



MINUTES

of the
Wingecarribee Local Planning Panel
Meeting

held electronically

on

Wednesday 28 - 29 September 2021



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MINUTES OF THE LOCAL PLANNING PANEL MEETING

Wednesday 29 September 2021



MINUTES OF THE LOCAL PLANNING PANEL MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD BY ELECTRONIC MEANS (EMAIL) ON TUESDAY 28 SEPTEMBER 2021

Present:

Chairperson	Michael Mantei
Expert	Heather Warton
Expert	Scott Barwick
Community Representative	Anthony Neill

NOTE: This development application (DA21/0583) was deferred at the Panel's meeting held on 1 September 2021 to enable the applicant to provide Council with additional information as outlined in the minutes of the Panel's meeting. The Panel also resolved at that meeting to determine DA21/0583 by electronic means once the additional information was submitted and a further assessment report prepared by Council officers. A further assessment report has been circulated to panel members and the application is now before the Panel for determination.

1. DECLARATIONS OF INTEREST

There were no interests disclosed by any panel member in the matter listed for determination on the agenda for this Meeting.

2. DEVELOPMENT APPLICATIONS

2.1 Development Application 21/0583 - Subdivision of Land and Carrying Out of Works to Create Two Lots, Lots 1 and 2 SP76930, 21 Ascot Road, Bowral

Report Author: Senior Development Assessment Planner

OFFICERS RECOMMENDATION

THAT the Independent Advisory Planning Assessment Panel determines development application 21/0583 for subdivision of land and carrying out of works to create two lots at Lots 1 & 2 SP76930, 21 Ascot Road, Bowral by APPROVAL, subject to the recommended conditions of consent specified in Attachment 1 to the report

WLPP 1/21

REASONS FOR DETERMINATION

The Panel has considered the Council officers' assessment report and the revised written request to vary under the minimum lot size standard in clause 4.2F of Wingecarribee LEP 2010, prepared by the applicant under section 4.6 of Wingecarribee LEP 2010.

The Panel is now satisfied that the written request meets the minimum standard required for a request to vary a development standard under clause 4.6 of the Wingecarribee LEP 2010. The Panel considers that the variation request adequately demonstrates that:

- a. compliance with the development standard in clause 4.2F of Wingecarribee LEP 2010 is unreasonable or unnecessary in the circumstances of the case; and
- b. there are sufficient environmental planning grounds to justify contravening the standard in clause 4.2F of Wingecarribee LEP 2010.

The Panel is also satisfied, for the reasons outlined in the Council officers' assessment report and the applicant's written request, that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.2F of Wingecarribee LEP 2010 and the objectives for development within the R3 zone under Wingecarribee LEP 2010.

The Panel otherwise considered that the application has merit.

The Panel notes that the Council officers' assessment report does not address paragraph 2(d) of the Panel's resolution on 1 September 2021, which requested an assessment of whether the proposed variation to the minimum lot size will create an undesirable precedent for the subdivision of dual occupation in the Wingecarribee LGA. Nonetheless, the Panel has considered the potential precedent effect and is satisfied that precedent is not a reason to refuse the application, given the circumstances of the case.

DETERMINATION

THAT development application DA21/0583 for subdivision of land and carrying out of works to create two lots at Lots 1 & 2 SP76930, 21 Ascot Road, Bowral be determined by the granting of development consent subject to the conditions contained in the Council officers' assessment report.

PASSED

VOTING : UNANIMOUS

Assessment Officer's Report Attached

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To:	Wingecarribee Local Planning Panel
CC:	Manager Development Assessment
From:	Senior Development Assessment Planner
Subject:	DEVELOPMENT APPLICATION 21/0583 – SUBDIVISION OF LAND AND CARRYING OUT OF WORKS TO CREATE TWO LOTS, LOTS 1 AND 2 SP76930, 21 ASCOT ROAD, BOWRAL: REPORT ON FURTHER ASSESSMENT
Date:	21 September 2021
File Number:	21/0583

PURPOSE

This report presents development application 21/0583 for further consideration by the Panel and recommends determination by APPROVAL subject to conditions specified in **Attachment 1**.

Consultants:	N/A
Applicant:	R Michael Baker
Land owner:	Timothy Grant Hume, Joy Maree Hume, James Carl Hume, Reginald Michael Baker, Dorothy Edith Baker.
Land zoning:	R3 Medium Density Residential
Applicant's estimated cost proposed development:	N/A
Notification period:	26 October to 16 November 2020 (20 days).
Number of submissions:	Nil
Political donations:	None declared.
Reason for referral to Panel:	The proposed development contravenes a numerical development standard by greater than 10%.

RECOMMENDATION

THAT the Independent Advisory Planning Assessment Panel determines development application 21/0583 for subdivision of land and carrying out of works to create two lots at Lots 1 & 2 SP76930, 21 Ascot Road, Bowral by APPROVAL, subject to the recommended conditions of consent specified in Attachment 1.

Executive summary

R. Michael Baker lodged development application 21/0583 on 12 October 2020, seeking consent to subdivide Lots 1 & 2 in Strata Plan 76930 to create two lots under Torrens Title. The proposed Torrens Title lot configuration is substantially the same as the registered configuration of Lots 1 & 2 SP76930.

The land was lawfully developed for the purpose of dual occupancy (detached) before it was subdivided under Strata Title in 2006. Whilst the land's historical Strata Title subdivision could effectively be reversed or extinguished without any need for consent (reverting the land to a 1214m² Torrens Title lot occupied by a detached dual occupancy development that would satisfy the relevant provisions of

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Wingecarribee Local Environmental Plan 2010 (the LEP)), the proposed creation of a 400.7m² Torrens Title lot, which would be occupied by one of the dwellings comprising the dual occupancy, contravenes clause 4.2F (4) (b) of the LEP, which specifies a minimum lot size of 600m² in these circumstances. That aside, the proposed development is considered satisfactory with respect to the overarching objectives specified by clause 4.2F (1) of the LEP.

On 1 September 2021 the Independent Advisory Planning Assessment Panel considered a report detailing Council's assessment of development application 21/0583. The Panel determined:

1. *THAT determination of development application DA21/0583 for subdivision of land and carrying out of works to create two lots at Lots 1 & 2 SP76930, 21 Ascot Road, Bowral be deferred to enable the applicant to submit to Council a written request to vary the development standard in clause 4.2F of Wingecarribee LEP 2010 that satisfies the requirements of clauses 4.6(3) and 4.6(4)(a)(ii) of Wingecarribee LEP 2010.*
2. *THAT the Council officers' assessment report to be submitted to the Panel for the future determination of DA21/0583 address, among other matters for consideration in section 4.15(1) of the EP&A Act, whether:*
 - a. *the applicant's written request has adequately demonstrated that compliance with the development standard in clause 4.2F of Wingecarribee LEP 2010 is unreasonable or unnecessary in the circumstances of the case;*
 - b. *the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the standard in clause 4.2F of Wingecarribee LEP 2010;*
 - c. *the proposed development will be in the public interest because it is consistent with the objectives of clause 4.2F of Wingecarribee LEP 2010 and the objectives for development within the R3 zone under Wingecarribee LEP 2010; and*
 - d. *the proposed variation to the minimum lot size in clause 4.2F of Wingecarribee LEP 2010 will create an undesirable precedent for the subdivision of dual occupation in the Wingecarribee LGA.*
3. *THAT the applicant for DA21/0583 be advised of the reasons for the Panel's decision as set out below.*
4. *THAT following submission and assessment of the written request, DA21/0583 be submitted to the Panel for future determination by electronic means.*

Pursuant to items 1 and 3 of the Panel's determination, Council notified the applicant of the Panel's determination and reasons, and requested the applicant elaborate on their previous written request seeking to justify the proposed development's contravention of clause 4.2F (4) (b) of the LEP. On 13 September 2021 the applicant provided their expanded written request, reproduced in **Attachment 2**.

The applicant's expanded written request is considered to adequately demonstrate that compliance with the development standard specified by clause 4.2F (4) (b) of the LEP is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. Further, the proposed development is considered consistent with the overarching objectives specified by clause 4.2F (1) and the objectives of the applicable Zone R3 Medium Density Residential.

The proposed development is also considered satisfactory with respect to all other matters for consideration specified by section 4.15 (1) of the Environmental Planning and Assessment Act 1979. It is therefore recommended that the Panel determines the application by granting development consent subject to the conditions specified in **Attachment 1**.

REPORT

Pursuant to item 2 of the Panel's determination of 1 September 2021, the following addresses the matters for consideration in section 4.15 (1) of the Environmental Planning and Assessment Act 1979 that are relevant to the proposed development, including whether:

- (a) the applicant's written request has adequately demonstrated that compliance with the development standard in clause 4.2F of Wingecarribee LEP 2010 is unreasonable or unnecessary in the circumstances of the case;
- (b) the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the standard in clause 4.2F of Wingecarribee LEP 2010;
- (c) the proposed development will be in the public interest because it is consistent with the objectives of clause 4.2F of Wingecarribee LEP 2010 and the objectives for development within the R3 zone under Wingecarribee LEP 2010; and
- (d) the proposed variation to the minimum lot size in clause 4.2F of Wingecarribee LEP 2010 will create an undesirable precedent for the subdivision of dual occupation in the Wingecarribee LGA

Site description and locality

Figures 1 and 2 illustrate the land's location and layout. The land is a developed 1214m² corner parcel of two medium density residential lots under Strata Title, on the southern side of Ascot Road and the western side of Gordon Road in Bowral, around 1.1km southeast of the town centre. The land is accessible by vehicle from Gordon Road.

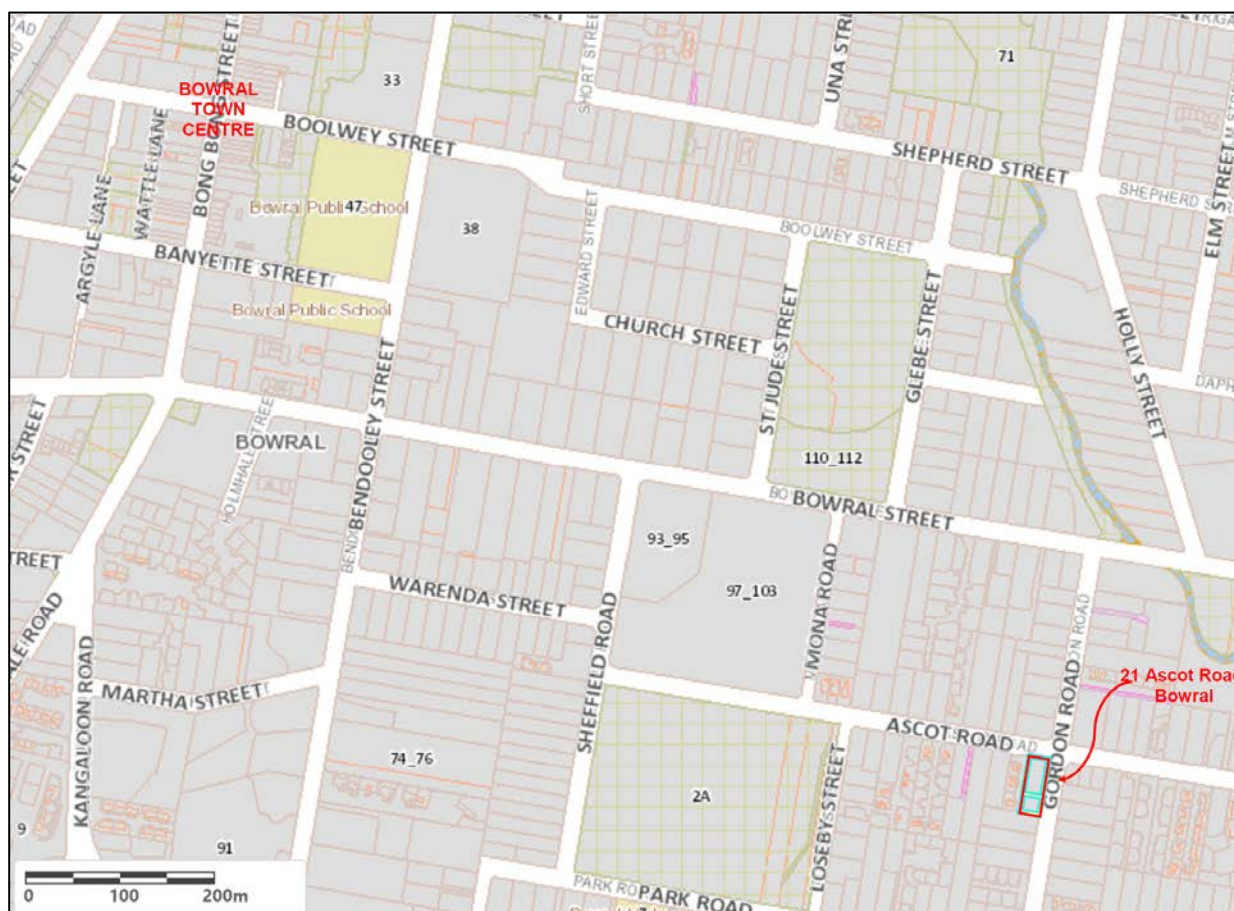


Figure 1: Locality map

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The land slopes gently and uniformly from south to north, towards Ascot Road. Each of the two Strata Title lots is occupied by a dwelling house and associated buildings and works. Vegetation on the land comprises domestic lawns and gardens, including mature ornamental exotic trees and shrubs.

Surrounding properties are generally developed for a mixture of low and medium density residential accommodation purposes.

The land was created in May 2006 by registration of Strata Plan 76930: a Strata Title subdivision of Lot 1 DP1096286, the subject of Council's development consent LUA1476/05. Deposited Plan 1096286 was in fact a plan of redefinition of the former Lot C DP339464, registered in April 2006.

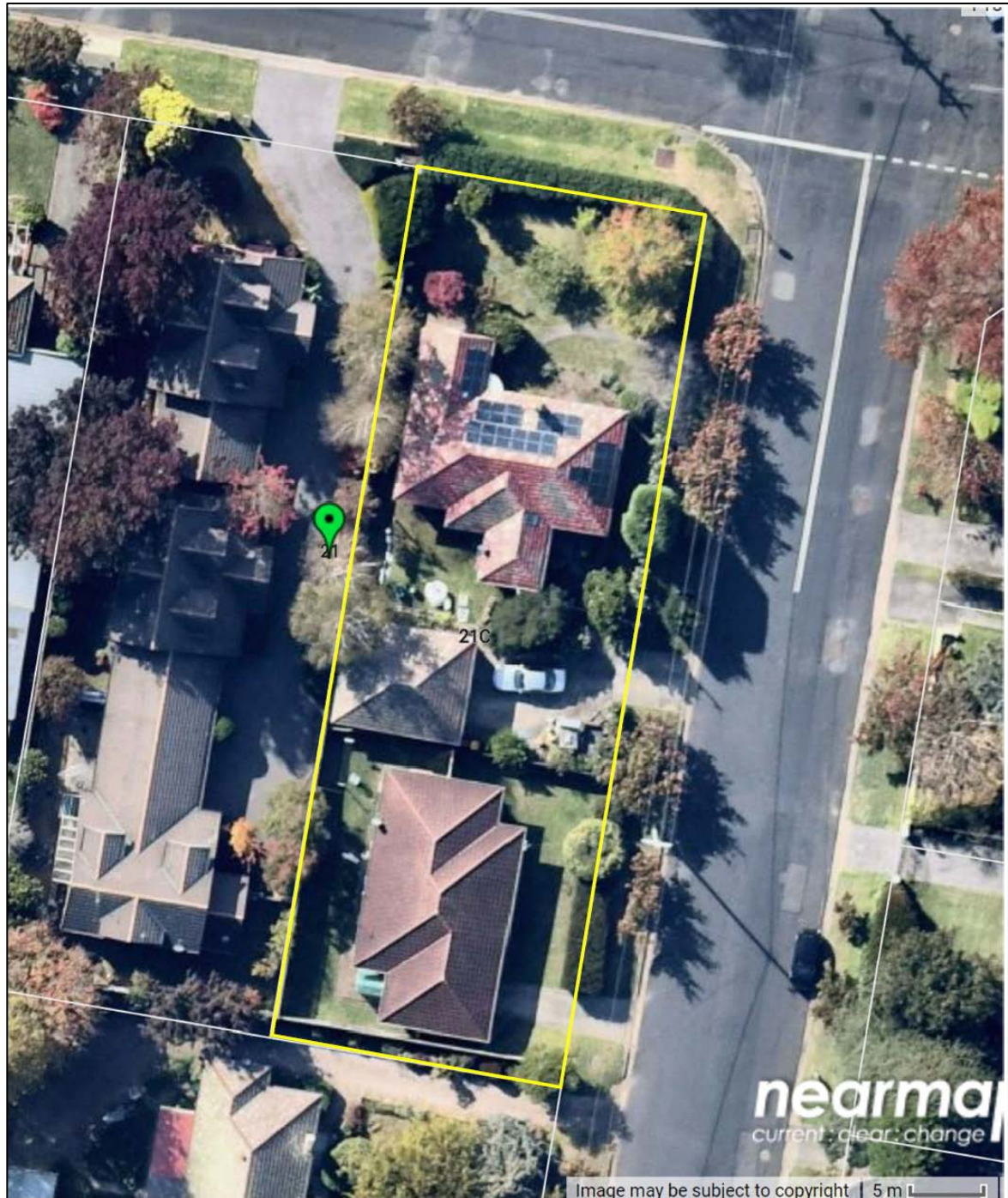


Figure 2: Aerial image

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On 11 August 1999, before either Deposited Plan 1096286 or Strata Plan 76930 were registered, Council wrote to the applicant in response to an enquiry regarding the potential subdivision of Lot C DP339464:

“Should you wish to undertake a Torrens subdivision of the property it would involve the creation of allotments below the 700m² standard as prescribed by Council’s planning controls.

“Such an application would entail a report to Council and be supported by a planning statement to support the variation. Council staff believe that such a variation would be worthy of support as:-

- *“Impacts on the streetscape have been addressed through the erection of the dwelling.*
- *“The subdivision does not have other impacts other than a variation to Council’s subdivision standards.*
- *“It is a huge burden to create a two unit strata scheme.”*

On 12 September 2001 Council further wrote to the applicant:

“...Council is currently in the process of preparing a strategic plan for the whole of the Shire...and has recently publicly exhibited stage 2 of this proposed plan (Draft Policy Options).

“Included in the housing section of the Draft Policy Options document is the following proposal:

“8, Include in the new Shire Plan, provisions to permit the development and subdivision of dual occupancy housing (detached or attached) on corner allotments with a minimum area of 1000m² " located in all sewered residential zones on the condition that:

- *development is single storey,*
- *separate vehicular and pedestrian access is provided to each dwelling, and*
- *subdivision can only occur following construction of all dwellings.”*

“A report was prepared on the submissions received during the public exhibition period, for Council’s meeting held on Wednesday 22 August 2001. As a result, the Council resolved to prepare a restructured strategic plan document, and undertake further studies in relation to the social and economic impact of the draft plan. The above clause relating to dual occupancy development and subdivision, will be part of the restructured document for Council’s consideration early next year. If Council decides to adopt this clause in the final strategic plan document, then provisions could be available for Council, in the future, to consider proposals for subdivisions such as yours...”

On 11 February 2003 Council wrote to the applicant:

“Council recently prepared a strategic plan for the whole of the Shire (known as Wingecarribee Our Future - Strategic Plan) which was adopted at its meeting held 23 October 2002. This strategic plan will form the basis of a review of the current Shire Plan (Wingecarribee Local Environmental Plan 1989).

“The following land use planning action is included in the strategic plan:

“Permit the development and subdivision of dual occupancy housing (attached or detached) on corner allotments in Bowral that are zoned Residential 2(a) and have a minimum area of 1000m², and:

- a. *prohibit the subdivision of dual occupancy development until such time as the construction of the development has been completed,*
- b. *require subdivided dual occupancy dwellings to be provided with separate driveway access via different street frontages,*
- c. *require subdivided dual occupancy dwellings to be single storey in height,*
- d. *require at least one (1) subdivided dual occupancy dwelling to be constructed as an adaptable dwelling complying with Australian standard AS 4299 (Minimum Standard).”*

“This proposal will be included in the draft local environmental plan (currently being prepared by Council) which will amend Wingecarribee Local Environmental Plan 1989...”

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The prospective provisions discussed in Council's letters of 12 September 2001 and 11 February 2003 are now largely conveyed by clause 7.2 of Wingecarrabee Local Environmental Plan 2010. However, that clause is relevant only to land in Zones R2 Low Density Residential and B1 Neighbourhood Centre; it therefore does not apply to the subject land, due to its R3 Medium Density Residential zoning.

Description of proposed development

The application seeks consent to subdivide Lots 1 & 2 SP76930 to create two lots under Torrens Title. The proposed corner Lot 1 is 813.3m² in area, and proposed Lot 2 is 400.7m² in area. Each of the proposed lots is occupied by a dwelling house. The proposed development drawings accompanying the application are reproduced in **Figure 3**. The proposed configuration of lots is substantially the same as illustrated by the registered Strata Plan 76930, reproduced in **Figure 4**.

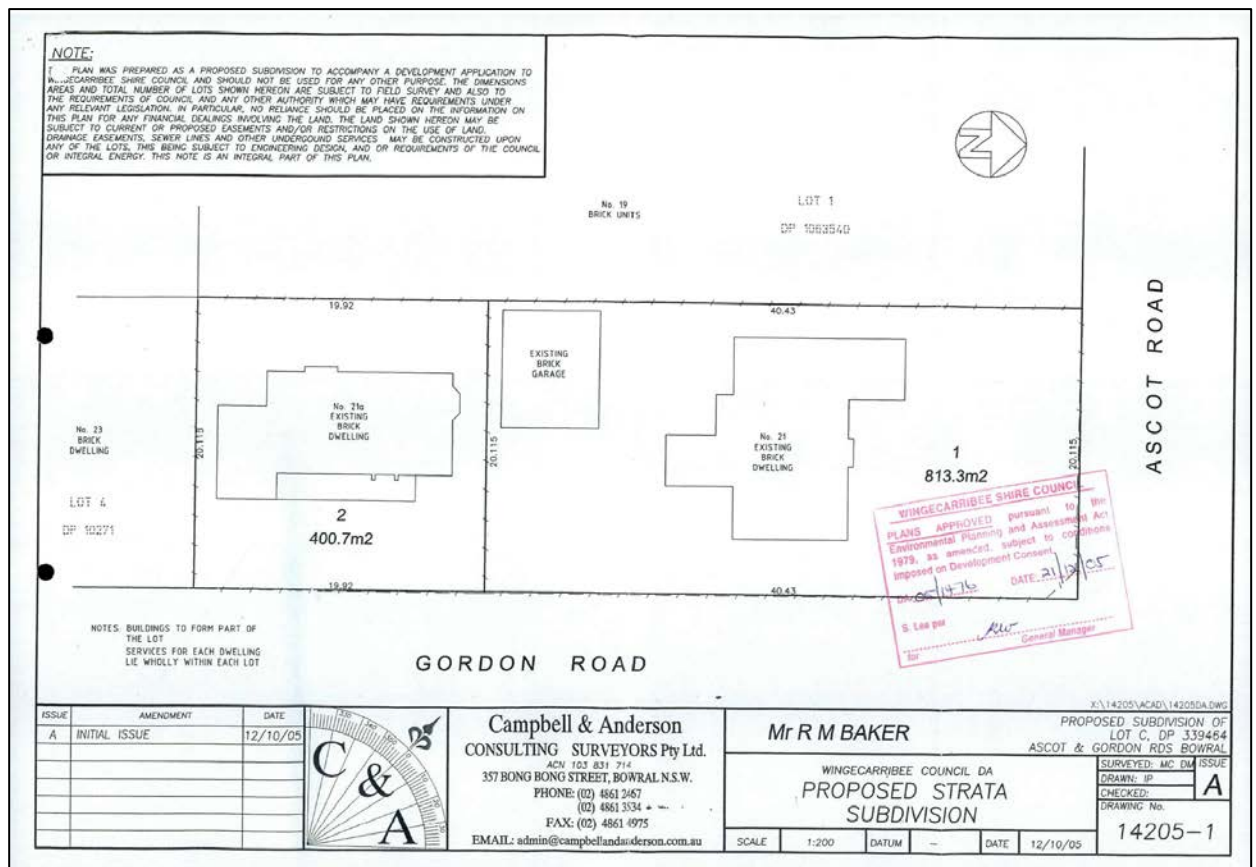


Figure 3: Proposed development drawings

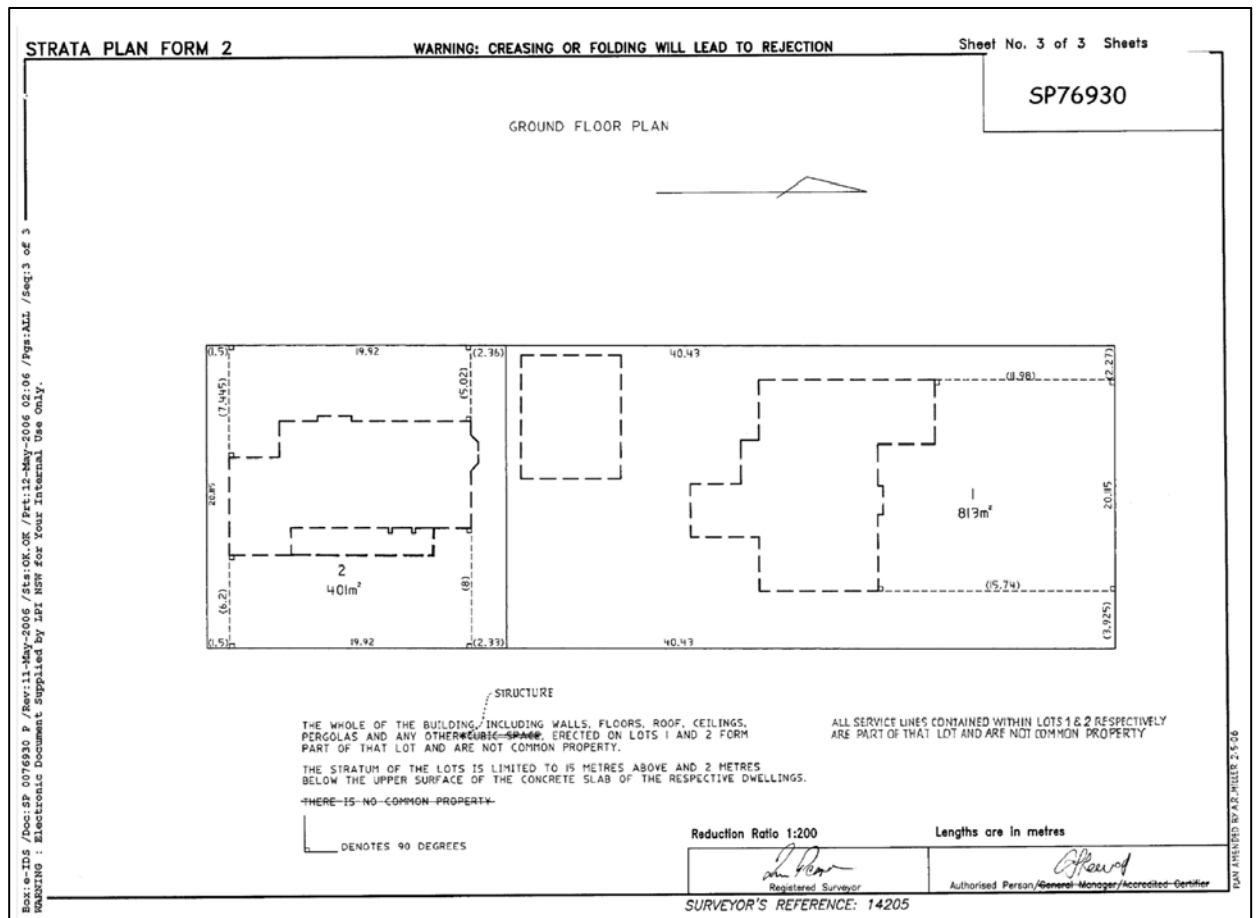


Figure 4: Extract from registered Strata Plan 76930

Assessment

The application has been considered with regard to the matters for consideration specified by section 4.15 (1) of the Environmental Planning and Assessment Act 1979, as detailed below.

4.1 Section 4.15 (1) (a) (i)—The provisions of any environmental planning instrument that apply to the land

4.1.1 State Environmental Planning Policy (Koala Habitat Protection) 2021

The proposed development is considered satisfactory with respect to the Policy's aim to encourage 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. The land is not considered to comprise or include koala habitat; clause 12 of the Policy therefore specifies Council is not prevented from granting consent for the proposed development.

4.1.2 State Environmental Planning Policy No 55—Remediation of Land

The proposed development is considered satisfactory with respect to the Policy's aim of promoting remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. With respect to clause 7 of the Policy, the land is neither considered to be contaminated nor to require remediation to be made suitable for the proposed development, and as the proposed development does not involve any change to the land's use, Council needn't consider a preliminary contamination investigation report before determining the application.

4.1.3 State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The proposed development is considered satisfactory with respect to the Policy's aims:

- (a) *to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and*
- (b) *to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and*
- (c) *to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.*

The proposed development does not involve the carrying out of any work, nor any change to the land's use. It is therefore not expected to have any impact on the quality of water entering Sydney's drinking water catchment. Therefore, clause 10 of the Policy does not obstruct the granting of consent for the proposed development, and clause 11 of the Policy does not require Council to obtain Water NSW's concurrence.

4.1.4 Wingecarribee Local Environmental Plan 2010 (the LEP)

Clause	Control	Discussion	Compliance
1.2—Aims of Plan	Subclause (2) sets out the LEP's particular aims.	The proposed development is considered satisfactory with respect to the LEP's particular aims.	Yes
1.4—Definitions	Defines particular purposes for which development may be carried out.	The proposed development will produce two Torrens Title lots, each occupied by a dwelling house. It therefore comprises subdivision of land to create two lots for the purpose of dwelling houses as defined by the LEP.	Yes
2.3—Zone objectives and Land Use Table	Refers to Land Use Table at the end of Part 2 of the LEP, which specifies objectives of land use zones and purposes for which development is permitted without consent, permitted with consent, or prohibited.	The land is in Zone R3 Medium Density Residential. The proposed development is considered satisfactory with respect to the specified R3 zone objectives: <ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density 	Yes

		<p>residential environment.</p> <ul style="list-style-type: none"> To provide a variety of housing types within a medium density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. <p>The Land Use Table specifies development (including subdivision of land to create lots) for the purpose of dwelling houses is permitted with consent in Zone R3.</p>	
2.6— Subdivision— consent requirements	Subdivision of land requires development consent.	The application satisfies the provisions of clause 2.6.	Yes
4.1—Minimum subdivision lot size	The size of any lot resulting from a subdivision of land to which clause applies is not to be less than the minimum size shown on the LEP Lot Size Map in relation to that land (the minimum size shown on the LEP Lot Size Map in relation to the land is 700m ²).	Clause 4.2F (discussed below) specifies provisions applicable to subdivision of land occupied by a lawfully erected dual occupancy, which apply despite clause 4.1.	N/A
4.2E— Minimum lot size for dual occupancies	Subclause (3) specifies consent must not be granted for dual occupancy unless the area of the lot is at least 1,000m ² .	The land was lawfully developed for the purpose of dual occupancy (detached) before it was subdivided under Strata Title in 2006. The Strata Title subdivision could effectively be reversed or extinguished without any need for consent, reverting the land to a 1214m ² Torrens Title lot, occupied by a dual	Yes

		occupancy (detached) development that would satisfy subclause (3).	
4.2F—Minimum subdivision lot sizes for dual occupancies in certain zones	<p>Subclauses (3) (a) and (4) specify that despite clause 4.1 (discussed above), consent may be granted for subdivision of land if:</p> <ul style="list-style-type: none"> • there is an existing lawfully erected dual occupancy on the land, and • the lot size of each resulting lot will be 50% of the minimum lot size shown on the Lot Size Map in relation to the land, and • the size of each resulting lot will be at least 600m², and • there will be no more than 1 dwelling on each resulting lot. 	<p>The land's historical Strata Title subdivision could be extinguished or reversed without any need for consent, resulting in a 1214m² Torrens Title lot occupied by a lawfully erected detached dual occupancy. For all intents and purposes, the proposed development therefore satisfies the requirement of subclause (3) (a) that there is an existing lawfully erected dual occupancy on the land.</p> <p>The two proposed lots are 400.7m² and 813.3m² in area, and each proposed lot is occupied by one dwelling house. The proposed development therefore satisfies subclause (4) (a) and (c), but does not satisfy the requirement of subclause (4) (b) that the size of each lot resulting from the proposed development will be at least 600m².</p> <p>As discussed below regarding clause 4.6, the application is accompanied by a written request from the applicant that seeks to justify contravention of the development standard specified by clause 4.2F (4) (b).</p>	No
4.6— Exceptions to development standards	Development consent may be granted even though the proposed development would contravene a	Consideration of the applicant's written request is detailed below. In short, the applicant's written request is considered satisfactory with respect to	Yes

	<p>development standard, if:</p> <ul style="list-style-type: none"> • the consent authority has considered a written request from the applicant seeking to justify contravention of the development standard by demonstrating: <ul style="list-style-type: none"> ○ compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and ○ that there are sufficient environmental planning grounds to justify contravening the development standard, and • the consent authority is satisfied that: <ul style="list-style-type: none"> ○ the applicant's written request has adequately addressed the above matters, 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, and 	<p>the requirements specified by clause 4.6.</p>	
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	<ul style="list-style-type: none"> o the Planning Secretary's concurrence has been obtained. 		
<p>Detailed discussion of clause 4.6</p> <p>Clause 4.6 (1)-(4) specifies as follows:</p> <p>4.6 Exceptions to development standards</p> <p>(1) <i>The objectives of this clause are as follows—</i></p> <p>(a) <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></p> <p>(b) <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p> <p>(2) <i>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.</i></p> <p>(3) <i>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—</i></p> <p>(a) <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p>(b) <i>that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p> <p>(4) <i>Development consent must not be granted for development that contravenes a development standard unless—</i></p> <p>(a) <i>the consent authority is satisfied that—</i></p> <p>(i) <i>the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p> <p>(ii) <i>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</i></p> <p>(b) <i>the concurrence of the Planning Secretary has been obtained.</i></p> <p>Pursuant to subclause (3), the application is accompanied by a written request from the applicant that seeks to justify the proposed development's contravention of the development standard specified by clause 4.2F (4) (b). The applicant's written request is reproduced in Attachment 2.</p> <p>Consideration of the applicant's request with regard to the matters specified by subclause (4) is detailed below.</p> <ul style="list-style-type: none"> • <u>Subclause (4) (a) (i)—Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)</u> o <u>Subclause (3) (a)—Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case</u> The applicant's request notes the following circumstances: 			

"Lots 1 and 2 form existing strata scheme SP76930.

"Existing and proposed lot 1 is 813.3m² in area and encompasses a freestanding brick dwelling with detached brick garage. The dwelling and detached garage occupy approximately 235m² of the lot. Existing and proposed lot 2 is 400.7m² in area and encompasses a freestanding brick dwelling (approximately 165m²).

"The strata scheme has no common property, both dwellings have separate access onto Gordon Road and all services for each dwelling are contained wholly within each lot.

"The smaller dwelling was constructed under dual occupancy provisions in 1998 and the strata subdivision occurred in 2006 (05/1476)".

"Development Application 21/0583 seeks consent for the creation of 2 Torrens title lots. The proposed lot areas and boundaries would be identical to the existing strata lot areas and boundaries noted above".

"The variation is sought to address non-compliance with Clause 4.2F (4) (b):

- (4) In addition to the matters listed in subclause (3), the consent authority must be satisfied that—*
- (b) the lot size of each resulting lot will be at least 600 square metres...*

"The two lots proposed to be created are 813.3m² and 400.7m² (identical to existing strata lots 1 & 2). The quantum of the variation sought is 33% for proposed lot 2.

"The subject development meets all other provisions of Clause 4.2F of the LEP, being (2),(3),(4) (a),(4) (c) and (5):

- (2) – Within the R3 zone,*
- (3) – Given that the existing dual occupancy was created under a legal planning instrument,*
- (4)(a) – The resulting smallest lot (2) would be 400.7m², greater than 50% of the minimum lot size (350m²),*
- (4)(c) – There will only be one dwelling on each lot,*
- (5) – Not applicable".*

The applicant's request goes on to submit:

"Compliance with Clause 4.2F (4) (b) of the LEP is unnecessary in this case as the proposed development will have no impact on the surrounding amenity and is consistent with the objectives of the land zoning, Clause 4.2F and Clause 4.1 of the LEP. Justification for this is given in Table 1".

The referenced table is reproduced below:

Table 1 - Consistency of the development with relevant planning objectives

Clause	Objective	Justification
4.2F (1)	to ensure that dual occupancy development is compatible with the character of existing	The proposed Torrens subdivision will have no negative impacts on the character of the surrounding area and will not compromise existing development or amenity



		<i>development within the surrounding area.</i>	<i>because there will be no change to physical properties or lot boundaries within the development, only the lot types.</i>
	4.1 (1) (b)	<i>to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.</i>	<i>The second dwelling was constructed in 1998 (forming the dual occupancy) and has been part of the area for 20+ years. Both dwellings are of modest brick veneer/ ceramic roof construction consistent with the local character. Both dwellings include well appointed gardens and street plantings sympathetic to the streetscape. Both dwellings have modest and functional access to Gordon Road. See Figure 1 and Figure 2 below.</i>
	R3 (1)	<i>To provide for the housing needs of the community within a medium density residential environment.</i>	<i>The development meets the objectives of the R3 zone. The two separate dwellings provide housing types suited to different groups from the community within a medium density environment. The larger dwelling may be suited to a growing family whilst the smaller, more manageable dwelling, is ideal for a young or retiring couple or a family seeking more affordable housing. In this way the development helps to serve the housing needs of the broader community and meet the objectives of the R3 zone.</i>
		<i>To provide a variety of housing types within a medium density residential environment.</i>	
		<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<i>Not applicable</i>

The table refers to Figures 1 and 2 of the applicant's request, which are reproduced below.



Figure 1 - Existing and proposed Lot 1 (21 Ascot St)



Figure 2 - Existing and proposed Lot 2 (21a Ascot Street)

The applicant's request is considered to accurately identify the circumstances of the case and demonstrate that given those circumstances, despite its contravention of the development standard specified by clause 4.2F (4) (b) of the LEP, the proposed development is consistent with the objectives of both the development standard and the R3 zone, and unlikely to have any environmental, social or economic impact nor any impact on the locality's character and amenity. The applicant's request is therefore considered to adequately address the matter required to be demonstrated by clause 4.6 (3) (a).

- Subclause (3) (b)—there are sufficient environmental planning grounds to justify contravening the development standard

The applicant's request submits:

“There are sufficient environmental planning grounds to justify a reduction in minimum lot size and this is in the public interest because:

- *Notwithstanding the non-compliance to the minimum lot size specified in Clause 4.2F (4) (b), the proposed development is consistent with the objectives of Clause 4.2F of the LEP,*
- *The proposed development meets all other criteria (2)-(5) in Clause 4.2F, including the other minimum lot size requirements specified in 4.2F (4) (a),*

- *The proposed development is consistent with the objectives of the R3 – medium density residential zone,*
- *The proposed lots/dwellings are fully serviced, independently of one another including the provision of reticulated water, sewer, efficient stormwater disposal, compliant and independent vehicular access, sufficient parking, telecommunications and electricity.*
 - *This makes the lots suitable for conversion to Torrens title with no physical works required and therefore no environmental impact,*
- *The proposed lots/ dwellings compliment the surrounding amenity,*
- *The proposed development meets the objectives of Clause 4.1 (1) (b)".*

The applicant's request is considered to adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard specified by clause 4.2F (4) (b) of the LEP; i.e. despite the proposed contravention, the proposed development is consistent with the objectives of both the development standard and the R3 zone, and may be expected to have no environmental, social or economic impact and no impact on the locality's character and amenity. The applicant's request is therefore considered to adequately address the matter required to be demonstrated by clause 4.6 (3) (b).

- *Subclause (4) (a) (ii)—Development consent must not be granted for development that contravenes a development standard unless 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*

The single overarching objective of the development standard specified by clause 4.2F (4) (b) of the LEP is specified by clause 4.2F (1):

- (1) *The objective of this clause is to ensure that dual occupancy development is compatible with the character of existing development within the surrounding area.*

The historical Strata Title subdivision of the land and the two dwelling houses thereon could be extinguished or reversed without any need for consent, resulting in a 1214m² Torrens Title lot occupied by a lawfully erected detached dual occupancy. The proposed subdivision of the existing detached dual occupancy to create two lots, substantially identical to the existing Strata Title lots, will cause no change to the land's built form or character. It is therefore expected to have no impact on the compatibility of development on the land with the character of existing development in the locality. In turn, the proposed development is considered consistent with the objective specified by clause 4.2F (1).

The land is in Zone R3 Medium Density Residential. The Land Use Table at the end of Part 2 of the LEP specifies three R3 zone objectives:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development retains existing housing on the land without change, in a neighbourhood that is widely zoned R3 Medium Density Residential and is gradually transitioning from a low density residential to a medium density residential character. The proposed development facilitates continuing provision for the housing needs of the community within an increasingly medium density residential environment, consistent with the first R3 zone objective.

The proposed development retains two existing dwelling houses without change, within a locality characterised by a mix of low and medium density residential development. It is therefore considered consistent with the second R3 zone objective.

The third R3 zone objective is irrelevant to the proposed development, being for the purpose of residential accommodation.

The proposed development is thus considered consistent with the objectives of the development standard specified by clause 4.2F (4) (b) and Zone R3 Medium Density Residential, and is therefore also considered in the public interest. In turn, the proposed development is considered satisfactory with respect to subclause (4) (a) (ii).

- *Subclause (4) (b)—The concurrence of the Planning Secretary has been obtained*

The NSW Government's Planning System Circular PS 20-002 – Variations to development standards (5 May 2020) explains:

“All consent authorities may assume the Secretary's concurrence under:

- *clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006...*”

The Circular goes on to specify circumstances under which the Secretary's concurrence may not be assumed by a delegate of Council, including where a proposed development contravenes a numerical standard by greater than 10%, but clarifies that those restrictions do not apply to decisions made by local planning panels. The subject application is to be determined by the Independent Advisory Planning Assessment Panel, so Council is not subject to the restrictions in this instance.

4.2 Section 4.15 (1) (a) (ii)—The provisions of any proposed instrument that apply to the land

No draft instrument is relevant to the proposed development.

4.2 Section 4.15 (1) (a) (iii)—The provisions of any development control plan that apply to the land

The Bowral Town Plan Development Control Plan (the DCP) applies to the land. However, noting the proposed development effectively involves only the conversion of existing developed lots from Strata Title to Torrens Title and does not involve erection of any building, the carrying out of any work or any change of land use, none of the DCP's provisions are of any consequence to the proposed development.

4.3 Section 4.15 (1) (a) (iv)—The provisions of any planning agreement that apply to the land

No planning agreement or draft planning agreement applies to the land.

4.4 Section 4.15 (1) (a) (v)—The provisions of the regulations (to the extent that they prescribe matters for the purposes of this paragraph) that apply to the land

No provisions of Division 8 of Part 6 of the Environmental Planning and Assessment Regulation 2000 are relevant to the proposed development.

4.5 Section 4.15 (1) (b)—The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Noting the proposed development effectively involves only the conversion of existing developed lots from Strata Title to Torrens Title and does not involve erection of any building, the carrying out of any work or any change of land use, the proposed development is not expected to have any environmental, social or economic impact.

4.6 Section 4.15 (1) (c)—The suitability of the site for the development

The proposed Torrens Title lot layout is substantially the same as the land's existing Strata Title lot layout, and each of the proposed Torrens Title lots is already developed for the purpose of a dwelling house. The proposed development is not expected to have any impact on the locality's existing and desired character and amenity, and no site attributes are considered to render the land unsuitable for the proposed development.

4.7 Section 4.15 (1) (d)—Any submissions made in accordance with the Act or the regulations

Council notified the application to owners and occupants of surrounding properties, inviting submissions between 26 Oct and 16 Nov 2020. Notification of the application did not attract any submissions.

4.8 Section 4.15 (1) (e)—The public interest

There is not considered to be any overriding public interest opposing the granting of consent for the proposed development.

Internal and external communication and consultation

The application was referred to Council's Development Engineer, who raises no objection to the proposed development subject to recommended standard conditions of consent relating to provision of services, drainage and vehicle access. The application does not require or warrant referral to any external authority and, as discussed, notification of the application to owners and occupants of surrounding properties did not attract any submissions.

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Conclusion

The proposed development is considered satisfactory with respect to the matters for consideration specified by section 4.15 (1) of the Environmental Planning and Assessment Act 1979. It is recommended that the Panel determines the application by granting development consent, subject to the conditions specified in **Attachment 1**.

Senior Development Assessment Planner

ATTACHMENT 1:

Draft conditions of development consent

ADMINISTRATION CONDITIONS

1. Development Description

Development consent is granted in accordance with Council's notice of determination for subdivision of land to create two lots for the purpose of dwelling houses.

Reason: *To confirm the scope of the development.*

2. Development in Accordance with Plans and Documents

Except where otherwise specified by conditions of consent, the development shall be carried out in accordance with the information accompanying the development application, and the stamped consent drawings set out in the following table including any notations or amendments made by Council.

Drawing Title	Reference	Prepared By	Dated
PROPOSED SUBDIVISION	Drawing No 14205-1	Campbell & Anderson Consulting Surveyors Pty Ltd (with amendments made by Council)	12/10/05

Reason: *To ensure the development is carried out in accordance with the approved plans and documentation.*

3. Inconsistency between documents

In the event of any inconsistency between the conditions of Council's consent and the drawings/documents referred to above, the conditions of consent shall prevail to the extent of the inconsistency.

Reason: *To ensure that the development is undertaken in accordance with the submitted plans and documents (as amended).*

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

4. Subdivision Certificate

An application for a Subdivision Certificate shall be lodged with Council or an Accredited Certifier (in accordance with Section 6.15 of the *Environmental Planning and Assessment Act 1979*) for approval to enable the subdivision plans to be submitted to and registered with NSW Land Registry Services. Should the Subdivision Certificate application be lodged with Council, a final plan of subdivision and 3 copies shall be included with the application.

All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.

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The application for a Subdivision Certificate is to be accompanied by supporting documentation outlining how each condition of consent has been complied with.

Reason: *To comply with the provisions of the Environmental Planning and Assessment Act 1979.*

Note: *The applicant is to ensure that works associated with the Section 138 (Roads Act) approval and Section 68 (Local Government Act) approval are completed and inspected by Council.*

5. Provision of Services

A separate access, sewer connection, storm water drainage connection, water service and electricity supply shall be provided to each allotment within the subdivision at the applicants expense prior to the issue of the Subdivision Certificate.

All property services shall be located within the lots that they serve in accordance with Wingecarribee Shire Council Engineering Design and Construction Specifications, Drawings and relevant Standards. The applicant shall provide to Council written confirmation of compliance.

Reason: *To ensure that all available services are provided to each lot within the subdivision.*

6. Inter-allotment Drainage for Upstream/Adjoining Property

Inter-allotment drainage shall be provided for all lots that do not drain natural to a public system (road, watercourse etc.) prior to the issue of the Subdivision Certificate. All inter-allotment drainage system (pipes, pits, etc.) shall be contained within a suitable easement to drain water a minimum of 2 metres wide.

Reason: *To control stormwater flows.*

7. Vehicle Access (Urban)

Access to the site shall be provided by means of a vehicle crossing as per Council's Standard Drawings SD107 and SD123 and approved by Council's Development Engineer prior to the issue of the Subdivision Certificate.

Reason: *To comply with Council's Engineering Standards.*

8. Construction of Sewer Sidelines

Sidelines and junctions shall be installed for sewer connections to the development by Council at the Developer's cost prior to the issue of the Subdivision Certificate.

Council's application form shall be completed by the applicant and the appropriate fee paid.

If the sideline is to be extended from a sewer main in adjoining property, written permission of the affected landowner allowing work to be undertaken, shall be submitted with the application form.

Reason: *To ensure that the development is serviced.*

9. Construction of Water Service

A water service shall be installed to each lot in the subdivision prior to the issue of the Subdivision Certificate.

Council's application form shall be completed by the Developer and the appropriate fee paid.

Reason: *To ensure that the development is serviced.*

END OF CONDITIONS



ATTACHMENT 2:

**Applicant's written request seeking to justify proposed contravention of
Wingecarribee LEP 2010 clause 4.2F (4) (b)**

14 September 2021

To: Wingecarribee Shire Council - Independent Advisory Planning Assessment Panel
C/- Roland Wong
Senior Development Assessment Planner
Via email only: Roland.Wong@wsc.nsw.gov.au

**Development application 21/0583 - Lots 1 & 2 SP76930 – 21 & 21a Ascot Road Bowral
Clause 4.6 Variation request – Minimum subdivision lot size**

Dear Roland

Thank you for the invitation to meet the Wingecarribee Shire Council's Independent Advisory Planning Assessment Panel on Wednesday 1st of September 2021 to discuss development application 21/0583. From that meeting and your letter dated 13th September 2021 I understand the Committee requires a 4.6 Variation Request, in writing, to be submitted in support of the creation of one lot below the minimum lot size.

Please accept this letter report as the 4.6 Variation Request for application 21/0583.

1. Introduction

a. Purpose of this letter

This letter serves as a request in writing to vary Clause 4.2F(4)(b) of the Wingecarribee Local Environmental Plan 2010 (hereafter referred to as the LEP), under the provisions of Clause 4.6 of the LEP.

b. Site conditions and history

The subject development sits on the corner of Ascot Road and Gordon Road in Bowral NSW. Lots 1 and 2 form existing strata scheme SP76930.

Existing and proposed lot 1 is 813.3m² in area and encompasses a freestanding brick dwelling with detached brick garage. The dwelling and detached garage occupy approximately 235 m² of the lot. Existing and proposed lot 2 is 400.7m² in area and encompasses a freestanding brick dwelling (approximately 165m²).

The strata scheme has no common property, both dwellings have separate access onto Gordon Road and all services for each dwelling are contained wholly within each lot.

The smaller dwelling was constructed under dual occupancy provisions in 1998 and the strata subdivision occurred in 2006 (05/1476).

c. Proposed development

Development Application 21/0583 seeks consent for the creation of 2 Torrens title lots. The proposed lot areas and boundaries would be identical to the existing strata lot areas and boundaries noted above.

2. Relevant LEP clauses, land zoning and objectives

a. Clause 4.6 provisions

Clause 4.6 of the LEP allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

In considering whether to grant development consent subject to this clause, despite the contravention of a development standard, the consent authority must receive a request in writing (this request) that addresses Clause 4.6(3) and Clause 4.6(4)(a)(ii), namely:

(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.

And

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

(a) the consent authority is satisfied that—

(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.

b. land zoning

With reference to the LEP “Land Zoning Map - Sheet LZN_007G” (20 March 2020 – LEP amendment 52) the land is zoned R3 – Medium density residential.

The objectives of the R3 zone are:

- To provide for the housing needs of the community within a medium density residential environment,
- to provide a variety of housing types within a medium density residential environment, and
- to enable other land uses that provide facilities or services to meet the day to day needs of residents.

c. Clause 4.2F - Minimum subdivision lot sizes for dual occupancies in certain zones

Clause 4.2F allows for development consent to be granted for the subdivision of a legally erected dual occupancy in certain circumstances. When the criteria are met in 4.2F(2)-(5), consent for subdivision may be granted despite the provisions of Clause 4.1.

The objective of Clause 4.2F is to ensure;

- that dual occupancy development is compatible with the character of existing development within the surrounding area.

d. **Clause 4.1 – Minimum subdivision lot size**

The subject development is being assessed against the provisions of Clause 4.2F. Notwithstanding, the objectives of Clause 4.1, specifically 4.1(1)(b), are relevant to this request. The objective is:

- to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.

With reference to the LEP “Lot Size Map - Sheet LSZ_007G” the minimum lot size as it pertains to Clause 4.1 of the LEP is 700 m².

3. Standard proposed to be varied – Clause 4.2F(4)(b)

The variation is sought to address non-compliance with Clause 4.2F(4)(b):

(4) In addition to the matters listed in subclause (3), the consent authority must be satisfied that—

(b) the lot size of each resulting lot will be at least 600 square metres....

The two lots proposed to be created are 813.3 m² and 400.7 m² (identical to existing strata lots 1&2). The quantum of the variation sought is 33% for proposed lot 2.

The subject development meets all other provisions of Clause 4.2F of the LEP, being (2),(3),(4)(a),(4)(c) and (5);

(2) – Within the R3 zone,

(3) – Given that the existing dual occupancy was created under a legal planning instrument,

(4)(a) – The resulting smallest lot (2) would be 400.7m², greater than 50% of the minimum lot size (350m²),

(4)(c) – There will only be one dwelling on each lot,

(5) – Not applicable.

4. Justification for variation

a. Clause 4.6(3)(a)

The provisions of Clause 4.6(3)(a) require the applicant to demonstrate;

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with Clause 4.2F(4)(b) of the LEP is unnecessary in this case as the proposed development will have no impact on the surrounding amenity and is consistent with the objectives of the land zoning, Clause 4.2F and Clause 4.1 of the LEP. Justification for this is given in Table 1.

Table 1 - Consistency of the development with relevant planning objectives

Clause	Objective	Justification
4.2F(1)	to ensure that dual occupancy development is compatible with the character of existing development within the surrounding area.	The proposed Torrens subdivision will have no negative impacts on the character of the surrounding area and will not compromise existing development or amenity because there will be no change to physical properties or lot boundaries within the development, only the lot types.
4.1(1)(b)	to ensure that the subdivision of land to create new lots is compatible with the character of the surrounding land and does not compromise existing development or amenity.	The second dwelling was constructed in 1998 (forming the dual occupancy) and has been part of the area for 20+ years. Both dwellings are of modest brick veneer/ ceramic roof construction consistent with the local character. Both dwellings include well-appointed gardens and street plantings sympathetic to the streetscape. Both dwellings have modest and functional access to Gordon Road. See Figure 1 and Figure 2 below.
R3 (1)	To provide for the housing needs of the community within a medium density residential environment.	The development meets the objectives of the R3 zone. The two separate dwellings provide housing types suited to different groups from the community within a medium density environment. The larger dwelling may be suited to a growing family whilst the smaller, more manageable dwelling, is ideal for a young or retiring couple or a family seeking more affordable housing. In this way the development helps to serve the housing needs of the broader community and meet the objectives of the R3 zone.
	To provide a variety of housing types within a medium density residential environment.	
	To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not applicable.

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Figure 1 - Existing and proposed Lot 1 (21 Ascot St)



Figure 2 - Existing and proposed Lot 2 (21a Ascot Street)

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b. Clause 4.6(3)(b) and 4.6(4)(a)(ii)

Clause 4.6(3)(b) requires the applicant to demonstrate;

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

The consent authority must also be satisfied as per Clause 4.6(4)(a)(ii) that;

(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.

There are sufficient environmental planning grounds to justify a reduction in minimum lot size and this is in the public interest because;

- Notwithstanding the non-compliance to the minimum lot size specified in Clause 4.2F(4)(b), the proposed development is consistent with the objectives of Clause 4.2F of the LEP,
- The proposed development meets all other criteria (2)-(5) in Clause 4.2F, including the other minimum lot size requirements specified in 4.2F(4)(a),
- The proposed development is consistent with the objectives of the R3 – medium density residential zone,
- The proposed lots/ dwellings are fully serviced, independently of one another including the provision of; reticulated water, sewer, efficient stormwater disposal, compliant and independent vehicular access, sufficient parking, telecommunications and electricity.
 - This makes the lots suitable for conversion to Torrens title with no physical works required and therefore no environmental impact,
- The proposed lots/ dwellings compliment the surrounding amenity,
- The proposed development meets the objectives of Clause 4.1(1)(b).

c. Previous support from Wingecarribee Shire Council staff

Following the second dwelling being constructed, the then Director of Environment and Planning, J K Lawrence, wrote to the undersigned indicating that an application for Torrens subdivision to create the proposed lots would be supported because:

- Impacts to the streetscape had been addressed through the creation of the dwellings,
- The subdivision does not have other impacts other than a variation to Council's subdivision standards,
- It is a huge burden to create a two lot strata scheme.

A copy of this letter is attached.

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5. Conclusion

Having given due regard to Wingecarribee Shire Council's Local Environmental Plan 2010, the proposed development is in the public interest because it is consistent with the objective of Clause 4.2F of the LEP and the objectives for development within R3 medium residential zone.

There are sufficient environmental planning grounds to support the reduction in minimum lot size from that specified in Clause 4.2F(4)(b). The development will have no negative impact on the surrounding land, streetscape, existing development or local amenity and the proposed lots are independently accessed and serviced.

On the above grounds, this Clause 4.6 Variation request for reduction in minimum lot size and the associated development application are recommended to be approved.

I trust this letter meets the Planning Assessment Panel's requirements. It is my understanding that this is the final piece of information the Assessment Panel requires prior to determining the application. I look forward to a prompt determination.

Regards



R. Michael Baker

End: Letter from J K Lawrence dated 11 August 1999.

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Civic Centre, Elizabeth Street, Moss Vale, 2577
P.O.Box 141, Moss Vale, 2577
DX 4961, Bowral

Telephone: (02) 4868 0888

Facsimile: (02) 4869 1203

Our ref: GJH:SC DA52/98
Contact: Mr G Hewat

11 August 1999

Michael Baker
P O Box 106
SYLVANIA WATERS NSW 2224

Dear Mr Baker

Re: Lot C DP 339464 No 21 Ascot Road, Bowral

I refer to the above and your enquiry regarding the subdivision of the property.

Should you wish to undertake a Torrens subdivision of the property it would involve the creation of allotments below the 700m² standard as prescribed by Council's planning controls.

Such an application would entail a report to Council and be supported by a planning statement to support the variation. Council staff believe that such a variation would be worthy of support as:-

- Impacts on the streetscape have been addressed through the erection of the dwelling.
- The subdivision does not have other impacts other than a variation to Council's subdivision standards.
- It is a huge burden to create a two unit strata scheme.

If any additional information is required regarding the above, please contact Mr Graeme Hewat at the Moss Vale Office during the hours of 8.30 am - 10.00 am on (02) 4868 0759 - Monday to Friday.

Yours faithfully


J K Lawrence
Acting Director Environment & Planning

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