. SBP is the gateway to the Southern Growth Corridor, i.e. 'Somersby to Erina Corridor Strategy'.
6. Strengthen the economic self-determination of	N/A	Not Applicable. The land proposal is not land owned by the



Central Coast Regional Plan		
Direction	Applicable	Assessment/Comment
Aboriginal communities		DLALC.
7. Increase job containment in the region	Yes	The subject proposal is consistent with this Direction. See responses 2, 3 & 5 above.
8. Recognise the cultural landscape of the Central Coast	Yes	The proposal is consistent with this Direction. The subject proposal does not detract from the cultural landscape of the Central Coast. The lower lands on the subject site will be used for employment uses, which is compatible with the lands across the road within the SBP, whilst the higher lands will be zoned to E2 Environmental Conservation (with no dwelling right) and must be commonly owned with IN1 zoned land. A post Gateway study will be required of the applicant regarding Aboriginal cultural heritage assessment.
9. Protect and enhance productive agricultural land	N/A	The proposal is consistent with this Direction. The subject site is not located on prime agricultural lands mapped under the deemed State Environmental Planning Policy (SEPP) Sydney Regional Environmental Plan (SREP) No. 8, nor identified as Biophysical Strategic Agricultural Land (BSAL).
10. Secure the productivity and capacity of resource lands	N/A	The proposal is consistent with this Direction. The subject land is within an area to which SREP No: 8 applies, however the land is not mapped as being 'prime agricultural land', nor as a 'preferred location of extractive industry'. The land is also subject to the deemed SEPP, SREP No: 9, however there are no direct effects on the subject land, and it is not mapped. The 2014 NSW Government audit of mineral resources did not address the land. SEPP (Mining, Petroleum Production and Extractive Industries) 2007 permits mining and extractive industries with consent wherever a Local Environmental Plan (LEP) permits agriculture or industry. Industry is a permissible use in the



Central Coast Regional Plan		
Direction	Applicable	Assessment/Comment
		proposed zone IN1 zone. The E2 Environmental Conservation zoned land must be commonly owned with IN1 zoned land and will have no dwelling right.
11. Sustain and balance productive landscapes west of the M1	Yes	The proposal is consistent with this Direction. The site is not located on resource lands per SREP Nos. 8 and 9 mapping.
12. Protect and manage environmental values	Yes	<p>The submitted ecological report identifies that the general locality contains suitable habitat for over 20 threatened species. A check of mapping held by Council shows no Aboriginal cultural heritage sites on the land, however, as some exist in the locality post Gateway the applicant will be required to prepare an Aboriginal Cultural Heritage Assessment.</p> <p>The area has high biodiversity values, ecological connectivity and Aboriginal cultural heritage values.</p> <p>The proposal seeks to zone the higher land to E2 Environment Conservation and to deny a dwelling right with the aim to retain habitat for a wildlife corridor and minimise potential future environmental impacts, which is supported. The remainder of the site presents some potential issues including:</p> <ol style="list-style-type: none"> <li>1. The introduction of the <i>Biodiversity Conservation (BC) Act 2016</i> introduced the concept of Serious and Irreversible Impact (SAIL) for species that meet one of four criteria outlined in s6.7 of the Biodiversity Conservation Regulation 2017.</li> <li>2. S.7.1.6.2 of the BC Act 2016 requires that a consent authority must not grant development consent to a proposal that may present SAILs for their survival for particular species and/or their habitat.</li> <li>3. Somersby Mintbush and Hibbertia procumbens both have the potential of occurring on the site and possibly meet the criteria for SAIL.</li> </ol> <p>A comprehensive flora and fauna survey is required to be carried out post-Gateway by the applicant for to ensure that these matters are addressed prior to any rezoning of the land and an Aboriginal cultural heritage assessment regarding the proposal.</p>



Central Coast Regional Plan		
Direction	Applicable	Assessment/Comment
13. Sustain water quality and security	Yes	The proposal is consistent with this Direction. The subject site is not located within the Drinking Water Catchment.
14. Protect the coast and manage natural hazards and climate change	Yes	The proposal is consistent with this Direction. The proposal is not affected by coastal hazards. The site comprises category 1 bushfire prone vegetation. Future development of the site will be required to include relevant measures to ensure the security of land improvements, such as Asset Protection Zones (APZs). A bushfire assessment will be required to be carried out post-Gateway by the applicant.
15. Create a well-planned, compact settlement pattern	Yes	The subject proposal is consistent with this Direction. The proposal will deliver additional employment lands adjacent to the SBP.
16. Grow investment opportunities in the region's centres	N/A	The subject proposal is not within a centre.
17. Align land use and infrastructure planning	Yes	The subject proposal is consistent with this Direction. The proposal will complete the employment lands in this part of SBP and will utilise existing services and infrastructure.
18. Create places that are inclusive, well-designed and offer attractive lifestyles	Yes	The subject proposal is consistent with this Direction. The proposal will complete the employment lands in this part of SBP.
19. Accelerate housing supply and improve housing choice	N/A	The proposal does not relate to housing supply.
20. Grow housing choice in and around local centres	N/A	The proposal does not relate to housing supply or a centre.
21. Provide housing choice to meet community	N/A	The proposal does not relate to housing supply.



Central Coast Regional Plan		
Direction	Applicable	Assessment/Comment
needs		
22. Deliver housing in new release areas that are best suited to building new communities	N/A	The proposal does not relate to housing supply.
23. Manage rural lifestyles	N/A	The proposal does not relate to rural living.

State Environmental Planning Policies (SEPPs)	
SEPP	CONSISTENCY
<b>SEPP (Koala Habitat Protection) 2019</b>	
<p><b>Aim of Policy</b></p> <p>This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline</p>	<p>Applicable &amp; Consistent.</p> <p>The applicant's submitted 'Ecological Issues and Assessment Report' stated that <i>"It is noted, however, that no Koalas have been recorded on or are known from the Debenham Parklands site or nearby lands; and none have been recorded in recent times in the SIP. There is no "resident population of koalas" at this location;</i></p>
<b>SEPP 55 – Remediation of Land</b>	
<p>Aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.</p> <p>(a) by specifying when consent is required, and when it is not required, for a remediation work, and</p> <p>(b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and</p> <p>(c) development applications for consent to carry out a remediation work in particular, and</p> <p>(d) by requiring that a remediation work meet certain</p>	<p>Applicable &amp; Consistent.</p> <p>The Applicant's planning report states that a search of the Environmental Protection Authority's (EPAs) Contaminated Land Records reveals no entries, notices, actions or management proposals issued under the Contaminated lands Act for the subject land.</p> <p>Post Gateway a <i>Stage 1 contaminated lands assessment</i> should be carried out to determine compliance with Ministerial Direction 2.6 Remediation of Contaminated Land and SEPP No 55, given existing greenhouses and past extractive industry onsite.</p>



<b>State Environmental Planning Policies (SEPPs)</b>	
<b>SEPP</b>	<b>CONSISTENCY</b>
standards and notification requirements.	
<b>SEPP (Coastal Management) 2018</b>	
<p>The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with objects of the Coastal Management Act 2016, including the Management objectives for each coastal management area, by:</p> <p>(a) managing development in the coastal zone and protecting the environmental assets of the coast, and</p> <p>(b) establishing a framework for land use planning to guide and decision-making in the coastal zone, and mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.</p>	<p>Not Applicable.</p> <p>The subject land is not within the areas affected by this SEPP.</p>
<b>SEPP (Mining, Petroleum &amp; Extractive Industries) 2007</b>	
<p>Aims:</p> <p>(a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and</p> <p>(b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and</p> <p>(b1) to promote the development of significant mineral resources, and</p> <p>(c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and</p> <p>(d) to establish a gateway assessment process for certain mining and petroleum (oil and gas) development:</p> <p>(i) to recognise the importance of agricultural resources, and</p>	<p>Applicable &amp; Consistent.</p> <p>SEPP State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 permits mining and extractive industries with consent wherever an LEP permits agriculture or industry.</p> <p>Industry is a permissible use in the proposed zone IN1 zone and the E2 Environmental Conservation zoned land must be commonly owned with IN1 zoned land and will have no dwelling right.</p>



<b>State Environmental Planning Policies (SEPPs)</b>	
<b>SEPP</b>	<b>CONSISTENCY</b>
(ii) to ensure protection of strategic agricultural land and water resources, and (iii) to ensure a balanced use of land by potentially competing industries, and (iv) to provide for the sustainable growth for mining, petroleum and agricultural industries.	
<b>SEPP (Vegetation in Non-Rural Areas) 2017</b>	
The aims of this Policy are as follows: (a) to establish the process for assessing and identifying sites as urban renewal precincts, (b) to facilitate the orderly and economic development and redevelopment of sites in and around urban renewal precincts, (c) to facilitate delivery of the objectives of any applicable government State, regional or metropolitan strategies connected with the renewal of urban areas that are accessible by public transport.	Not applicable.
<b>SEPP (Aboriginal Land) 2019</b>	
Aims: (a) to provide for development delivery plans for areas of land owned by Local Aboriginal Land Councils to be considered when development applications are considered, and (b) to declare specified development carried out on land owned by Local Aboriginal Land Councils to be regionally significant development.	Not applicable. The land is not identified in the mapping supporting this SEPP.
<b>SEPP (Primary Production and Rural Development) 2019</b>	



State Environmental Planning Policies (SEPPs)	
SEPP	CONSISTENCY
<p>Aims</p> <p>(a) to facilitate the orderly economic use and development of lands for primary production,</p> <p>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</p> <p>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</p> <p>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</p> <p>(e) to encourage sustainable agriculture, including sustainable aquaculture,</p> <p>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</p> <p>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</p>	<p>Not applicable.</p> <p>SREP 8 applies across the plateau and extends south to include rural lands around Somersby Business Park, including the subject lands. The subject land is not mapped as prime agricultural land, nor as a preferred location for extractive industries under SREP No 8.</p>
SEPP Infrastructure	
<p>The aim of this Policy is to facilitate the effective delivery of infrastructure across the State.</p>	<p>Applicable &amp; Consistent.</p> <p>The land proposed to be rezoned to IN1 can be provided with water and sewer services and the local road network has capacity for potential development. The small amount of proposed IN1 that cannot be serviced is still suitable for industrial uses and can be used for storage, parking or the like.</p>



Deemed State Environmental Planning Policies – Assessment	
Deemed SEPP	Consistency
Sydney Region Environmental Plan No. 8 Central Coast Plateau Areas	Comment
<p>The relevant aims of the deemed SEPP are:</p> <ul style="list-style-type: none"> <li>- to provide a basis for evaluating competing land uses</li> <li>- to direct development for non-agricultural purposes to land of lesser agricultural capability and</li> <li>• to encourage the preparation of draft LEPs based on merits</li> </ul> <p>2 - Aims, objectives etc</p> <p>(a) to provide for the environmental protection of the Central Coast plateau areas and to provide a basis for evaluating competing land uses,</p>	<p>Consistent.</p> <p>SREP 8 applies across the plateau and extends south to include rural lands around Somersby Business Park, including the subject lands.</p> <p>The subject land is not mapped as prime agricultural land, nor as a preferred location for extractive industries.</p> <p>The submitted ecological report identifies that the general locality contains suitable habitat for over 20 threatened species. A check of mapping held by Council shows no Aboriginal cultural heritage sites on the land, however, as some exist in the locality post Gateway the applicant will be required to prepare an Aboriginal Cultural Heritage Assessment.</p> <p>The area has high biodiversity values, ecological connectivity and Aboriginal cultural heritage values.</p> <p>The proposal seeking to zone the higher land not required for industrial purposes to E2 Environment Conservation and to deny a dwelling right with the aim to minimise potential future environmental impacts is supported. The remainder of the site in particular presents some potential issues including:</p> <ol style="list-style-type: none"> <li>1 The introduction of the Biodiversity Conservation Act 2016 introduced the concept of Serious and Irreversible Impact (SAIL) for species that meet one of four criteria outlined in s6.7 of the Biodiversity Conservation Regulation 2017.</li> <li>2 S7.1.6.2 of the BC Act requires that a consent authority must not grant development consent to a proposal that may present SAILs</li> </ol>



## Deemed State Environmental Planning Policies – Assessment

Deemed SEPP	Consistency
<p>(b) to encourage the use of land having a high agricultural capability for that purpose and, as much as possible, to direct development for non-agricultural purposes to land of lesser agricultural capability,</p> <p>(d) to protect regionally significant mining resources and extractive materials from sterilization,</p> <p>(e) to enable development for the purposes of extractive industries in specified locations,</p> <p>(g) to protect the natural ecosystems of the region, and</p> <p>(h) to maintain opportunities for wildlife movement across the region, and</p>	<p>for their survival for particular species and/or their habitat.</p> <p>2 Somersby Mintbush and Hibbertia procumbens both have the potential of occurring on the site and possibly meet the criteria for SAIL.</p> <p>A comprehensive flora and fauna survey is required to be carried out by the applicant post-Gateway to ensure that these matters are addressed prior to any rezoning of the land and an Aboriginal cultural heritage assessment regarding the proposal.</p> <p>Consistent.</p> <p>The subject land is not identified as "prime agricultural land"</p> <p>Consistent.</p> <p>None of the subject land is identified as the preferred location for extractive industries (SREP No 8), nor mapped or identified under SREP No. 9.</p> <p>None of the subject land is identified in the transitional area as being in proximity to the Acacia Road quarry under the State Government 2014 Mineral Resources Audit.</p> <p>SEPP State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 permits mining and extractive industries with consent wherever an LEP permits agriculture or industry. Industry is a permissible use in the proposed zone IN1 zone, and the E2 Environmental Conservation zoned land must be commonly owned with IN1 zoned land and will have no dwelling right.</p> <p>See 2(d) above.</p> <p>See 2(a) above.</p> <p>Action 12.2 of the Central Coast Regional Plan (CCRP) is to 'Identify and strengthen biodiversity corridors as places for priority biodiversity offsets'. CCRP mapping identifies a corridor running east of the M1, which does not affect the subject land.</p>



## Deemed State Environmental Planning Policies – Assessment

Deemed SEPP	Consistency
<p>(i) to discourage the preparation of draft local environmental plans designed to permit rural residential development, and</p> <p>(j) to encourage the preparation of draft local environmental plans based on merits.</p>	<p>Council has prepared mapping of biodiversity wildlife corridors within the LGA. The model used by the consultants aims to connect 'core habitat' areas based upon 2015 aerial photography and uses Council's adopted Bell vegetation mapping.</p> <p>The corridor map model aims to connect the core habitat located further to the north (i.e. north of the adjacent rural-residential living lot) with core habitat on the eastern side of the M1 and hence identifies the subject land as a wildlife corridor. The subject site does not connect directly to any core habitat areas. Post gateway the applicant will be required to carry out an investigation into the designation and feasibility of the site as a potential wildlife corridor.</p> <p>The proposed rezoning would result in clearing of the front part (about 1.5 ha) of the site for industrial uses. The remainder of the site (about 0.7 ha) is to be zoned to E2 Environmental Conservation with no dwelling right and will be held in common ownership with IN1 zoned land, together with ongoing conservation management requirements.</p> <p>The State Government's Biodiversity Values Map and Threshold Tool is a test used to determine when it is necessary to engage an accredited assessor to apply the Biodiversity Assessment Method (BAM) to assess the impacts of a proposal. The subject land is unaffected by this mapping.</p> <p>Additional detailed investigations are proposed post-Gateway regarding bushfire, environmental, wildlife corridor, contaminated lands, geotechnical capability, biodiversity issues and Aboriginal cultural heritage assessment and will be required to be undertaken by the applicant.</p> <p>Consistent.</p> <p>The proposal does involve rezoning any land to permit rural residential development.</p> <p>Consistent.</p> <p>There is a strategic basis to support the small amount (approx. 1.5 ha) of additional employment lands proposed in this location as it will complete the last potentially suitable industrial land in this location adjacent to the SBP.</p>



<b>Deemed State Environmental Planning Policies – Assessment</b>	
<b>Deemed SEPP</b>	<b>Consistency</b>
	<p>The land lies adjacent to the M1 and contains some steep lands in the east which are unsuitable for industrial uses. These are not proposed to be rezoned for industrial purposes, however retained for conservation (zoned E2 with no dwelling right).</p> <p>All services and road networks required are available within the adjacent SBP.</p> <p>Environmental issues will be investigated in more detail post-Gateway.</p>
<b>SREP No. 9 Extractive Industry (No2 – 1995)</b>	
<p>2 Aims, objectives</p> <p>(a) to facilitate the development of extractive resources in proximity to the population of the Sydney Metropolitan Area by identifying land which contains extractive material of regional significance.</p> <p>(b) to permit, with the consent of the council, development for the purpose of extractive industries on land described in Schedule 1 or 2, and</p> <p>(c) to ensure consideration is given to the impact of encroaching development on the ability of extractive industries to realise their full potential.</p> <p>3 Future development controls for extraction from Schedule 1 or 2 land</p> <p>(a) council should not prepare a draft local environmental plan to prohibit development for the purpose of an extractive industry on land described in Schedule 1 or 2.</p>	<p>Applicable and consistent.</p> <p>SEPP (Mining, Petroleum Production and Extractive Industries) 2007 permits mining and extractive industries with consent wherever an LEP permits agriculture or industry. Industry is a permissible use in the proposed zone IN1 zone, and the E2 Environmental Conservation zoned land must be commonly owned with IN1 zoned land and will have no dwelling right.</p> <p>Consistent.</p> <p>The subject land is not identified within Schedule 1 or 2 (nor on the map).</p> <p>Consistent.</p> <p>The subject land is not located near affected lands.</p> <p>The subject land is not identified within Schedule 1 or 2 (nor on the map).</p>
<b>State Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No2 – 1997)</b>	
<p>Aims Objectives and Special Provisions of SREP 20</p> <p>3 Aim of this plan</p> <p>The aim of this plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring</p>	<p>Not applicable.</p> <p>The land is not mapped under the SREP.</p>



### Deemed State Environmental Planning Policies – Assessment

Deemed SEPP	Consistency
that the impacts of future land uses are considered in a regional context.	

### Ministerial Section 9.1 Directions

Direction	Comment
<b>Employment &amp; Resources</b>	
<b>1.1 Business &amp; Industrial Zones</b>	
<p>Aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and to support the viability of identified centres.</p> <p>Applies when a planning proposal affects land within an existing or proposed business or industrial zone.</p>	<p>Applicable and consistent.</p> <p>There is a strategic basis to support the small amount (approx. 1.5 ha) of additional employment lands proposed in this location adjacent to the SBP. The proposal will complete the last potentially suitable industrial land in this location. The land lies adjacent to the M1. Steep lands are unsuitable for industrial uses will not be rezoned to IN1 and will be retained for conservation (zoned E2 with no dwelling right).</p> <p>All services and road networks required are available within the adjacent Somersby Business Park.</p>
<b>1.2 Rural Zones</b>	
<p>Aims to protect the agricultural production value of rural land.</p> <p>Applies when a planning proposal affects land within an existing or proposed rural zone.</p>	<p>Applicable.</p> <p>The land is zoned RU2 – Rural Landscape.</p> <p>The subject land is covered by Sydney Regional Plan No: 8 (deemed SEPP).</p> <p>The subject land is not mapped as being ‘prime agricultural land’, nor as being Biophysical Strategic Agricultural Land.</p> <p>The proposal it is not considered to be alienating agricultural production as it is directly adjacent to existing industrial development and is isolated from other landholdings (to the east) by the M1 Pacific Motorway.</p> <p>The inconsistency of the proposal with this Direction is of minor significance.</p>
<b>1.3 Mining, Petroleum Production and Extractive Industries</b>	



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
<p>Aims to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.</p> <p>Applies when a planning proposal would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restricting the potential of development resources of coal, other mineral, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.</p>	<p>Applicable and consistent.</p> <p>SEPP (Mining, Petroleum Production and Extractive Industries) 2007 permits mining and extractive industries with consent wherever an LEP permits agriculture or industry. Industry is a permissible use in the proposed zone IN1 zone, and the E2 Environmental Conservation zoned land must be commonly owned with IN1 zoned land and will have no dwelling right.</p>
<b>1.4 Oyster Aquaculture</b>	
<p>Aims to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered, and to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.</p> <p>Applies when a planning proposal could result in adverse impacts on a Priority Oyster Aquaculture Areas or current oyster aquaculture lease in the national parks estate or results in incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or current oyster aquaculture lease in the national parks estate and other land uses.</p>	<p>Not Applicable.</p> <p>There are no 'Priority Oyster Aquaculture Areas' (POAA) near the northern end of Brisbane Water where the land's waters discharge through Narara Creek. The nearest POAAs are located around Woy Woy.</p>
<b>1.5 Rural Lands</b>	
<p>Objectives are to;</p> <ul style="list-style-type: none"> <li>- protect the agricultural production value of rural land;</li> <li>- facilitate the orderly and economic development of rural lands for rural and related purposes;</li> <li>- assist in the proper management, development and protection of rural lands to promote the social, economic and environmental welfare of the State;</li> </ul>	<p>Applicable and consistent.</p> <p>The land is zoned RU2 – Rural Landscape, but not RU1 – Primary Production.</p> <p>The subject land is covered by Sydney Regional Plan No: 8 (deemed SEPP).</p> <p>The subject land is not mapped as being 'prime agricultural land'.</p> <p>The proposal it is not considered to be alienating agricultural production as it is directly adjacent to existing industrial development and is isolated</p>



### Ministerial Section 9.1 Directions

Direction	Comment
<ul style="list-style-type: none"> <li>- minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses;</li> <li>- encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land;</li> <li>- support the delivery of the actions outlined in the New South Wales Right to Farm Policy.</li> </ul>	<p>from other landholdings (to the east) by the M1 Pacific Motorway.</p> <p>The proposal is consistent with the objectives.</p>

### Environment & Heritage

#### 2.1 Environmental Protection Zones

<p>Aims to protect and conserve environmentally sensitive areas.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable.</p> <p>Further environmental investigation post gateway will be required of the applicant.</p> <p>The submitted ecological report identifies that the general locality contains suitable habitat for over 20 threatened species. A check of mapping held by Council shows no Aboriginal cultural heritage sites on the land, however, as some exist in the locality post Gateway the applicant will be required to prepare an Aboriginal Cultural Heritage Assessment.</p> <p>The area has high biodiversity values, ecological connectivity and Aboriginal cultural heritage values.</p> <p>The proposal seeking to zone the higher land to E2 Environment Conservation and to deny a dwelling right with the aim to minimise potential future environmental impacts is supported. The remainder of the site presents some potential issues including:</p> <ol style="list-style-type: none"> <li>1 The introduction of the <i>Biodiversity Conservation (BC) Act 2016</i> introduced the concept of Serious and Irreversible Impact (SAIL) for species that meet one of four criteria outlined in s6.7 of the Biodiversity Conservation Regulation 2017.</li> <li>2 S7.1.6.2 of the BC Act 2016 requires that a consent authority must not grant development consent to a proposal that may present SALLs</li> </ol>
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<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
	<p>for their survival for particular species and/or their habitat.</p> <p>3 Somersby Mintbush and Hibbertia procumbens both have the potential of occurring on the site and possibly meet the criteria for SAIL.</p> <p>A comprehensive flora and fauna survey will be required of the applicant post Gateway to ensure that this matter will be addressed prior to the rezoning of the land and an Aboriginal cultural heritage assessment regarding the proposal.</p>
<b>2.2 Coastal Management</b>	
<p>Aims to protect and manage coastal areas of NSW. Applies when a planning proposal applies to land in the Coastal Zone as defined under the Coastal Management Act 2016.</p>	<p>Not Applicable.</p> <p>The Coastal Zone is defined under the Coastal Management Act as those lands identified as coastal wetlands and littoral rainforests areas, coastal vulnerability environmental and coastal use areas which are mapped under SEPP Coastal Management. No 'coastal zone' areas are located in the vicinity of the subject site, the nearest being adjacent to Narara Creek.</p>
<b>2.3 Heritage Conservation</b>	
<p>Aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable.</p> <p>Further investigation post-Gateway will be required of the applicant regarding this matter.</p> <p>A Non-Indigenous heritage assessment has not been provided by the applicant. However, historical photos back until 1957 show a small part of the land was used as a quarry and there is no evidence on any buildings, hence no formal study is considered necessary.</p> <p>A search of the Aboriginal Heritage Information Management System (AHIMS) maintained by the NSW Office of Environment and Heritage which revealed the following information:</p> <p style="padding-left: 40px;">Lot 1 DP 261607 (Site 1) – 0 Sites or Places Recorded.</p> <p>An archaeological study by Kayandel Archaeological Services in 2007 was also reviewed as part of the lodged submission.</p>



Ministerial Section 9.1 Directions	
Direction	Comment
	<p>A review of a historical survey &amp; report produced for Lester Firth &amp; Associates pertaining to the Somersby &amp; Mount Penang areas in 1983 was also undertaken.</p> <p>The proponents have undertaken consultation with the Darkinjung Local Aboriginal Land Council (DLALC) and other Aboriginal interest groups. To date, no objections to the proposed re-zoning of the subject sites have been raised.</p> <p>An Aboriginal cultural heritage assessment will be required to be prepared by the applicant post-Gateway.</p>
<b>2.4 Recreational Vehicle Areas</b>	
<p>Aims to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable and consistent.</p> <p>The proposal does not seek to provide recreational vehicle areas.</p>
<b>2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs</b>	
<p>Aims to ensure that a balanced and consistent approach is taken when applying environmental protection zones and overlays to land on the NSW Far North Coast.</p>	<p>Not Applicable</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>2.6 Remediation of Contaminated Land</b>	
<p>Aims to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p>	<p>The direction applies to land on which development for a purpose referred to in Table 1 to the <i>contaminated land planning guidelines</i> is being, or is known to have been, carried out, which includes land previously used for extractive industries and horticulture / agriculture (e.g. existing green-houses), such as this site.</p> <p>The Applicant's planning report states that a search of the Environmental Protection Authority's (EPAs) Contaminated Land Records reveals no entries, notices, actions or management proposals issued under the Contaminated lands Act for the subject land.</p> <p>Post Gateway a <i>Stage 1 contaminated lands assessment</i> should be carried out to determine</p>



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
	compliance with this direction and SEPP No 55, given existing greenhouses and past extractive industry onsite.
<b>Housing, Infrastructure and Urban Development</b>	
<b>3.1 Residential Zones</b>	
<p>Aims to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services and to minimise the impact of residential development on the environment and resource lands.</p> <p>Applies when a planning proposal affects land within an existing or proposed residential zone, and any other zone in which significant residential development is permitted or proposed to be permitted.</p>	<p>Not Applicable.</p> <p>Proposal is not within or proposing residential zonings.</p>
<b>3.2 Caravan Parks and Manufactured Home Estates</b>	
<p>Aims to provide for a variety of housing types and provide opportunities for caravan parks and manufactured home estates.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable and consistent.</p> <p>Caravan Parks are not permissible under the current RU2 zoning.</p> <p>The proposal does not seek to alter provisions relating to the permissibility of caravan parks or Manufacture Home Estates.</p>
<b>3.3 Home Occupations</b>	
<p>Aims to encourage the carrying out of low impact small business in dwelling houses.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable and consistent.</p> <p>The proposal does not seek to alter provisions relating to the permissibility of home occupations.</p>
<b>3.4 Integrating Land Use &amp; Transport</b>	
<p>Aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts to achieve: improving access to housing, jobs and services by walking, cycling and public transport; increasing choice of available transport and reducing dependence on cars; reducing travel demand; supporting efficient</p>	<p>Applicable and consistent.</p> <p>A small area of IN1 zoning (about 1.5 ha) is proposed, hence the direction is applicable.</p> <p>There is a strategic basis to support the provision of additional employment lands proposed in this location as it will complete the last potentially</p>



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
<p>and viable public transport services; and provide for efficient movement of freight.</p> <p>Applies when a planning proposal creates alters or moves a zone or provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p>	<p>suitable industrial land in this location adjacent to the SBP. The land lies adjacent to the M1.</p> <p>Steep lands are unsuitable for industrial uses and will not be rezoned to IN1, but retained for conservation purposes (zoned E2 with no dwelling right).</p> <p>All services and road networks required are available within the adjacent Somersby Business Park.</p>
<b>3.5 Development Near Regulated Airports and Defence Airfields</b>	
<p>Aims to ensure the effective and safe operation of regulated airports and defence airfields; to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and to ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</p> <p>Applies when a planning proposal creates, alters or removes a zone or provision relating to land near a regulated airport which includes a defence airfield.</p>	<p>Not Applicable.</p> <p>The subject land is not located near a regulated airport which includes a defense airfield.</p>
<b>3.6 Shooting Ranges</b>	
<p>Aims to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range, to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land, and to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.</p> <p>Applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.</p>	<p>Not Applicable.</p> <p>The land does not lie adjacent or near to a shooting range.</p>
<b>3.7 Reduction in non-hosted short term rental accommodation period</b>	
<p>Applies when a Council prepares a planning proposal to identify or reduce the number of days that non- hosted short term rental accommodation</p>	<p>Not Applicable</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong</p>



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
<p>may be carried out in parts of its local government area.</p> <p>Applies to Byron Bay Shire Council</p>	<p>or Gosford LGAs).</p>
<b>Hazard &amp; Risk</b>	
<b>4.1 Acid Sulfate Soils</b>	
<p>Aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>Applies when a planning proposal applies to land having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps.</p>	<p>Applicable and consistent.</p> <p>According to Council's Acid Sulfate Soil Mapping the subject lands are class 5 which are generally unaffected by this issue as they are suitable for urban uses.</p>
<b>4.2 Mine Subsidence &amp; Unstable Land</b>	
<p>Aims to prevent damage to life, property and the environmental on land identified as unstable or potentially subject to mine subsidence.</p> <p>Applies when a planning proposal permits development on land which is within a mine subsidence district, or identified as unstable in a study, strategy or assessment undertaken by or on behalf of the relevant planning authority or other public authority and provided to the relevant planning authority.</p>	<p>Applicable.</p> <p>Further investigation post Gateway will be required of the applicant into the geotechnical suitability of the site for urban uses.</p> <p>According to Council's Landslip Mapping the subject lands are free of this affectation, except the site of the previous quarry noted on the eastern area of the site.</p> <p>Disused quarries are noted as an 'Immediate High' hazard.</p>
<b>4.3 Flood Prone Land</b>	
<p>Aims to ensure: development on flood prone land is consistent with NSW Government's Flood Prone Land Policy and principles of the Floodplain Development Manual 2005; and provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts</p>	<p>Applicable and consistent.</p> <p>The land is located at the upstream end of a tributary of Piles Creek which is a tributary of Mooney Mooney Creek.</p> <p>There is no available flood study for this area which would define any flooding on this site. However as the property is located at the upstream end of the catchment and also that there appears to be no defined watercourses that cross the site that would fill during rainfall events and cause flooding to downstream or adjoining proposed development, it is considered that no formal flood study is required for the proposed</p>



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
	<p>development at this planning proposal stage.</p> <p>The downstream development from this site has experienced flooding from Piles Creek in the past and as such there should be no increase in runoff from the site from all flood events up to the 100-year flood event that would worsen the risk to life and damage to property from flooding. Any increase in run-off should be retained on the site for all flood events up to the 100-year flood event.</p> <p>All development is to comply with Council's LEP and also DCP requirements particularly with regards to Water Cycle Managements, as not to increase run-off from the site from pre-development conditions.</p> <p>The proposal is consistent with this Direction.</p>
<b>5.1 Implementation of Regional Strategies</b>	
The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>5.2 Sydney Drinking Water Catchment</b>	
<p>Aims to protect water quality in the hydrological catchment.</p> <p>Applies when a relevant planning authority prepares a planning proposal that applies to Sydney's hydrological catchment.</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>5.3 Farmland of State and Regional Significance on the NSW Far North Coast</b>	
<p>Aims to: ensure that the best agricultural land will be available for current and future generations to grow food and fibre; provide more certainty on the status of the best agricultural land, assisting councils with strategic settlement planning; and reduce land use conflict arising between agricultural use and non-agricultural use of farmland caused by urban encroachment into farming areas.</p> <p>Applies to Ballina, Byron, Kyogle, and Tweed Shire Councils, Lismore City Council and Richmond Valley</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
Council.	
<b>5.4 Commercial and Retail Development along the Pacific Highway, North Coast</b>	
<p>Aims to manage commercial and retail development along the Pacific Highway, North Coast.</p> <p>Applies to all councils between and inclusive of Port Stephens and Tweed Shire Councils.</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>5.9 North West Rail Link Corridor Strategy</b>	
<p>Aims to promote transit-oriented development and manage growth around the eight train stations of the North West Rail Link (NWRL) and ensure development within the NWRL corridor is consistent with the proposals set out in the NWRL Corridor Strategy and precinct Structure Plans.</p> <p>Applies to the This Direction applies to Hornsby Shire Council, The Hills Shire Council and Blacktown City Council.</p>	<p>Not Applicable</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>5.10 Implementation of Regional Plans</b>	
<p>Aims to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable and consistent.</p> <p>See section above on compliance with the Central Coast Regional Plan 2036.</p> <p>The proposal is consistent with most relevant actions. Further studies to ascertain compliance with remaining relevant actions will be required post-Gateway.</p>
<b>5.11 Development of Aboriginal Land Council Land</b>	
<p>Aims to provide for the consideration of development delivery plans prepared under the State Environmental Planning Policy (Aboriginal Land) 2019.</p> <p>Applies when the relevant planning authority prepares a planning proposal for land shown on the Land Application Map of the SEPP (Aboriginal Lands) 2019.</p>	<p>Not applicable.</p> <p>The is not owned by an Aboriginal land council and it is not affected by the SEPP (Aboriginal Land).</p>
<b>Local Plan Making</b>	
<b>6.1 Approval and Referral Requirements</b>	



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
<p>Aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable and consistent.</p> <p>The planning proposal does not include provisions that require concurrence, consultation or referral of development applications.</p>
<b>6.2 Reserving Land for Public Purposes</b>	
<p>Aims to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where land is no longer required for acquisition.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Not Applicable.</p> <p>The proposal does not seek to reserve land for public purposes.</p>
<b>6.3 Site Specific Provisions</b>	
<p>Aims to discourage unnecessarily restrictive site-specific planning controls.</p> <p>Applies when the relevant planning authority prepares a planning proposal to allow particular development to be carried out.</p>	<p>Not Applicable.</p> <p>No specific land use or development is proposed.</p>
<b>Metropolitan Planning</b>	
<b>7.1 Implementation of A Plan for Growing Sydney</b>	
<p>Aims to give legal effect to the planning principles, directions and priorities for sub regions, strategic centres and transport gateways contained in A Plan for Growing Sydney</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>7.2 Implementation of Greater Macarthur Land Release Investigations</b>	
<p>Aims to ensure development within the Greater Macarthur Land Release Investigation Area is consistent with the Greater Macarthur Land Release Preliminary Strategy and Action Plan.</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>7.3 Parramatta Road Corridor Urban Transformation Strategy</b>	
<p>Aims to facilitate development within the Parramatta Road Corridor that is consistent with the Parramatta Road Corridor Urban Transformation Strategy (November 2016) and the Parramatta Road</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong</p>



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
<p>Corridor</p> <p>Implementation Tool Kit. To provide a diversity of jobs and housing to meet the needs of a broad cross-section of the community and guide the incremental transformation of the Parramatta Road Corridor in line with the delivery of necessary infrastructure.</p> <p>This Direction applies to City of Parramatta Council, Cumberland Council, Strathfield Council, Burwood Council, Canada Bay Council and Inner West Council.</p>	<p>or Gosford) LGAs.</p>
<b>7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan</b>	
<p>Aims to ensure development within the North West Priority Growth Area is consistent with the North West Priority Growth Area Land Use and Infrastructure Strategy (the Strategy)</p> <p>This direction applies to Blacktown City Council, The Hills Shire Council and Hawkesbury City Council.</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan</b>	
<p>The objective of this direction is to ensure development within the Greater Parramatta Priority Growth Area is consistent with the Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan dated July 2017 (the interim plan).</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan</b>	
<p>The objective of this direction is to ensure development within the Wilton Priority Growth Area is consistent with the Wilton Interim Land Use and Infrastructure Implementation Plan and Background Analysis.</p> <p>This direction applies to Wollondilly Shire Council.</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs).</p>
<b>7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor</b>	
<p>The objective of this direction is to ensure development within the precincts between Glenfield and Macarthur is consistent with the plans for these</p>	<p>Not Applicable.</p> <p>This Direction does not apply to the Central</p>



<b>Ministerial Section 9.1 Directions</b>	
<b>Direction</b>	<b>Comment</b>
precincts. This direction applies to Campbelltown City Council	Coast Local Government Area (or former Wyong or Gosford LGAs)
<b>7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan</b>	
The objective of this direction is to ensure development within the Western Sydney Aerotropolis is consistent with the Stage 1 Western Sydney Aerotropolis Land Use and Infrastructure Implementation Plan dated August 2018 (the Stage 1 Land Use and Implementation Plan). This direction applies to Liverpool, Penrith Blue Mountains, Blacktown Campbelltown City Council and Fairfield City Councils, Camden Council and Wollondilly Shire Council.	Not Applicable. This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs)
<b>7.9 Implementation of Bayside West Precincts 2036 Plan</b>	
The aim is to ensure development within the Bayside West Precincts (Arncliffe, Banksia and Cooks Cove) is consistent with the Bayside West Precincts 2036 Plan (the Plan). This direction applies to land within the Bayside local government area.	Not Applicable. This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs)
<b>7.10 Implementation of Planning Principles for the Cooks Cove Precinct</b>	
The objective of this direction is to ensure development within the Cooks Cove Precinct is consistent with the Cooks Cove Planning Principles. This direction applies to land within the Cooks Cove Precinct in the Bayside local government area, as shown on Map Sheet LAP_001 Cooks Cove Precinct Section 9.1 Direction	Not Applicable. This Direction does not apply to the Central Coast Local Government Area (or former Wyong or Gosford LGAs)

<b>Community Strategic Plan 'One – Central Coast'</b>	
<b>Objectives</b>	<b>Assessment/Comment</b>
<i>B1 Support reconciliation through the celebration of Aboriginal and Torres Strait Islander cultures</i>	The Aboriginal Heritage Information Management System (AHIMS) GIS mapping indicates no Aboriginal sites or places on the subject land.



Community Strategic Plan 'One – Central Coast'	
Objectives	Assessment/Comment
	An Aboriginal cultural heritage assessment will be required of the applicant post Gateway to ascertain if the proposal is consistent with this Action.
<p>F1</p> <p><i>Protect our rich environmental heritage by conserving beaches, waterways, bushland, wildlife corridors and inland areas and the diversity of local native species</i></p>	<p>The submitted ecological report identifies that the general locality contains suitable habitat for over 20 threatened species. A check of mapping held by Council shows no Aboriginal cultural heritage sites on the land, however, as some exist in the locality post Gateway the applicant will be required to prepare an Aboriginal Cultural Heritage Assessment.</p> <p>The area has high biodiversity values, ecological connectivity and Aboriginal cultural heritage values.</p> <p>The proposal seeking to zone the higher land to E2 Environment Conservation and to deny a dwelling right with the aim to minimise potential future environmental impacts is supported. The remainder of the site in particular presents some potential issues including:</p> <ol style="list-style-type: none"> <li>1 The introduction of the <i>Biodiversity Conservation (BC) Act 2016</i> introduced the concept of Serious and Irreversible Impact (SAIL) for species that meet one of four criteria outlined in s6.7 of the Biodiversity Conservation Regulation 2017.</li> <li>2 S7.1.6.2 of the BC Act requires that a consent authority must not grant development consent to a proposal that may present SAILs for their survival for particular species and/or their habitat.</li> <li>3 Somersby Mintbush and <i>Hibbertia procumbens</i> both have the potential of occurring on the site and possibly meet the criteria for SAIL. If these species were recorded during the DA stage harm to these species would not be permitted.</li> </ol> <p>A comprehensive flora and fauna survey will be required of the applicant post-Gateway to ensure that these matters are addressed prior to a rezoning of the land and an Aboriginal cultural heritage assessment regarding the proposal.</p>


**Community Strategic Plan 'One – Central Coast'**

Objectives	Assessment/Comment
<p>I1</p> <p><i>Preserve local character and protect our drinking water catchments, heritage and rural areas by concentrating development along transport corridors and town centres east of the M1</i></p>	<p>Consistent.</p> <p>The proposal will logically complete the industrial zoning of suitable land in this area adjacent to the SBP, where necessary road network and service infrastructure are available for extension to the site.</p> <p>The steeper more prominent land adjacent to the M1 will be zoned to E2 Environmental Conservation.</p>
<p>I2</p> <p><i>Ensure all new developments are well planned with good access to public transport, green space and community facilities and support active transport</i></p>	<p>Consistent.</p> <p>See above I1.</p>
<p>I3</p> <p><i>Ensure land use planning and development is sustainable and environmentally sound and considers the importance of local habitat, green corridors, energy efficiency and stormwater management</i></p>	<p>See above F1.</p> <p>A comprehensive flora and fauna survey will be required of the applicant post-Gateway to ensure that these matters are addressed prior to a rezoning of the land.</p>



## Gosford Biodiversity Strategy

Action	Assessment/Comment
<p>1 Enable biodiversity conservation to be taken into consideration in Council's strategic planning</p>	<p>The submitted ecological report identifies that the general locality contains suitable habitat for over 20 threatened species. A check of mapping held by Council shows no Aboriginal cultural heritage sites on the land, however, as some exist in the locality post Gateway the applicant will be required to prepare an Aboriginal Cultural Heritage Assessment.</p> <p>The area has high biodiversity values, ecological connectivity and Aboriginal cultural heritage values.</p> <p>The proposal seeking to zone the higher land to E2 Environment Conservation and to deny a dwelling right with the aim to minimise potential future environmental impacts is supported. The remainder of the site in particular presents some potential issues including:</p> <ol style="list-style-type: none"> <li>1 The introduction of the <i>Biodiversity Conservation (BC) Act 2016</i> introduced the concept of Serious and Irreversible Impact (SAIL) for species that meet one of four criteria outlined in s6.7 of the Biodiversity Conservation Regulation 2017.</li> <li>2 S7.1.6.2 of the BC Act requires that a consent authority must not grant development consent to a proposal that may present SAILs for their survival for particular species and/or their habitat. is likely to affect SAIL entities.</li> <li>3 Somersby Mintbush and <i>Hibbertia procumbens</i> both have the potential of occurring on the site and possibly meet the criteria for SAIL. If these species were recorded during the DA stage harm to these species would not be permitted.</li> </ol> <p>A comprehensive flora and fauna survey for these species will be required of the applicant post-Gateway to ensure that these matters are addressed prior to a rezoning and an Aboriginal cultural heritage assessment regarding the proposal.</p>



Interim Local Strategic Planning Statement	
Strategies	Assessment/Comment
1 Revitalise our centres	<b>Not applicable</b> to this PP
2 Renew urban form	<b>Not applicable</b> to this PP
3 Define the urban edge	<p><b>Consistent</b>, as outlined below:</p> <ul style="list-style-type: none"> <li>a. Land suitability           <ul style="list-style-type: none"> <li>i. the lower and gently sloping land fronting the road is across the road from existing industrially zoned land with services and infrastructure available and extendable to the site, hence the site is suitable for the IN1 General Industrial zoning</li> <li>ii. the more elevated and steeper land is potentially part of a wildlife corridor &amp; is proposed for the E2 Environment Conservation zoning without a dwelling right</li> </ul> </li> <li>b. Contain urban sprawl           <ul style="list-style-type: none"> <li>i. the proposed amount of 1.5 ha (approximately) of IN1 zoned land is small and will round off suitable IN1 zoned land in this area, hence not create a precedence</li> </ul> </li> <li>c. Planned infrastructure           <ul style="list-style-type: none"> <li>i. the proposed IN1 zoned land front the road and is across the road from existing industrially zoned land with services and infrastructure have both capacity and potential to be extended</li> </ul> </li> <li>d. Retaining open and green space           <ul style="list-style-type: none"> <li>i. the more elevated and steeper land is potentially part of a wildlife corridor &amp; is proposed for the E2 Environment Conservation zoning without a dwelling right</li> </ul> </li> <li>e. Employment lands           <ul style="list-style-type: none"> <li>i. the proposed IN1 zoned land fronts the road, is across the road from existing industrially zoned land, infrastructure is available, hence is a logical rounding off of employment lands in the area, plus the draft Employment Lands Strategy has identify a need for more suitable employment lands for the region</li> </ul> </li> <li>f. Environmental protection           <ul style="list-style-type: none"> <li>i. the more elevated and steeper land is potentially part of a wildlife corridor &amp; is proposed for the E2 Environment Conservation zoning without a dwelling right</li> </ul> </li> <li>g. Agricultural land           <ul style="list-style-type: none"> <li>i. Land is zoned RU2 – Rural Landscape zoning, not RU1 Primary Production</li> </ul> </li> </ul>



Interim Local Strategic Planning Statement	
Strategies	Assessment/Comment
	<ul style="list-style-type: none"> <li>ii. Sydney Regional Plan No: 8 (deemed SEPP) applies</li> <li>iii. Land is not mapped as 'prime agricultural land' or 'Biophysical Strategic Agricultural Land' <ul style="list-style-type: none"> <li>1. The proposal will therefore not alienate agricultural production as it: <ul style="list-style-type: none"> <li>a. Is not prime agricultural land, and</li> <li>b. Lies adjacent to existing industrial development</li> </ul> </li> </ul> </li> <li>h. Tourist and economic innovation <ul style="list-style-type: none"> <li>i. The land is not suited to this use due to close proximity to industrial land and the M1 Motorway</li> </ul> </li> <li>i. Environmental living <ul style="list-style-type: none"> <li>i. The land is not developed for this use and not suited due to close proximity to industrial land and the M1 Motorway</li> </ul> </li> </ul>
4 Create a sustainable region	<p><b>Consistent</b>, as outlined below:</p> <ul style="list-style-type: none"> <li>ii. The lower and gently sloping land fronting the road is across the road from existing industrially zoned land and infrastructure is available and can be extended, hence the land is suitable for the IN1 General Industrial zoning</li> <li>iii. the more elevated and steeper land is potentially part of a wildlife corridor, hence is proposed for the E2 Environment Conservation zoning without a dwelling right</li> <li>iv. the proposal will contain urban sprawl as the proposed amount of 1.5 ha (approximately) of IN1 zoned land is small and will round off suitable IN1 zoned land in this area, hence will not create a precedence</li> </ul>
Planning Priority & Action	Assessment/Comment
<p><i>Planning Priority 11</i>  <i>Facilitate emerging logistics, warehousing, manufacturing and innovative enterprises</i></p> <p><i>Action</i>  <i>Develop the Central Coast's Somersby to Erina Corridor to provide an important connection from the regional gateway of</i></p>	<p><b>Consistent.</b></p> <p>The proposal seeks to provide a small amount of additional employment lands immediately across the road from the Somersby Business Park (SBP).</p> <p>SBP is the gateway to the Southern Growth Corridor. The 'Somersby to Erina Corridor Strategy' was adopted by Council to implement the Southern Growth Corridor. Direction 6 of the corridor strategy aims to 'ensure the long-term success of Somersby Employment Area'. One action</p>



Interim Local Strategic Planning Statement	
Strategies	Assessment/Comment
Somersby to Gosford City Centre and beyond.	to implement is to prepare an Employment Lands Strategy, which is underway.
<p>Planning Priority 14 Facilitate economic development to increase local employment opportunities for the community</p> <p>Action Prepare a suite of strategies to support new land use planning controls as part of the Comprehensive LEP and DCP.</p>	<p><b>Consistent.</b></p> <p>The subject land will be identified in the draft Employment Lands Strategy for investigation as potential future employment land.</p>
<p>Planning Priority 24 Map, protect and cherish natural areas and ecosystems</p> <p>Action Prepare and implement the Central Coast Biodiversity Strategy, including land use principles to protect and manage natural area and ecosystems of high biodiversity value.</p>	<p><b>Consistent.</b></p> <p>The Planning Proposal will contribute to the protection of wildlife corridors by protecting the elevated part of the site in an E2 Environmental Conservation Zone.</p>
<p>Planning Priority 26 Identify important agricultural and resource lands</p> <p>Action Prepare a Rural Lands Study and Strategy having regard to the region's biophysical, infrastructure, and socio-economic factors</p>	<p><b>Consistent.</b></p> <p>The land is zoned RU2 – Rural Landscape, but not RU1 – Primary Production. The subject land is covered by Sydney Regional Plan No: 8 (deemed SEPP). The subject land is not mapped as being 'prime agricultural land'. The proposal it is not considered to be alienating agricultural production as it is directly adjacent to existing industrial development and is isolated from other landholdings (to the east) by the M1 Pacific Motorway.</p> <p>SEPP (Mining, Petroleum Production and Extractive Industries) 2007 permits mining and extractive industries with consent wherever an LEP permits agriculture or industry. Industry is a permissible use in the proposed zone IN1 zone, and the E2 Environmental Conservation zoned land must be commonly owned with IN1 zoned land and will have no dwelling right.</p>



Interim Local Strategic Planning Statement	
Strategies	Assessment/Comment
<p><i>Planning Priority 28 Preserve environmental, scenic, heritage and cultural landscapes</i></p> <p><i>Action Determine areas within the rural landscape which require preservation because of environmental, scenic, heritage and cultural values, as part of the Rural Lands Study and Strategy</i></p>	<p><b>Consistent.</b></p> <p>The more elevated and steeper land is potentially part of a wildlife corridor, hence is proposed for the E2 Environment Conservation zoning without a dwelling right. It is recommended that should a Gateway Determination be granted that relevant environmental / ecological studies be carried out to clarify this issue.</p>