

25 August 2021

Dear Panel Member,

You are kindly requested to attend the **Independent Advisory Planning Assessment Panel Meeting** of Wingecarribee Shire Council to be held in **Nattai Room, Civic Centre, Elizabeth Street, Moss Vale** on **Wednesday 1 September 2021** commencing at **3.30pm**.

Yours faithfully

Malcolm Ryan
Interim Deputy General Manager



Business

- 1. OPENING OF THE MEETING**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. APOLOGIES**
Nil
- 4. DECLARATIONS OF INTEREST**

- 5. DEVELOPMENT APPLICATIONS**
 - 5.1 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 2
- 6. PLANNING PROPOSALS**
Nil
- 7. MEETING CLOSURE**

Our Mission, Our Vision, Our Values

OUR MISSION

To create and nurture a vibrant and diverse community growing and working in harmony with our urban, agricultural and natural environments

OUR VISION

Leadership: *'An innovative and effective organisation with strong leadership'*

People: *'A vibrant and diverse community living harmoniously, supported by innovative services and effective communication with Council'*

Places: *'Places that are safe, maintained, accessible, sympathetic to the built and natural environment, that supports the needs of the community'*

Environment: *'A community that values and protects the natural environment enhancing its health and diversity'*

Economy: *'A strong local economy that encourages and provides employment, business opportunities and tourism'*

OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality

Council Chambers

Recording and Webcasting of Independent Advisory Planning Assessment Panel Meetings

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The meeting must not be recorded by others.

Please ensure that all electronic devices including mobile phones are switched to silent.

The Council Chamber has 24 Hour Video Surveillance.

ACKNOWLEDGEMENT OF COUNTRY

“Wingecarribee Shire Council acknowledge the Gundungurra and Tharawal people as the traditional custodians of this land we now call the Wingecarribee Shire. I pay my respect to Elders both past, present and emerging. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.”

APOLOGIES

Nil at time of print.

DECLARATIONS OF INTEREST

101/3, 101/3.1

The provisions of Chapter 14 of the *Local Government Act 1993* regulate the way in which Panel Members and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest and the reasons for declaring such interest must be disclosed as soon as practicable after the start of the meeting.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions or voting on that matter and further require that the member vacate the Meeting.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

5 DEVELOPMENT APPLICATIONS

5.1 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

Reference: 21/0583
Report Author: Senior Development Assessment Planner
Authoriser: Manager Development Assessment

PURPOSE

This report presents development application 21/0583 for 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, Reginal Michael Baker, Dorothy Edith Baker.
Land zoning:	R3 Medium Density Residential
Applicant's estimated cost of 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 to the report

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 dual occupancy (detached) development that would satisfy the relevant provisions of the LEP), the proposed creation of a 400.7m² Torrens Title lot 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.

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The above aside, the proposed development is considered satisfactory with respect to the overarching objectives specified by clause 4.2F (1) of the LEP.

The application is accompanied by a written request, made pursuant to clause 4.6 (3) of the LEP, that seeks to justify the proposed development's contravention of the development standard specified by clause 4.2F (4) (b) of the LEP. On balance, the documents accompanying the application, including the applicant's written request, are 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 otherwise 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 therefore recommended that the Panel determines the application by granting development consent subject to the conditions specified in **Attachment 1**.

REPORT

2. Site description and locality

Figures 1 and 2 illustrate the land's location and layout (see also Attachments 2 and 3). 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.

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.

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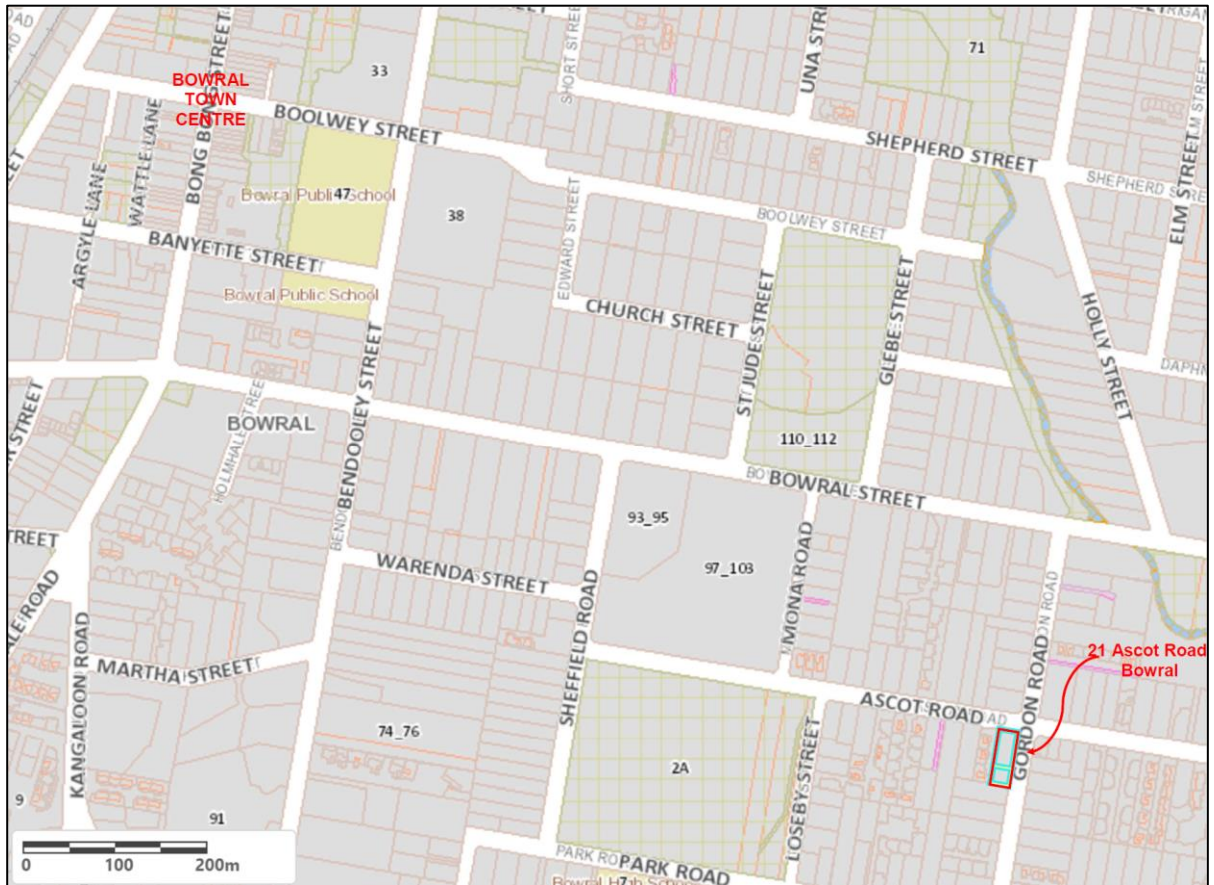


Figure 1: Locality Map (see also Attachment 2)

Before either Deposited Plan 1096286 or Strata Plan 76930 were registered, on 11 August 1999, Council wrote the following 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.”*

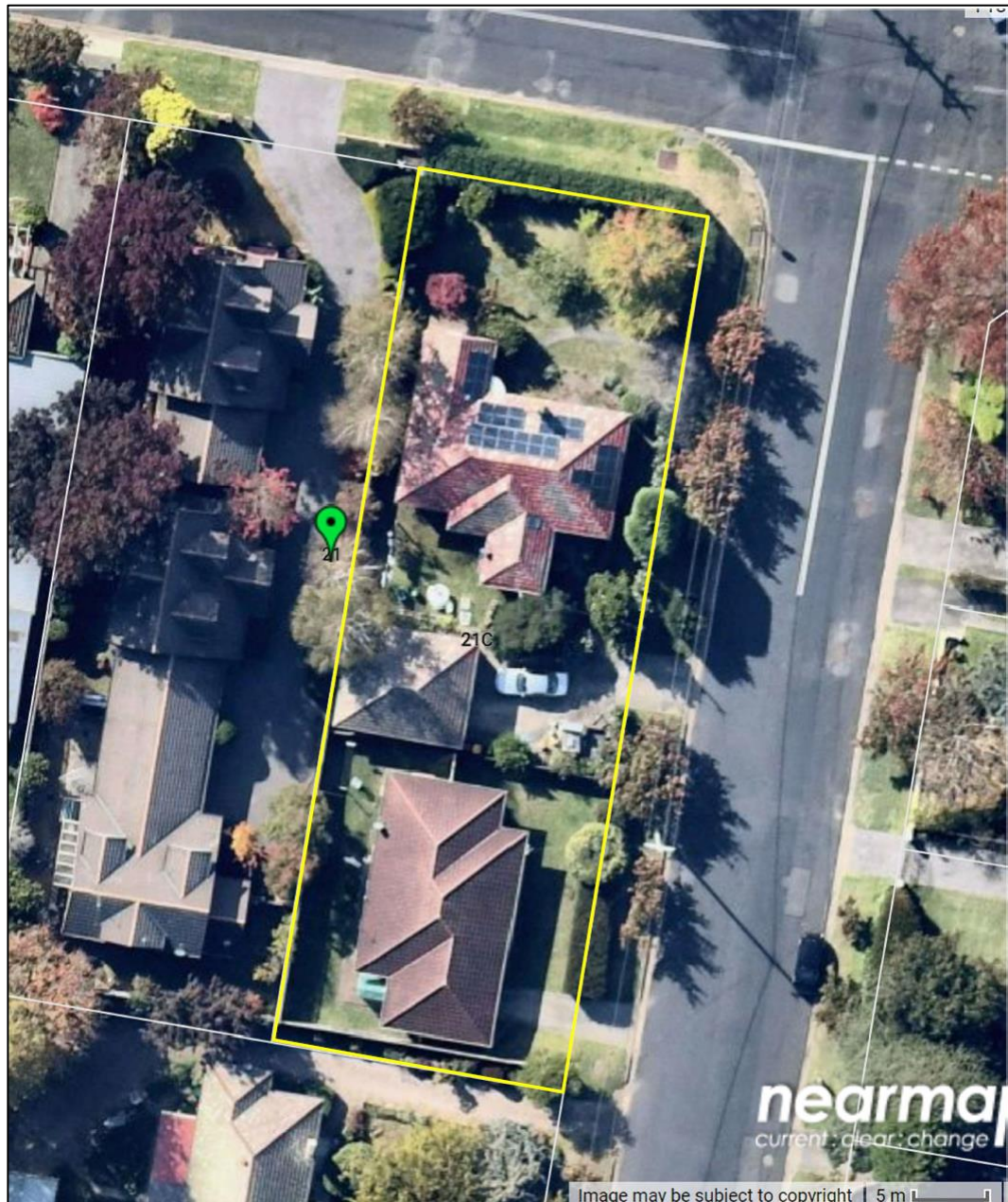


Figure 2: Aerial image (see also Attachment 3)

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:

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- *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...”

Council’s letters of 11 August 1999, 12 September 2001 and 11 February 2003 are reproduced in **Attachment 4**.

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 Wingecarribee Local Environmental Plan 2010. However, that clause is relevant only to land in Zones R2 Low

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Density Residential and B1 Neighbourhood Centre and is therefore does not apply to the subject land due to its location in Zone R3 Medium Density Residential.

3. Description of proposed development

R Michael Baker made the subject application on 12 October 2020, seeking 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** and **Attachment 5**. The proposed configuration of lots is substantially the same as illustrated by the registered Strata Plan 76930, reproduced in **Figure 4** and **Attachment 6**.

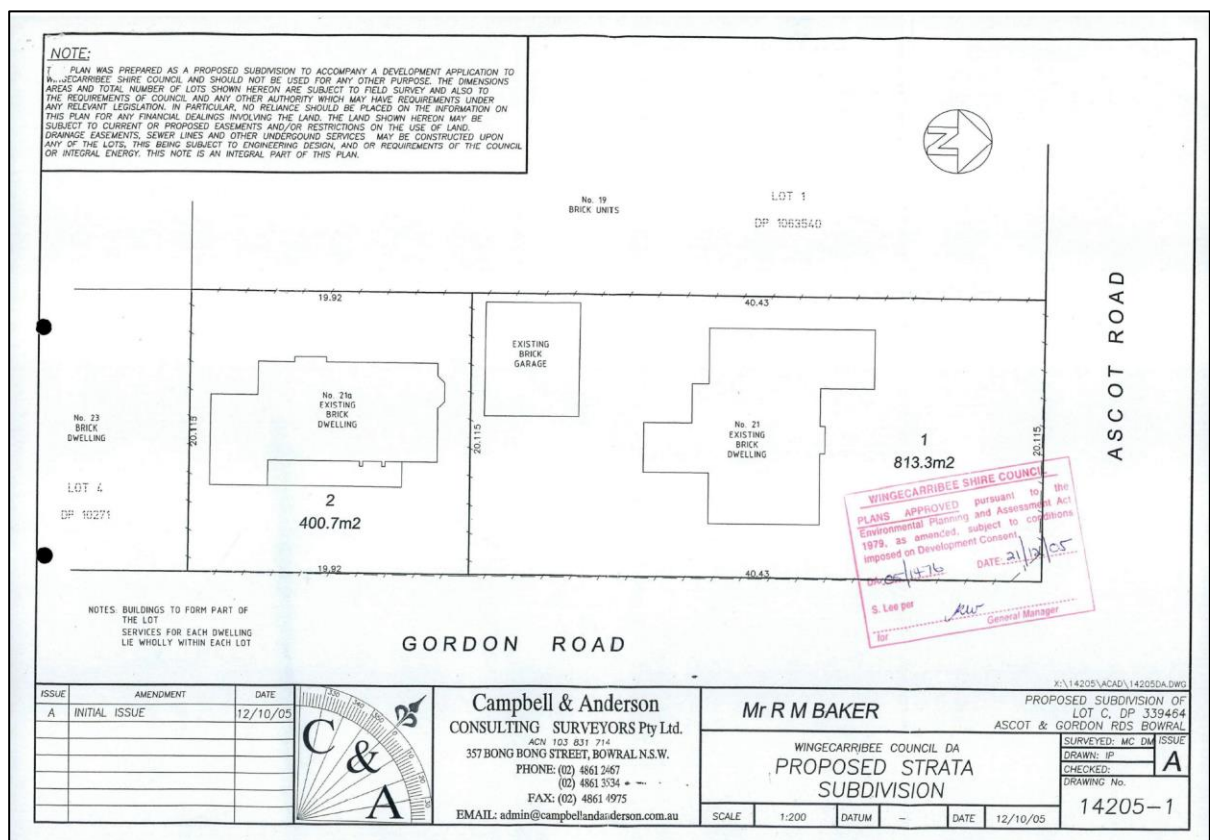


Figure 3: Proposed development drawings (see also Attachment 5)

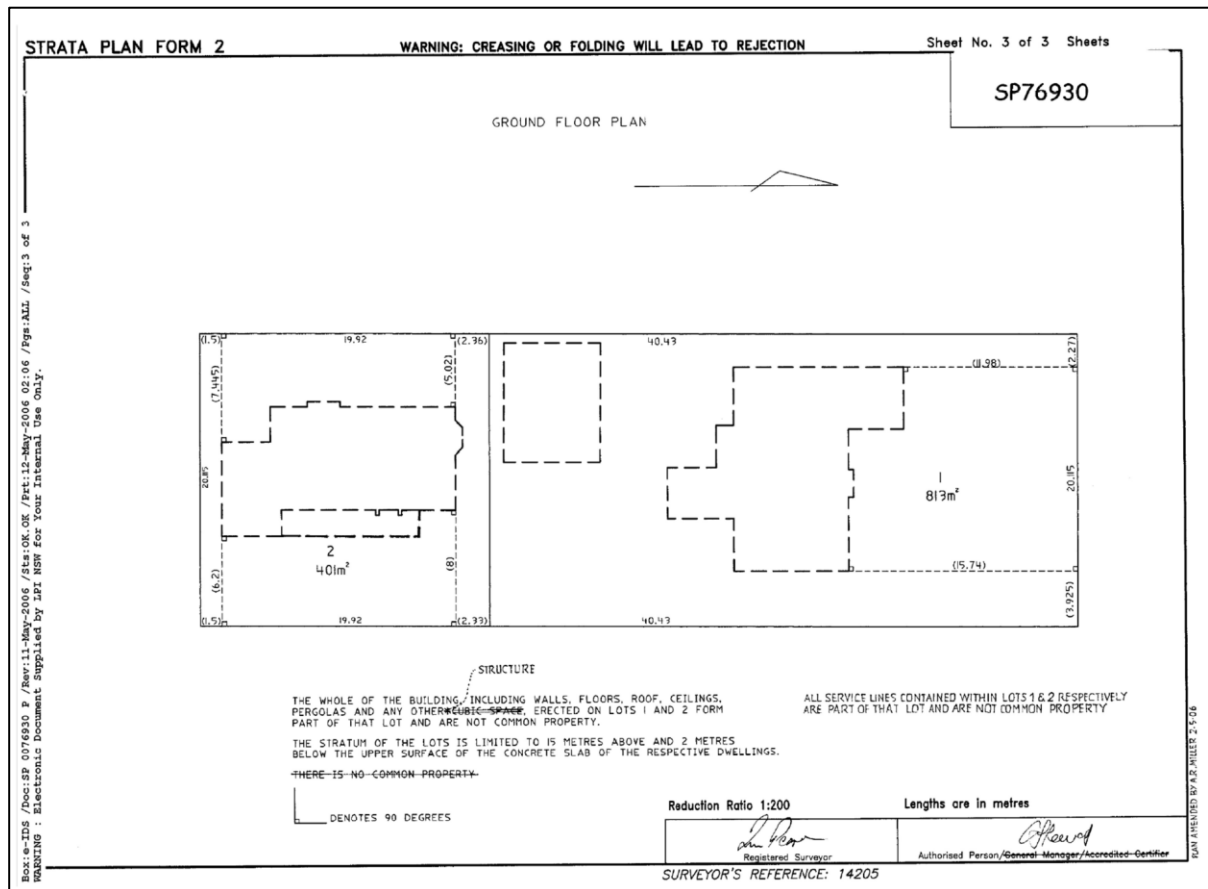


Figure 4: Extract from registered Strata Plan 76930 (see also Attachment 6)

4. 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.

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

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.

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

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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.

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.

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 residential environment.• To provide a variety of housing types within a medium density residential environment.	Yes

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Clause	Control	Discussion	Compliance
		<ul style="list-style-type: none"> 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.	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 occupancy (detached) development that would satisfy subclause (3).	Yes
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 	<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>However, the proposed development does not satisfy the</p>	No

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Clause	Control	Discussion	Compliance
	<p>minimum lot size shown on the Lot Size Map in relation to the land, and</p> <ul style="list-style-type: none"> • 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>requirement of subclause (4) (b) that the size of each proposed lot must be at least 600m², and the layout of existing buildings and works on the land (refer to Figures 2, 3 and 4 (Attachments 3, 5 and 6) does not facilitate the creation of two lots of at least 600m².</p> <p>The above aside, the proposed development is considered satisfactory with respect to the overarching objective specified by subclause (1) to ensure dual occupancy development is compatible with the character of existing development within the surrounding area. Furthermore, the application is accompanied by the applicant’s written request seeking to justify contravention of the development standard specified by subclause (4) (b), discussed below regarding clause 4.6.</p>	
<p>4.6— Exceptions to development standards</p>	<p>Development consent may be granted even though the proposed development would contravene a development standard, if the consent authority has considered a written request from the applicant seeking to justify contravention of the development standard by demonstrating:</p> <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 	<p>The applicant’s written request seeking to justify contravention of the development standard specified by clause 4.2F (4) (b) is reproduced in Attachment 7. It submits:</p> <p style="text-align: center;"><i>“The development complies with all other requirements of the application and blends in well with the surrounding locality”.</i></p> <p>Taking into consideration the applicant’s written request, as well as the other information accompanying the application, strict adherence to the development standard specified by clause 4.2F (4) (b) of the LEP is considered unreasonable and unnecessary in the circumstances of the case, and there are considered to be sufficient environmental planning grounds to justify contravening the development standard as proposed. Additionally, as discussed earlier, the proposed development is</p>	<p>Yes</p>

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Clause	Control	Discussion	Compliance
	<p>planning grounds to justify contravening the development standard, and</p> <ul style="list-style-type: none"> • 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 ○ the Planning 	<p>considered entirely consistent with the overarching objective specified by clause 4.2F (1) and the objectives of Zone R3 specified by the Land Use Table at the end of Part 2 of the LEP.</p> <p>With respect to the requirement of subclause (4) (b) for the Planning Secretary's concurrence, the NSW Government's Planning System Circular PS 20-002 – Variations to development standards (5 May 2020) explains:</p> <p style="padding-left: 40px;"><i>"All consent authorities may assume the Secretary's concurrence under:</i></p> <ul style="list-style-type: none"> • <i>"clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006..."</i> <p>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 Circular is reproduced in Attachment 8.</p>	

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Clause	Control	Discussion	Compliance
	Secretary's concurrence has been obtained.		

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.

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.

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.

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.

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.

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.

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

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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.

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.

5. 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.

6. 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**.

ATTACHMENTS

1. 21/0583 Recommended consent conditions
2. 21/0583 Locality map
3. 21/0583 Aerial image
4. 21/0583 Council correspondence of 11 August 1999, 12 September 2001 and 11 February 2003
5. 21/0583 Proposed development drawings
6. 21/0583 Extract from registered Strata Plan 76930
7. 21/0583 Applicant's request for exception to development standard
8. 21/0583 NSW Planning Circular PS 20-002



21/0583 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.

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.*

5.1 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

ATTACHMENT 1 21/0583 Recommended consent conditions



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.*

**5.1 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

ATTACHMENT 1 21/0583 Recommended consent conditions



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.

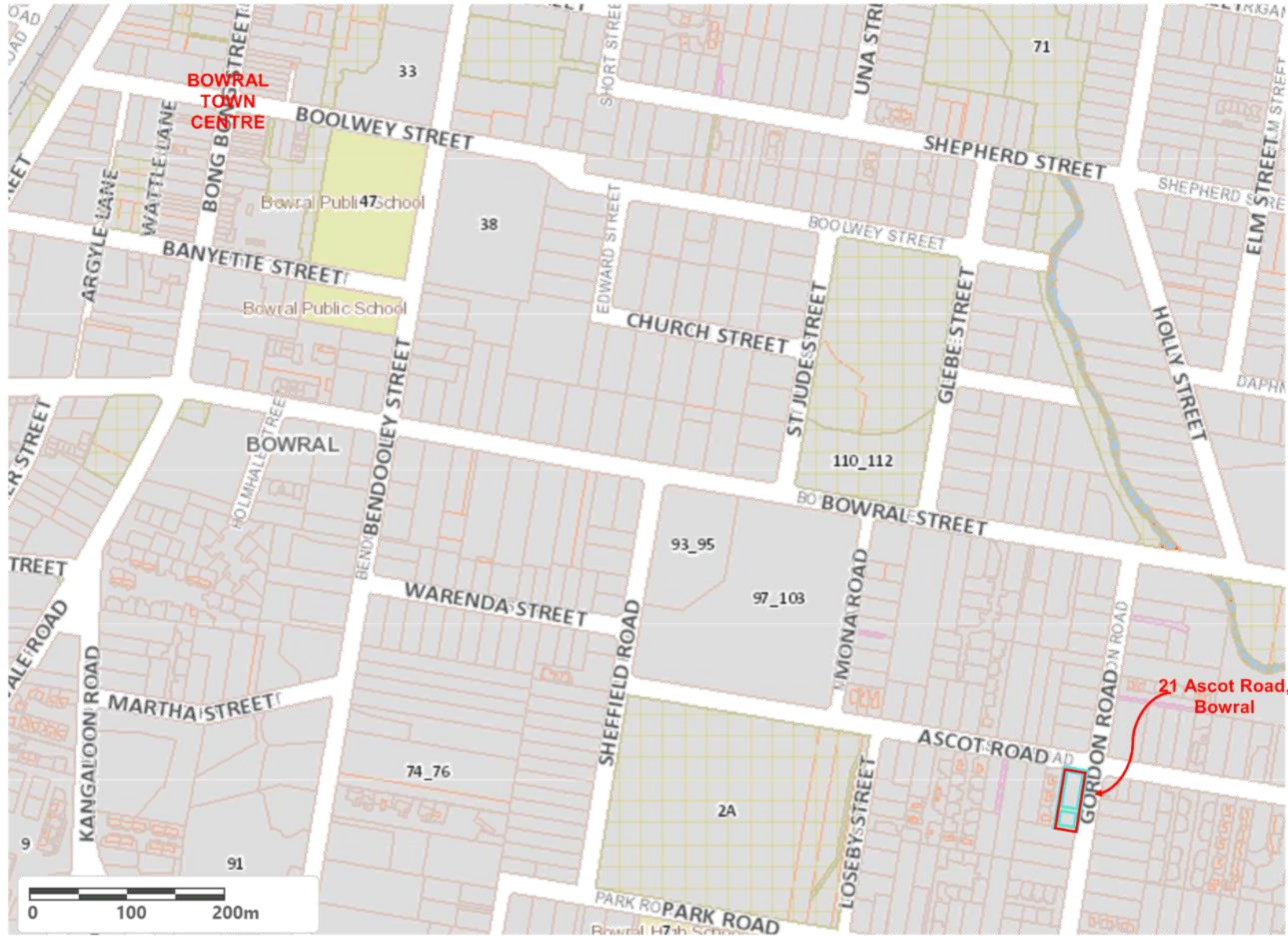
Reason: *To ensure that the development is serviced.*

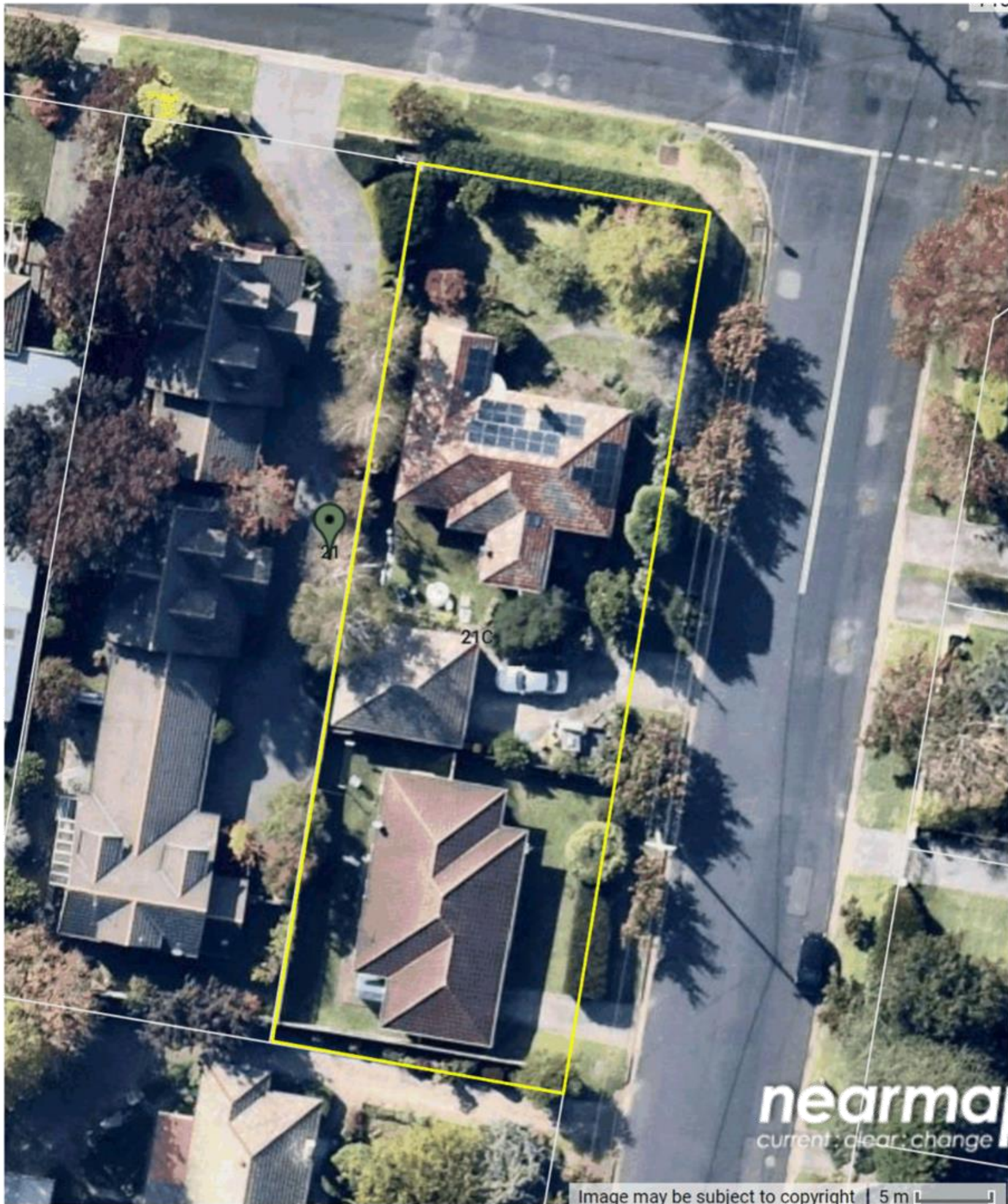
END OF CONDITIONS

5.1 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

ATTACHMENT 2 21/0583 Locality map





5.1 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
ATTACHMENT 4 21/0583 Council correspondence of 11 August 1999, 12
September 2001 and 11 February 2003



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

5.1 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

ATTACHMENT 4 21/0583 Council correspondence of 11 August 1999, 12
September 2001 and 11 February 2003



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

Telephone: (02) 4868 0888
wscmail@wsc.nsw.gov.au

Facsimile: (02) 4869 1203
ABN 49 546 344 354

Our Ref: LUA99/1810; 5602/7.2:FS
Contact: Felicity Saunders
Your Ref:

12 September 2001

Mr M Baker
PO Box 106
SYLVANIA WATERS NSW 2224

20/9/2001
Reaffirm
Dec. 2002

Dear Mr Baker

PROPOSED SUBDIVISION – 21 ASCOT ROAD, BOWRAL

I refer to your letter to Mr Graeme Hewat regarding a proposal to subdivide Lot C DP 339464 Ascot Road, Bowral.

As you may be aware, Council is currently in the process of preparing a strategic plan for the whole of the Shire (known as *Wingecarribee Our Future*), 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. However, please note that the final strategic plan document will provide a basis for a review of the Shire Plan (*Wingecarribee Local Environmental Plan 1989*) and this review is not expected to be completed for at least 18 months.

If you wish to discuss this matter further, please contact either myself or Felicity Saunders on 4868 0854.

Yours faithfully

J K Lawrence
MANAGER, STRATEGIC PLANNING

5.1 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

ATTACHMENT 4 21/0583 Council correspondence of 11 August 1999, 12 September 2001 and 11 February 2003



Civic Centre, Elizabeth Street, Moss Vale, 2577
P.O.Box 141, Moss Vale, 2577
Email: wscmail@wsc.nsw.gov.au
DX 4961, Bowral

Telephone: (02) 4868 0888
Facsimile: (02) 4869 1203

ABN 49 546 344 354

Our Ref: LUA 99/1810:FS
Contact: Felicity Saunders
Your Ref:

*Discussed
with Felicity Saunders 14/2/2003
Development
Control
Planner
(Pete) Mal*

11 February 2003

Mr M Baker
44 Holt Road
TAREN POINT NSW 2229

Dear Mr Baker

**AMENDMENTS TO WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 1989
DUAL OCCUPANCY HOUSING PROPOSALS**

Thank you for your letter dated 7 February 2002 regarding proposed amendments to *Wingecarribee Local Environmental Plan 1989*, in relation to dual occupancy housing.

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:

- ✓ Total 1200m²* "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:
- ✓ Completed* a. prohibit the subdivision of dual occupancy development until such time as the construction of the development has been completed,
- ✓ Completed* b. require subdivided dual occupancy dwellings to be provided with separate driveway access via different street frontages,
- ✓ Single Storey* c. require subdivided dual occupancy dwellings to be single storey in height,
- ✓ Both comply* 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)."

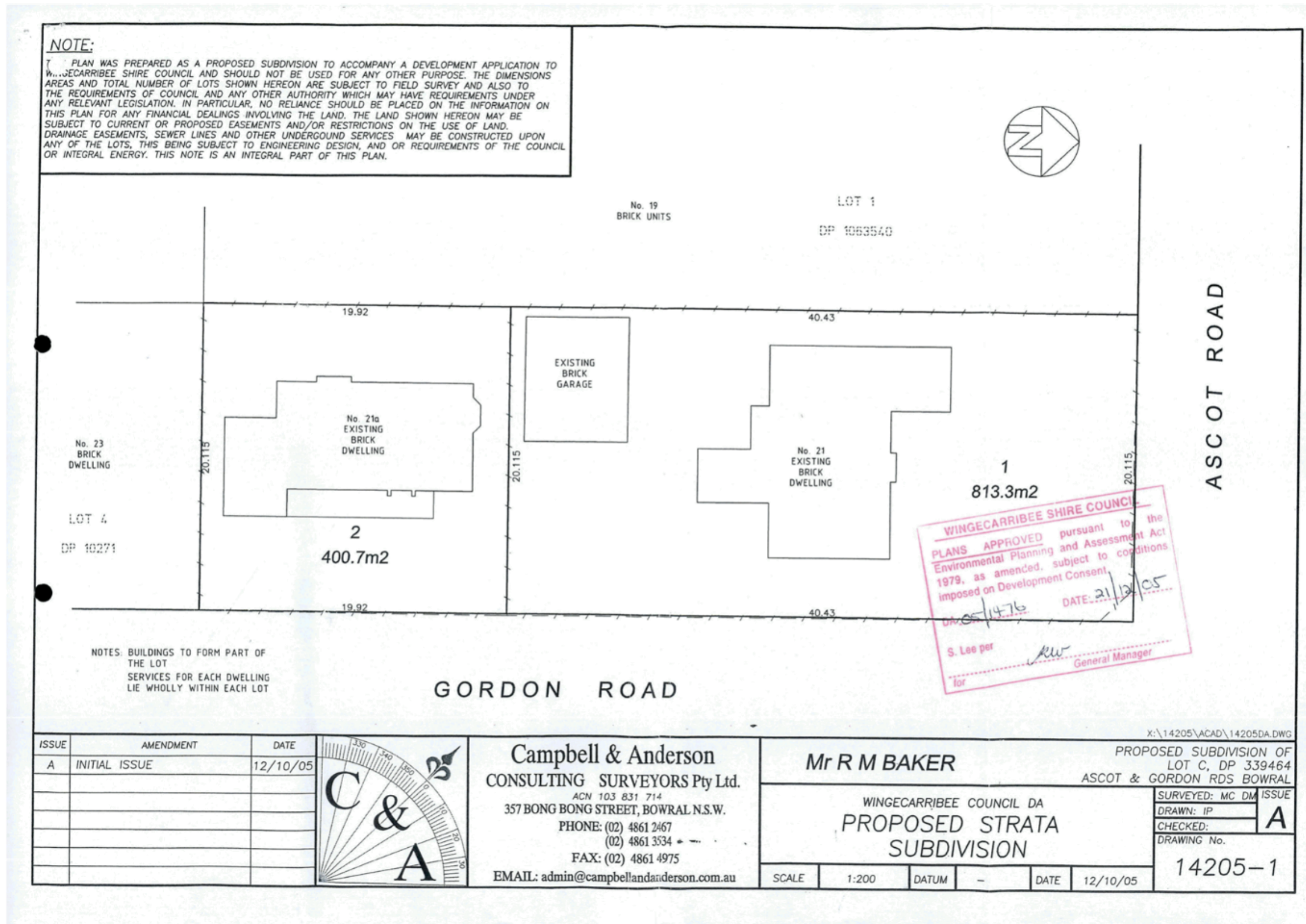
This proposal will be included in the draft local environmental plan (currently being prepared by Council) which will amend *Wingecarribee Local Environmental Plan 1989*. It is anticipated that the draft plan will be publicly exhibited in May/June 2003. After the public exhibition a report on the submissions received will be prepared for Council's consideration at an ordinary Council meeting. Further reports on the draft plan will be prepared and forwarded to the Minister for Planning for his approval. It is difficult to anticipate the actual date that the plan will become effective, but it is expected to be finalised later next year (2004).

If you require any further information or explanation please contact either myself or Felicity Saunders on 4868 0851.

Yours faithfully

J K Lawrence
MANAGER, STRATEGIC PLANNING

Proposed "Custard Unit June"





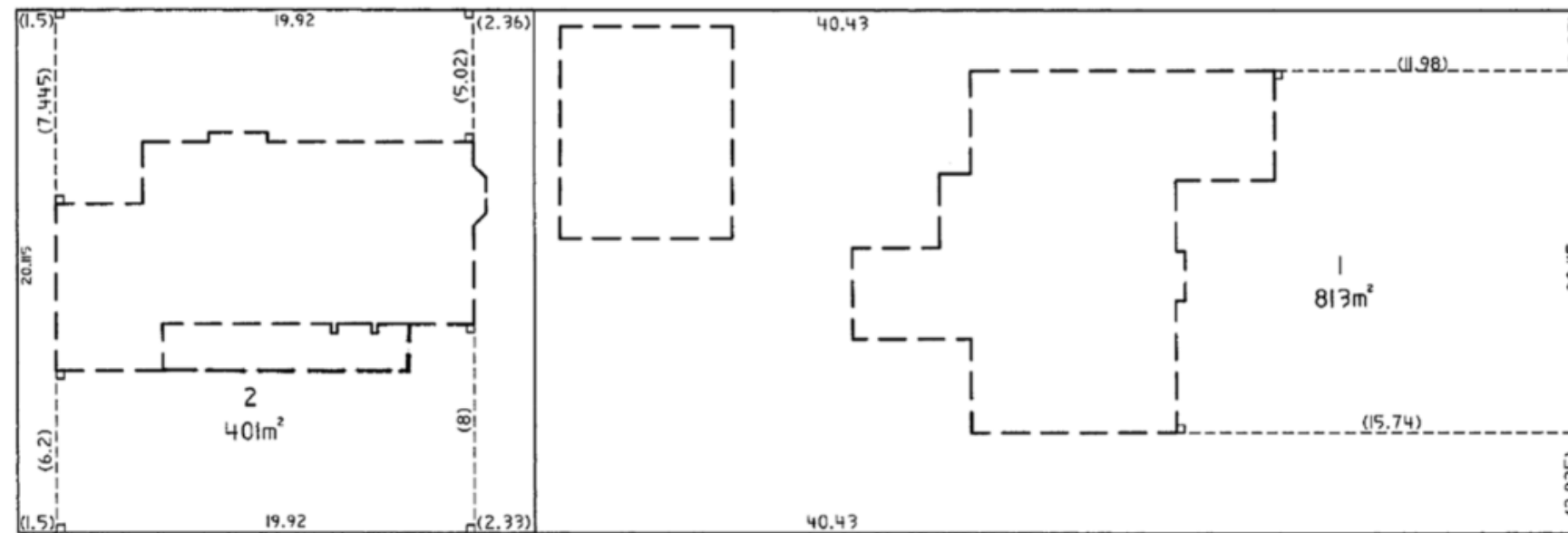
STRATA PLAN FORM 2

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet No. 3 of 3 Sheets

SP76930

GROUND FLOOR PLAN



STRUCTURE

THE WHOLE OF THE BUILDING, INCLUDING WALLS, FLOORS, ROOF, CEILINGS, PERGOLAS AND ANY OTHER ~~CUBIC SPACE~~, ERECTED ON LOTS 1 AND 2 FORM PART OF THAT LOT AND ARE NOT COMMON PROPERTY.

ALL SERVICE LINES CONTAINED WITHIN LOTS 1 & 2 RESPECTIVELY ARE PART OF THAT LOT AND ARE NOT COMMON PROPERTY

THE STRATUM OF THE LOTS IS LIMITED TO 15 METRES ABOVE AND 2 METRES BELOW THE UPPER SURFACE OF THE CONCRETE SLAB OF THE RESPECTIVE DWELLINGS.

~~THERE IS NO COMMON PROPERTY.~~

┌ DENOTES 90 DEGREES

Reduction Ratio 1:200

Lengths are in metres

[Signature]
Registered Surveyor

[Signature]
Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE: 14205

Box:e-IDS /Doc:SP 0076930 P /Rev:11-May-2006 /Sts:OK.OK /Prt:12-May-2006 02:06 /Pgs:ALL /Seq:3 of 3
WARNING : Electronic Document Supplied by LPI NSW for Your Internal Use Only.

PLAN AMENDED BY A.R. MILLER 2.5.06

5.1 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

ATTACHMENT 7 21/0583 Applicant's request for exception to development
standard



Roland Wong

From: Pa Mail <mike_baker@optusnet.com.au>
Sent: Tuesday, 16 March 2021 6:36 PM
To: Roland Wong
Subject: (DWS Doc No 7760513) DEVELOPMENT APPLICATION 21/0583 LOTS 1&2
SP76930-21 ASCOT RD BOWRAL

External Email: This email was sent from outside the organisation, please be cautious with links and attachments in the email.

MR ROLAND WONG,
SENIOR DEVELOPMENT ASSESSMENT PLANNER,
WINGECARRIBEE SHIRE COUNCIL,
MOSS VALE.

DEAR SIR,

I REFER TO YOUR EMAIL OF THE 15TH INST AND TO YOUR 'PHONE CALL NOTIFYING THAT OUR APPLICATION FOR DEVELOPMENT CONSENT CANNOT BE GRANTED WITHOUT FURTHER ASSESSMENT, AS THE APPLICATION CONTRAVENES CLAUSE 42F, WHEREBY THE LOT SIZE OF ONE SECTION FAILS TO MEET THE MINIMUM SUBDIVISION REQUIREMENT OF 600 SM.

I AM NOW WRITING TO REQUEST THAT DEVELOPMENT CONSENT BE GRANTED, UNDER EXCEPTIONS TO DEVELOPMENT STANDARDS, AS THAT IN SPECIAL CIRCUMSTANCES COUNCIL MAY GRANT APPROVAL. THE DEVELOPMENT COMPLIES WITH ALL OTHER REQUIREMENTS OF THE APPLICATION AND BLENDS IN WELL WITH THE SURROUNDING LOCALITY.

PLEASE ADVISE SHOULD YOU REQUIRE FURTHER INFORMATION.

THANKS,

R.MICHAEL BAKER

5.1 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

ATTACHMENT 8 21/0583 NSW Planning Circular PS 20-002



Planning circular

PLANNING SYSTEM

Varying Development Standards

Circular	PS 20-002
Issued	5 May 2020
Related	Revokes PS 18-003 (February 2018), PS 19-005

Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied) and clarify requirements around reporting and record keeping where that concurrence has been assumed.

Overview of assumed concurrence

This circular replaces Planning Circular PS 18-003 and issues assumed concurrence, governance and reporting requirements for consent authorities. It also advises that council reports are to come through the Planning Portal, and of the repeal of SEPP 1.

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* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards* for land included in an old Interim Development Order (IDO) or Planning Scheme Ordinance (PSO).

However, the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning, Industry and Environment to a previous notice will continue to have effect under the attached notice.

Assumed concurrence conditions

Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- 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, Zone E4 Environmental Living
- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 231).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

5.1 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

ATTACHMENT 8 21/0583 NSW Planning Circular PS 20-002



Department of Planning, Industry and Environment – Planning Circular PS 20-002

Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong were required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 231).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it applies to panels established after 1 March 2018.

Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect).

The notice takes effect on the day that it is published on the Department of Planning, Industry and Environment's website (i.e. the date of issue of this circular) and applies to pending development applications.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted through the NSW Planning Portal at <https://www.planningportal.nsw.gov.au/reporting/online-submission-planning-data> within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

Repeal of State Environmental Planning Policy No 1 – Development Standards (SEPP 1)

The repeal of SEPP 1 came into effect from 1 February 2020 as part of the SEPP Review Program to update and simplify the NSW Planning system.

SEPP 1 is repealed in circumstances where a standard instrument LEP applies in a local council

**5.1 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
ATTACHMENT 8 21/0583 NSW Planning Circular PS 20-002**



Department of Planning, Industry and Environment – Planning Circular PS 20-002

area. The amendments included the insertion of two clauses into the *SEPP (Concurrences and Consents) 2018*. Clause 6 provides for the continued operation of SEPP 1 where an Interim Development Order (IDO) or a Planning Scheme Ordinance (PSO) is in effect. Clause 7 is a savings provision which continues to apply SEPP 1 for applications that were made prior to the repeal but are yet to be determined.

Further information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning, Industry and Environment's information centre on 1300 305 695.

Department of Planning, Industry and Environment circulars are available at: planning.nsw.gov.au/circulars

Authorised by:

Marcus Ray
Group Deputy Secretary,
Planning and Assessment
Department of Planning, Industry and Environment

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	<p>Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size:</p> <ul style="list-style-type: none">- 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, Zone E4 Environmental Living- a land use zone that is equivalent to one of the above land use zones <p>This condition does not apply to State significant development or development for which a Minister is the consent authority</p>
2	<p>Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:</p> <ul style="list-style-type: none">- development that contravenes a numerical development standard by more than 10%- development that contravenes a non-numerical development standard <p>Note. Local planning panels constituted under the <i>Environmental Planning and Assessment Act 1979</i> exercise consent authority functions on behalf a council and are not delegates of the council</p> <p>This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority</p>

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17-006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018

Carolyn McNally
Secretary, Department of Planning and Environment

**5.1 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
ATTACHMENT 8 21/0583 NSW Planning Circular PS 20-002**



Malcolm Ryan
Interim Deputy General Manager

Wednesday 25 August 2021