

## **ASSESSMENT REPORT**

### **Section 75W Modification Sandon Point, Bulli (MP07\_0032 MOD 4 & MP06\_0094 MOD 4)**

#### **1. BACKGROUND**

The site is located within the Wollongong Local Government Area approximately 14 kilometres north of the Wollongong central business district at Sandon Point which lies to the south of Thirroul village centre and railway station (see **Figure 1**). The site itself comprises 53 hectares of several land parcels with multiple owners. It is bounded by Thomas Gibson Park and private landholdings to the north; McCauley's Beach to the east; the Point Estate (a Stockland subdivision) to the south; and the Illawarra railway line to the west. See **Figure 2** for the site location.

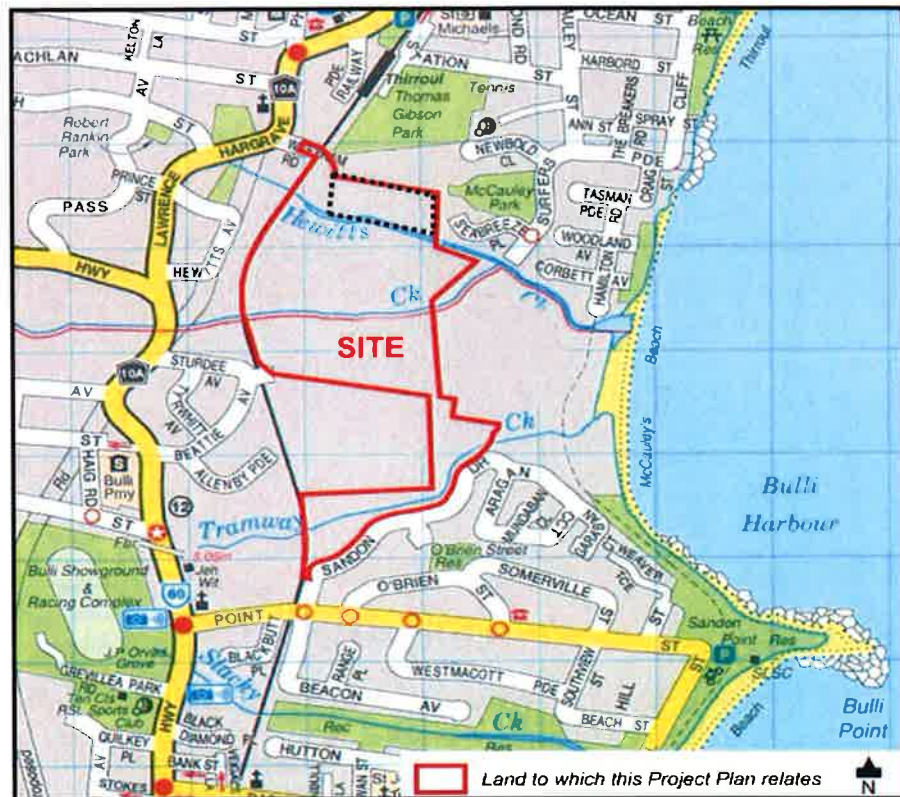


**Figure 1: Project location: Sandon Point**

On 21 December 2006, the then Minister for Planning approved a Concept Plan for the Redevelopment of Sandon Point (MP06\_0094) subject to modifications and future environmental assessment requirements. The concept plan permitted use of the land for the following:

- a subdivision to create a combination of 180 detached dwelling lots, one apartment super lot and two townhouse super lots; and
- a retirement development, including a residential aged care facility, independent living units, supporting community facilities and services, access and car parking.

The concept plan approved the broad development footprint, building envelopes, road layouts, associated works, car parking, built form controls (floor space ratio and heights) and staging. It also prescribed the planning consent regime and consent authorities' roles for future development.



**Figure 2:** Site location (area subject of current application within dashed black lines)

The concept plan was assessed concurrently with a State Significant Site Study (SSS Study) lodged under the former *State Environmental Planning Policy (Major Projects) 2005*. The SSS Study informed the rezoning process and assessment of the concept plan. The Minister ultimately approved the rezoning of the site to give effect to the concept plan.

Prior to the above rezoning and assessment process, in 2003 a Commission of Inquiry for Sandon Point investigated the preferred land uses, planning outcomes and management options for the site having regard to the site's values and the constraints of the surrounding urban and non-urban environment. Following the Commission's findings and recommendations, the then Minister for Planning appointed Charles Hill to conduct an independent review of the Commission's findings and recommendations. On 3 November 2005, the Charles Hill report recommended balancing development and environmental gains within Sandon Point.

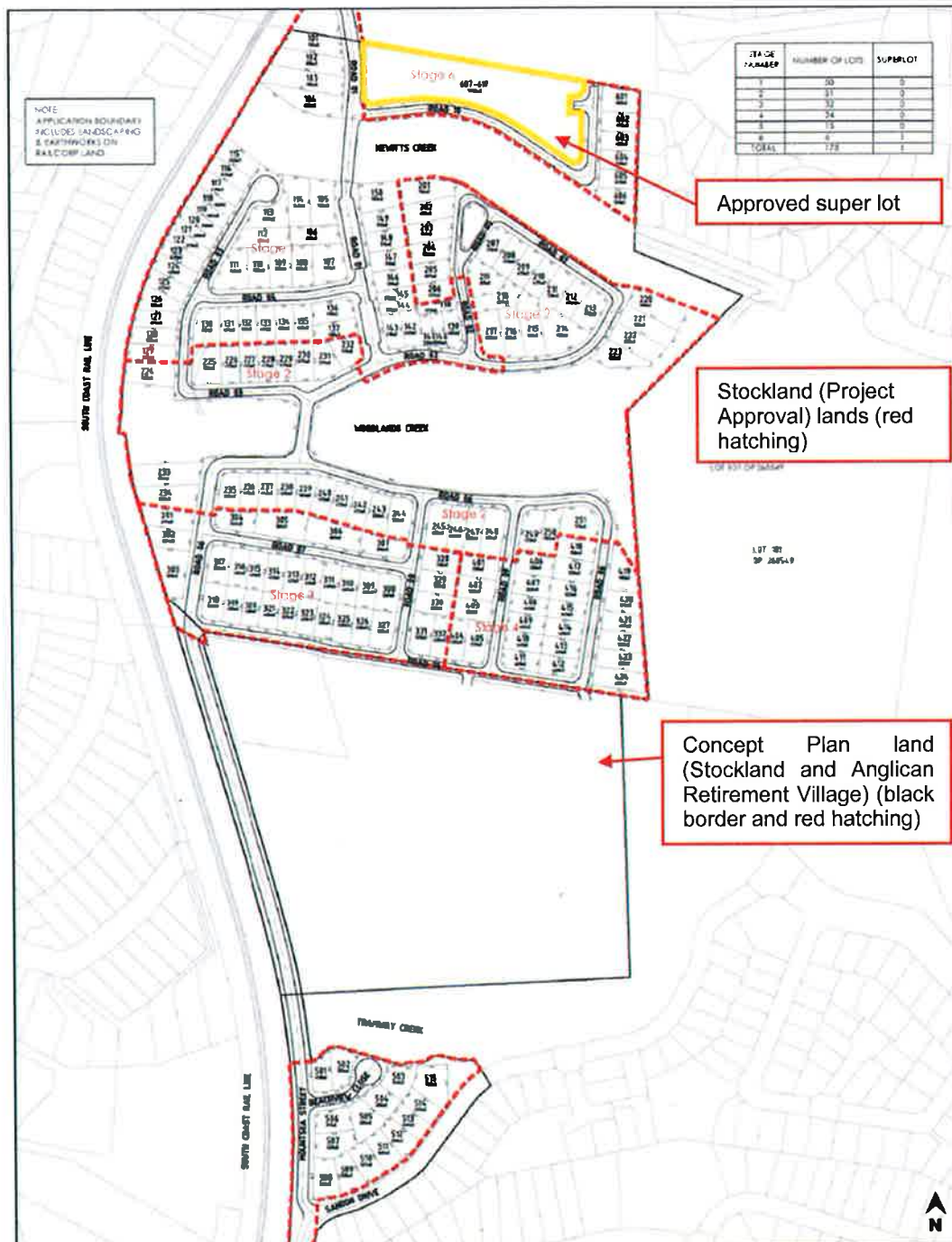
On 29 November 2009, the then Minister for Planning approved a modification to the concept plan (MOD 1) to permit a revised location of the proposed town house lots on the site, and a Project Application for residential subdivision at Sandon Point, Bulli (MP07\_0032) which permitted:

- 181 residential lots, one super lot for future residential flat building development and restoration of riparian corridors (**Figure 3**).

Since then, the then Deputy Director-General has approved, under delegation, three modification applications to the project approval, relating to:

- timing of the approved works to the Wrexham Road railway bridge;
- Aboriginal and European heritage conditions; and
- road upgrade works.

The approved project has commenced: the subdivision is well advanced, many houses have been completed and occupied, and construction is continuing.



**Figure 3:** Land the subject of the current application (within yellow lines) and the currently approved residential subdivision within hatched red lines.

## 2. PROPOSED MODIFICATION

On 13 November 2013, Stockland lodged two Section 75W modification applications with the then Department of Planning and Infrastructure (the Department). The applications seek to modify both the concept plan and project approvals concurrently to permit the following in stage 6:

### Concept plan:

- replace the apartment super lot with 16 single dwelling lots; and
- provide a built form control of a 9 m maximum building height for single dwellings on the 16 single dwelling lots consistent with the 9 m height limit across the remainder of the site.

### Project approval:

- replace the apartment super lot with 16 single dwelling lots (see **Figure 4**);

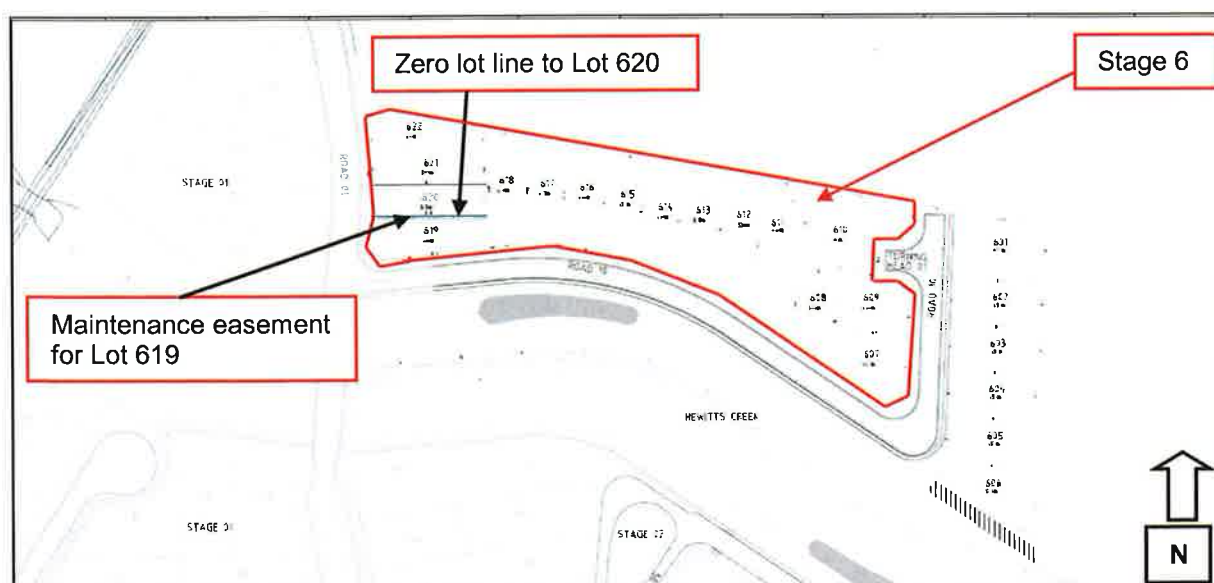


- amend the project description to provide for a building height of 9 m for future dwellings on those 16 single dwelling lots;
- consequential amendments to the stage 6 built form controls to set a maximum FSR of 0.5:1 and building height of 9 m for future dwelling houses on each of the proposed lots;
- carry out civil infrastructure works to create the proposed 16 single dwelling lots;
- a zero lot line to proposed Lot 620 and an associated Section 88B instrument and easement on proposed Lot 619 to allow for maintenance access;
- a consequential reference to amended plans and a subclause relating to the creation of the easement on Lot 619;
- the creation of Section 88B instruments to alert future owners of the lots to the built form controls; and
- minor amendments to the requirements for a final geotechnical report and to require an associated Section 88B instrument.

The proponent has provided the following as justification for the proposed modifications:

- the site's zoning permits low and medium density residential development and this will not change;
- adequate land zoned medium density residential is located nearby close to Thirroul town centre and railway station;
- medium density development on the apartment super lot is currently commercially unviable; and
- there is market demand for single lot housing.

Refer to **Appendix A** for details of the application.



**Figure 4:** Proposed subdivision of Stage 6

### 3. STATUTORY CONSIDERATION

#### Section 75W

Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act), as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the Act, continues to apply to Section 75W modification applications for Part 3A projects.

The applications have been lodged with the Secretary pursuant to section 75W of the Act. The Minister's approval is not required if the project as modified will be consistent with the original approval. As the application seeks to amend the concept plan and project approval, it requires approval.

The proposed changes constitute a modification: they are within the scope of section 75W of the Act and do not constitute a new application.

In this instance, it was not considered necessary to notify the proponent of environmental assessment requirements pursuant to section 75W(3) of the Act. Sufficient information was provided to assess the applications, and the concept plan provides for modifications and requirements for future applications under Parts 4 or 5 of the Act.

#### Approval Authority

On 14 September 2011, the functions of the Minister under section 75W of the Act to modify Part 3A approvals were delegated to Directors in the Major Projects Assessment Division where all of the following circumstances are satisfied:

- the relevant local Council has not made an objection, and
- a political disclosure statement has not been made, and
- there are less than 10 public submissions in the nature of objections.

The applications satisfy the delegation and are referred to the Director for determination.

#### Consultation

Under section 75W of the Act, a request to modify an approval does not necessarily require public exhibition, however, under section 75X(2)(f) of the Act, the Director-General is required to make the application publicly available. In this case, the Department considered it appropriate to exhibit the applications from 20 November 2013 to 19 December 2013, notify adjoining landowners and relevant agencies, including Council, and invite comments.

A total of thirteen submissions were received: six from agencies and seven from the public. Of the public submissions, four raised objections and three raised comments for consideration.

#### *Agencies' submissions:*

Of the agencies, the following had no issues, comments or objections regarding the applications:

- NSW Trade and Investment - Mineral Resources Branch and Crown Lands Division;
- Roads and Maritime Services;
- Environment Protection Authority; and
- NSW Department of Primary Industries.

Wollongong City Council did not object to the applications but made a series of comments on the RTS once it had been submitted (see section 4.2 'Proponent's response to submissions').

#### *Public submissions:*

The seven public submissions received primarily raised issues relevant to the original approvals and construction and development on the site to date. The Department considers the only issues relevant to the current applications are the site's zoning and uncontrolled fill at the northern end of the site.

The Department has carefully considered the public submissions. The Department is satisfied that the majority of the issues have either been addressed and dealt with in the assessment of the original applications or, are not relevant to the current applications and do not raise new issues for the current applications. Issues of relevance to the current applications are addressed in section 5 below.

#### *Proponent's Response to Submissions*

The proponent addressed the issues raised in all of the submissions in a Response to Submissions/Preferred Project Report (RTS). The RTS was published on the Department's website and referred to Council for comment (as were the current applications). No further

public submissions were received and Council provided comments (see *Council's remaining comment about the application* below).

The RTS provided additional justification for the need for the modifications, the departure from the *Wollongong Development Control Plan 2009* (the DCP) 15 m lot width control, and Section 88B instruments for FSR and building height, as detailed below (at points 1 to 3). The preferred project includes a minor change to the application: the inclusion of a zero lot line to proposed Lot 620 and an associated easement on proposed Lot 619 to allow for maintenance access.

The proponent's justification for the modification as detailed in its RTS is as follows:

*1. Strategic basis/need for the modification*

The site is zoned R3 Medium Density Residential under the *State Environmental Planning Policy (Major Development) 2005* (MD SEPP) and dwelling houses are permissible and were contemplated when the land was zoned. The zone does not limit residential development to medium density housing. The zone objectives provide opportunity for a variety of housing types. Sufficient land which permits medium density housing (in the R3 and B2 zones) exists around the nearby Thirroul railway station/town centre (see **Figure 5**), some of which is not yet fully developed.

Residential flat building development is not currently commercially viable compared with a single lot housing subdivision for which there is greater market demand. Developers will not construct housing that is commercially unviable, therefore, housing supply and choice will not be maximised.

*2. Subdivision layout - departure from 15 m lot width control*

While Lots 619 to 622 will be 10 m wide, they will have a depth of 21 m which is greater than the 15 m required under the DCP (notwithstanding the DCP does not apply to the site). Indicative building envelopes demonstrate those lots are capable of being developed in accordance with the DCP: with sufficient private open space and solar access and a garage wall located on each southern boundary (**Figure 6**). Narrow lots of 10 to 11 m have been approved by Council in other locations.

The zero lot line for Lot 620 will be extended for the entire length of the southern side boundary requiring a 900 mm wide easement for access and maintenance on the adjoining lot. The proposed subdivision plans have been amended accordingly (see **Figure 4**).

*3. Section 88B instruments*

The proponent proposes to create Section 88B instruments to add further restrictions on the land titles to set a maximum FSR and building height, consistent with the FSR and height controls sought in the modification applications. Such restrictions have already been created for other lots in the remainder of the approved subdivision. The instruments will complement the proposed modification of Condition A4 Built Form Controls of the concept plan to require future DAs for single dwellings on the proposed lots to comply with the proposed FSR and building height controls.

If the Department does not agree with the proposed use of the Section 88B instruments, it should recommend that Council include a suitable notation on Section 149 planning certificates for those lots.

An additional easement relating to the zero lot line on Lot 619 should be addressed through a Section 88B instrument as it is not readily addressed by a Section 149 certificate. This will be consistent with Condition C8(f) of the project approval.

#### *Council's comment*

Council's only comment on the applications following its consideration of the RTS related to the following:

#### *1. MD SEPP 2005 and Section 88B instruments*

Whilst Council agrees with the use of Section 88B instruments to alert future owners of the proposed lots to the applicable FSR and height controls, it considers such instruments may not apply pursuant to section 26, Schedule 3 of the MD SEPP.

Council prefers that the MD SEPP be amended to change the land use zone, FSR and height controls. Alternatively, Sandon Point should be repealed from the MD SEPP and included in an amended LEP. Notwithstanding, if the application is approved to permit the use of a Section 88B instrument in those circumstances, Council considers it should be the authority to release, vary or modify any instrument (see Section 4 *Development standards* below).

The Department has considered the issues raised in the submissions in its assessment of the applications as detailed in Section 5 below.

#### **4. ASSESSMENT**

The Department considers that the key assessment issues are:

- strategic justification;
- subdivision design; and
- development standards.

#### *Strategic justification*

The applications seek to modify the concept plan to increase the total number of approved lots from a maximum of 180 single dwelling lots to a maximum of 196 dwelling lots; and to modify the project approval to permit a change in the project description from 167 single dwelling lots to 183 single dwelling lots (a change in the total number of lots from 181 lots to 197 lots). This involves a subdivision of approved Lot 607 into 16 single lots, being Lots 607 to 622 and requires the modification of Schedules 1 and 2 of the concept plan and project approval (as detailed at **Appendix A**).

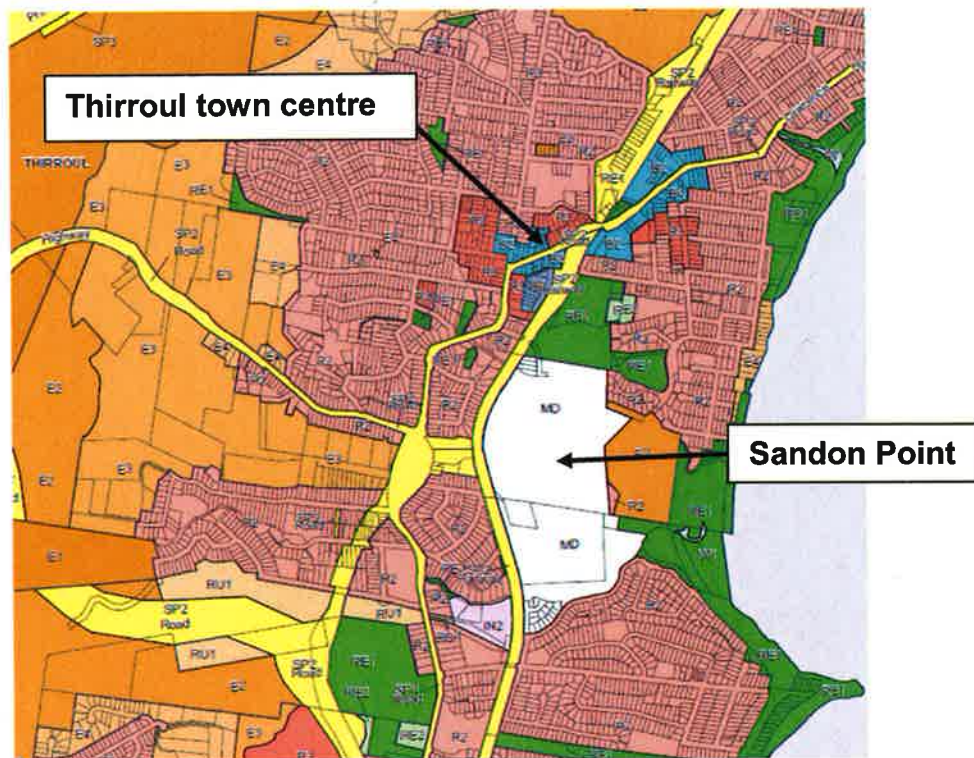
The MD SEPP zones the apartment super lot R3 Medium Density Residential. The applications do not seek a change to the underlying zoning of the lot which permits dwelling houses, multi dwelling housing, semi-detached dwellings, shop top housing and residential flat buildings with development consent. Rather, they seek a change to the approved pattern of subdivision in the northern area of the site to allow for the development of dwelling lots rather than residential flat buildings as currently approved. This would still provide an opportunity for apartments to be constructed on all or part of the super lot consistent with the zoning (subject to approval of a further modification to reverse the single residential subdivision into a super lot).

The Department considers that the proposed change raises strategic issues of housing mix and choice. The proponent's strategic justification for the applications and response to comments made in public submissions and by the Department is as follows:

- the site's medium density residential zoning permits dwelling houses and therefore low-density housing was contemplated when the site was zoned;
- notwithstanding the zoning, the proponent previously pursued development of the site for a residential flat building which was not supported by Council due to non-compliance with the number of storeys permitted by the concept plan; and
- the LEP zones nearby land around Thirroul railway station and town centre R3 and B2 which permit residential flat buildings and multi-unit and shop top housing. Those locations provide other opportunities for increased residential densities in and around the town centre and close to public transport.

**Department's Assessment:**

The proposed change in Lot 607 to single residential lots will be consistent with the subdivision pattern of the remainder of the approved residential subdivision (see **Figure 3**). It will also be consistent with the R2 low-density residential zoning of much of the surrounding area under the LEP (see **Figure 5**). The LEP zones land in closer proximity to the Thirroul town centre as R3 for medium density development consistent with higher densities close to the railway station. The applications will not change the medium density zoning of Lot 607 and will not preclude its future use for medium density housing subject to further approval of a subdivision layout to facilitate such development.



**Figure 5:** Wollongong LEP 2009 (Sandon Point site coloured white)

The Council considers that the MD SEPP should be amended to change the site's zoning, FSR and height controls or that the site be repealed from the MD SEPP and included in an amended LEP. Alternatively, Council supports the restriction of development on Lot 607 by an 88B instrument.

The Department considers that amendments to the MD SEPP are not required as the applications do not seek a change in the zoning or FSR and height controls for apartments or single dwellings. The Department acknowledges that the modifications will provide flexibility in the delivery of housing allowing the proponent to be more responsive to changing market demands for housing types. However, future development on the proposed 16 residential lots will still be subject to future DAs or the NSW Housing Code.

The applications do not alter the basis of the Department's original assessment or materially alter the impacts of the approved development. Accordingly, the Department is satisfied with this modification request and recommends the applications be approved.

***Subdivision design***

The application seeks to provide four of the proposed 16 residential lots (Lots 619 to 622) with widths less than the minimum 15 m required by the DCP, including a minimum 10 m width for Lot 620. The Department requested additional justification for this departure,



including indicative building envelopes demonstrating that future residential development could comply with the DCP.

The RTS includes indicative building envelopes (**Figure 6**) demonstrating that the proposed subdivision design will provide functional private open space and orientation suitable for satisfactory solar access. The RTS includes a zero lot line to proposed Lot 620 and an associated easement on proposed Lot 619 to allow for maintenance access (**Figure 4**). This involves a modification to Condition C8 of the project approval to require a 900 mm wide easement on the title of proposed Lot 619 (see **Appendix A and Appendix D**).

The Department requested clarification of the potential building envelope for proposed Lot 610 given the affectation of part of its frontage by uncontrolled fill, easements and restrictions on use (**Figure 7**). The RTS stated that Lot 610 has a width of over 20 m, at least 13 m of which is available and clear of uncontrolled fill along the northern boundary of Lot 607. The extent of uncontrolled fill represents a small proportion and depth of each proposed lot leaving adequate room for the siting of a dwelling house. The uncontrolled fill area is most likely to be at the rear gardens of each dwelling. The proponent's expert geotechnical investigation notes that the earthworks undertaken as part of the project approval have been completed in stage 6 of the residential subdivision and have been carried out in accordance with the approved plans. The land is considered suitable for subdivision into residential lots.

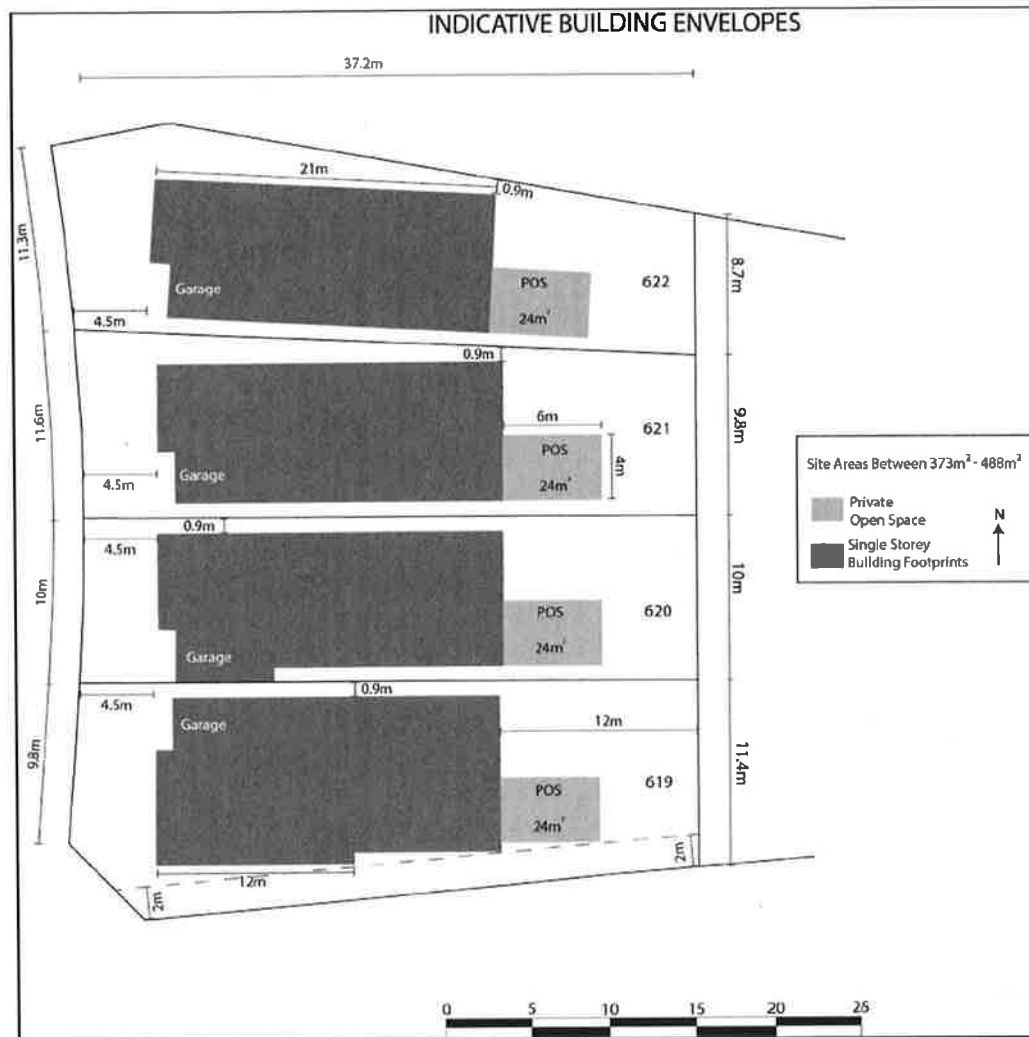
Notwithstanding the expert's conclusion that the earthworks have been completed in accordance with the approved plans, the RTS includes a requirement for a Section 88B instrument relating to uncontrolled fill. Condition C16(f) already contains a requirement for restricted building zones and can be slightly modified to deal with the geotechnical constraints on the approved Lot 607 (proposed Lots 610 to 618). No landslide or instability constraints have been identified and the site is considered suitable for development of dwellings from a geotechnical point of view.

#### Department's Assessment:

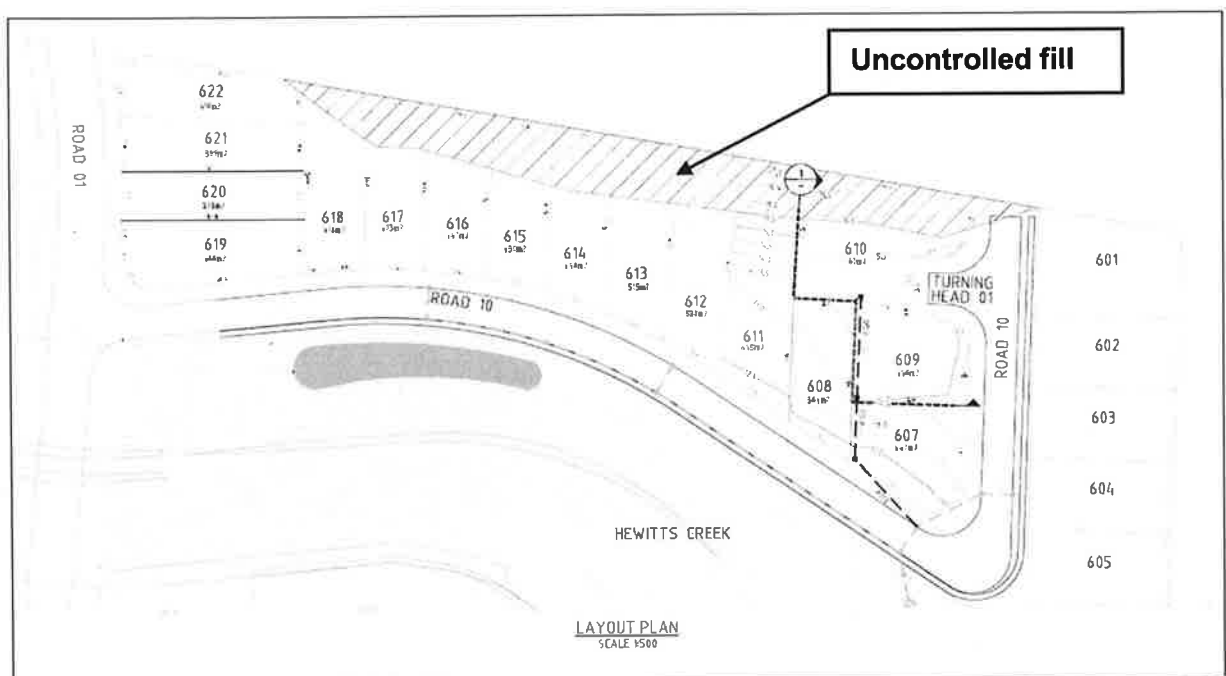
The Council did not make any comments regarding the proposed subdivision design, lot layout or frontage. The applications propose lots of suitable size and orientation to enable development for single residential development with satisfactory residential amenity.

The proponent's geotechnical expert concluded that the uncontrolled fill (at the rear of the approved super lot as shown in **Figure 7**) represents only a small proportion and depth of each lot providing adequate room for the siting of a dwelling house. The expert advised that no landslide or stability constraints have been identified and concluded that the land is suitable for subdivision into residential lots from a geotechnical point of view.

The Department considers that the proposed subdivision design provides for future dwelling houses generally consistent with the DCP. The recommended Section 88B Instrument for restricted building zones on Lots 610 to 618 will make it clear that a restriction deals with subsurface drainage or geotechnical constraints relating to uncontrolled fill in stage 6. Accordingly, the Department is satisfied with the proposed subdivision design.



**Figure 6:** Indicative building envelopes



**Figure 7:** Bulk Earthworks and Stormwater Layout - extent of uncontrolled fill (shown by hatching)

### *Development standards*

The applications seek to require Section 88B Instruments to be registered on the titles of the proposed 16 residential in order to restrict the FSR and building height on those lots, and to permit an access and maintenance easement over Lot 619 to benefit Lot 620 (as discussed above). The instruments would alert future purchasers to the restrictions without the need to refer to the approvals or the MD SEPP (in the case of the FSR and building height).

Alternatively, the proponent recommends that if the applications are not approved to require Section 88B instruments for FSR and building height, that Council be required to include a suitable notation on Section 149 planning certificates for proposed Lots 607 to 622.

### Department's Assessment:

Condition A1(2) of the project approval approved a subdivision for 167 single dwelling lots with an FSR of 0.5:1. Condition A1(3) approved the creation of one super lot for apartments with an FSR of 1.35:1, up to a maximum of 1.8:1 for design excellence as per the concept plan.

The approvals do not specify a maximum building height. However, the MD SEPP sets a maximum building height of 9 m for the low density residential zone across the entire site and 11 m for the medium density residential zone (the apartment super lot).

As the applications do not propose to change the zoning of the apartment super lot, residential flat buildings will remain permissible and the 1.35:1 FSR and 11 m height controls will continue to apply. However, the proposed modification of Condition A4(2) Built Form Controls (see **Appendix A**) will apply to all single dwelling lots on the apartment super lot and introduce a maximum building height of 9 m for single dwellings on the apartment super lot. This is intended to clarify that whilst apartments remain permissible on the approved super lot, the proposed single dwelling lots will not be subject to the controls intended for residential flat buildings. It will also be consistent with the current 9 m maximum building height for the low density residential zone in the MD SEPP which applies to the entire site, excluding the apartment super lot.

The Department recommends that Term of Approval A4 Built Form Controls of the concept plan be modified to introduce a maximum building height of 9 m for all single dwellings on the apartment super lot. This will be consistent with the 9 m maximum building height for the low density residential zone in the MD SEPP applicable to the remainder of the site. It will also acknowledge that whilst the approved apartment super lot (Lot 607) remains within a medium density residential zone (and subject to the relevant FSR for apartments), any future single dwellings on the proposed lots will be subject to the MD SEPP's low density residential building height control (in addition to the approved maximum FSR control for single dwellings). Accordingly, the Department recommends the requirements be modified as shown in bold below:

#### *A4 Built Form Controls*

- (1) The Concept Plan is modified by establishing the built form controls described below:
- (2) On Stockland Lands:
  - a) All single dwellings on **the approved single dwelling lots (referred to in Condition A2(1)(a) to Schedule 1)** shall have a maximum FSR of 0.5:1 **and a maximum building height of 9 metres.**

The Department has considered the provisions of the MD SEPP and the concept plan Terms of Approval. It is the Department's position that the proposed modification to require a Section 88B instrument is unnecessary as the concept plan prevails over the MD SEPP to the extent of any inconsistency in terms of the maximum FSR and height controls. In addition, Schedule 3, Part 24, clause 26 of the MD SEPP provides that a covenant, agreement or other similar instrument that restricts the carrying out of development does not apply to the extent necessary to serve that purpose. A Section 88B Instrument would be unnecessary because it would simply reflect the approved development controls of the

concept plan. Without it, the concept plan would still prevail over the more generous controls in the MD SEPP. The existing planning framework and approvals provide the planning context and accordingly, the Department recommends the concept plan not be modified by adding a new Condition B7.

The proponent suggested an alternative to a Section 88B Instrument: a suitable notation on Section 149 planning certificates for the proposed 16 single lots. Section 149(5) of the Act provides that "[A] council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it may be aware."

Whilst this is not a matter that can be dealt with in the modified concept approval, the Department agrees that there may be merit in including a reference to the modified concept approval in Council's Section 149 certificates. This would provide further clarity of the applicable planning controls to any future purchasers of these single lots. This is a matter that the Department intends to raise separately with Council.

In respect of the proposed modification of Condition C8, to require an access and maintenance easement on proposed Lot 619 to benefit proposed Lot 620, the Department recommends the condition be modified accordingly by adding subclause (I), as shown in bold below:

*Condition C8 Section 88B/E Instruments*

The submission of a Final Section 88B (Conveyancing Act 1919) instrument to the PCA, which incorporates (but is not necessarily to) the following restrictions, easements and covenants, where applicable:

a).....

**I) A 900 mm wide easement on the title of proposed Lot 619 for access and maintenance to benefit proposed Lot 620 to allow for a zero lot line along the southern boundary of proposed Lot 620.**

## 5. CONCLUSION

The purpose of the applications is to seek changes to the approved use and subdivision of the site to permit an additional 16 single residential lots in lieu of an apartment super lot. The proposed modifications fall within the scope of section 75W of the Act and do not alter the original assessment as to the site's suitability for the approved development.

In assessing the applications, the Department has reviewed the proponent's applications and RTS, and submissions made by Council and the public. The key issues for the Department's assessment are the strategic justification for the modification, subdivision design and development standards.

The Department supports the strategic justification for the proposed increase in the total number of residential lots on the site from 180 to 196. The medium density zoning and development controls of the approved apartment super lot will not change and residential flat buildings will remain a permissible use on that part of the site. In addition, there is suitably zoned land nearby within the Thirroul town centre which permits a range of medium density housing forms and is close to Thirroul railway station.

The proposed subdivision design demonstrates future development on the additional 16 lots can be achieved generally in accordance with the DCP. The development standards for single dwellings under the concept plan, project approval, and for the low density residential zone under the MD SEPP will apply to future single dwelling development on the proposed lots. As such, limited modifications to the existing concept plan and project approval instruments are needed.



The proposed modifications will add flexibility to the approvals to meet market conditions and changing demands for housing types. Overall, the Department considers that the applications do not alter its original assessment of the development or change the nature of any environmental impacts. Therefore, the Department recommends approval of the applications. The applications can be determined by the Director, Industry, Key Sites and Social Projects, as it satisfies the Minister's delegation.

## 6. RECOMMENDATION

It is recommended that the Director, Industry, Key Sites and Social Projects, as the delegate of the Minister for Planning, under section 75W of the Act, approve the proposed modifications (MOD 4) to MP06\_0094 and MP07\_0032, as set out in the recommended notices of modification for the Concept Plan and the Project Approval (**Appendix D**).

  
Chris Ritchie 25/7/14

**Manager**  
**Industry, Key Sites & Social Projects**

 25/7/14  
Dan Keary  
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J Flanagan  
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## APPENDIX A APPLICATION

See the Department's website at <http://majorprojects.planning.nsw.gov.au/page/>

**Table 1: Application details as per the RTS**

<b>Concept Plan MP06_0094</b>		
Schedule & Term of Approval/Condition	Requirement (as proposed to be modified) indicated by <del>strikethrough</del> and <b>bold</b>	Proponent's justification
Schedule 1 - PART A – APPROVAL A2 Approval in detail	"Subject to modifications in Schedule 2 which may reduce the yield of development, concept approval is only to the following development: (1) On Stockland lands, (a) Subdivision into a maximum of 180 single dwelling lots ( <b>or a maximum 196 single dwelling lots if the apartment super lot is developed for dwelling houses, not apartments</b> );..." <del>(b) Subdivision to create 1 super lot to accommodate up to 80 apartments;..."</del>	This will allow for subdivision of the super lot into 16 lots while retaining the opportunity for apartments to be constructed on all or part of the site consistent with its R3 zoning.  A2(b) needs to be deleted to ensure the concept plan is consistent with the project approval, as proposed to be modified (at Condition A1(3), see below).
Schedule 2 PART A DEPARTMENT OF PLANNING'S MODIFICATIONS Condition A4 Built Form Controls	"(1) The Concept Plan is modified by establishing the built form controls described below: (2) On Stockland Lands: (a) All single dwellings on <b>the approved single dwelling lots (referred to in Condition A2(1)(a) to Schedule 1)</b> shall have a maximum FSR of 0.5:1 <b>and maximum building height of 9 metres....</b> "	The proposed modification will: <ul style="list-style-type: none"> <li>clarify that dwellings on the proposed single dwelling lots are subject to an FSR of 0.5:1 and building height of 9 m consistent with the FSR and Height of Building maps under the MD SEPP;</li> <li>highlight that different controls apply to various housing types while apartments will still be permissible on Lot 607; and</li> <li>confirm that the proposed single dwelling lots are not subject to the (higher) controls intended for residential flat buildings (1.35:1 FSR and 11 m).</li> </ul>
Schedule 2 PART B - MODIFICATIONS TO THE STATEMENT OF COMMITMENTS	"Condition B7 Built Form Controls for dwelling lots If the first Stage 6 – Apartment site is subdivided into residential lots, then the proponent commits to creating s.88B instruments on the titles of those residential lots to restrict development other than residential flat buildings to a maximum FSR 0.5:1 and maximum building height of 9 m. Such s.88B instrument is to include Wollongong City Council as the entity that can vary, modify or revoke the instrument."	This will ensure future owners/homebuilders are aware of the FSR and building height controls applying to their land and remove the need for them to refer to the concept plan to ascertain the relevant controls.
<b>Project Approval MP07_0032</b>		
Schedule 2 PART A - ADMINISTRATIVE CONDITIONS Condition A1 Project Description	"Project approval is granted only to carry out the project described in detailed below: 1).... 2) Subdivision of <del>484</del> <b>197</b> allotments: <del>167</del> <b>183</b> single dwelling lots (FSR 0.5:1) and; 14 townhouse/terrace style house lots (FSR 0.1:1)..." <del>3) Creation of one super lot for apartments with an FSR 1.35:1 up to a maximum of 1.8:1 for design excellence as per Concept Plan Approval (MP06_0094);</del> 4)....;	This will reflect the proposed subdivision of Lot 607 into 16 single dwelling lots in place of an apartment super lot.

	5)....; 6)....; 7)....; 8)...."																					
Schedule 2 PART A - ADMINISTRATIVE CONDITIONS Condition A2 Staging	"The development is to be carried out over the proposed six (6) stages as follows: ....; (6) Stage 6 (a) creating the super lot for future apartment buildings residential lots in stage 6. " ....	As above.																				
Schedule 2 PART A - ADMINISTRATIVE CONDITIONS Condition A3 Project in Accordance with Plans and Documents	"The project, unless otherwise provided by the conditions of this approval, will be undertaken in accordance with the Environmental Assessment dated September 2007 prepared by Don Fox Planning Pty Ltd and all appendices except where varied by: ....; ....; The following drawings: <table><tr><th colspan="4">Drawings Prepared by Cardno Forbes Rigby Pty Ltd – Stage 06 McCauley's Beach</th></tr><tr><th>Drawing No.</th><th>Revision</th><th>Name of Plan</th><th>Date</th></tr><tr><td>SK09</td><td>P5</td><td>Proposed Stage 6 Layout Plan</td><td>30/01/14</td></tr><tr><td>SK11</td><td>1</td><td>Lot 607 Bulk Earthworks and Stormwater Layout</td><td>01/10/13</td></tr><tr><td>SK12</td><td>PO</td><td>Lot 607 Soil and Water Management Plan</td><td>14/09/13</td></tr></table>	Drawings Prepared by Cardno Forbes Rigby Pty Ltd – Stage 06 McCauley's Beach				Drawing No.	Revision	Name of Plan	Date	SK09	P5	Proposed Stage 6 Layout Plan	30/01/14	SK11	1	Lot 607 Bulk Earthworks and Stormwater Layout	01/10/13	SK12	PO	Lot 607 Soil and Water Management Plan	14/09/13	So the approved plans and documents refer to the proposed modified subdivision pattern of Lot 607.
Drawings Prepared by Cardno Forbes Rigby Pty Ltd – Stage 06 McCauley's Beach																						
Drawing No.	Revision	Name of Plan	Date																			
SK09	P5	Proposed Stage 6 Layout Plan	30/01/14																			
SK11	1	Lot 607 Bulk Earthworks and Stormwater Layout	01/10/13																			
SK12	PO	Lot 607 Soil and Water Management Plan	14/09/13																			
Schedule 2 PART B - PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE Condition C8 Section 88B/E Instruments	"The submission of a Final Section 88B (Conveyancing Act 1919) Instrument to the PCA, which incorporates (but is not necessarily limited to) the following restrictions, easements and covenants, where applicable: a)....; ....; <b>l) A restriction as to user on the title of proposed lots 607-622 as indicated on Drawing SK11 requiring future dwelling houses to comply with the following built form controls:</b> <b>(i) A maximum floor space ratio of 0.5:1; and</b> <b>(ii) A maximum height of building of 9 m.</b> <b>The definitions of floor space ratio and height of building are as per SEPP (Major Development) 2005.</b> <b>m) A 900 mm wide easement on the title of proposed Lot 619 for access and maintenance to benefit proposed Lot 620 to allow for a zero lot line along the southern boundary of proposed Lot 620.</b>	<b>FSR and height controls:</b> Condition C8 includes a range of Section 88B/E instruments required to be notated on the created land titles. This condition and others were imposed by the Department. The modification seeks to add further restrictions-as-to-user on the titles of the proposed lots to set a maximum FSR and building height. Those further restrictions could be successfully implemented as have the other restrictions for all of the other lots created by the approved subdivision.  This will complement the proposed modification to Condition A4 of the concept plan (see above) which will set a maximum FSR and building height for future dwellings on the proposed lots.  If the modification is not approved, the Department should advise Council to include a suitable notation on Section 149 planning certificates to communicate relevant matters affecting the lots.																				

		<p><b>Easement for access and maintenance:</b></p> <p>This is not readily addressed through a notation on a Section 149 planning certificate and is more appropriately addressed through a Section 88B instrument. This will be consistent with existing Condition C8(f) (which requires a restriction-as-to-user to define a restricted building zone).</p>
<p>Schedule 2 Part C PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE Condition C16 FINAL GEOTECHNICAL REPORT – SUBDIVISION CERTIFICATE</p>	<p>"The submission of a final geotechnical report by a suitably qualified and experienced geotechnical consultant to the PCA shall occur prior to the issue of a Subdivision Certificate. The report shall include, but is not necessarily limited to:</p> <ul style="list-style-type: none"> <li>a)...;</li> <li>b)...;</li> <li>c)...;</li> <li>d)...;</li> <li>e)...;</li> <li>f) The exact extent of any restricted building zones or any other restrictions affecting any of the allotments. Particular attention shall be paid to the location of subsurface drainage lines and <b>geotechnical constraints associated with the uncontrolled fill on Lot 607 DP 1156738</b>, which shall be burdened with a restriction-as-to-user within the Section 88B Instrument;</li> <li>g)...."</li> </ul>	<p>The proposed modification will make it clear that Section 88B instruments relate to uncontrolled fill as well as subsurface drainage lines. The extent of uncontrolled fill represents a small proportion and depth of each proposed lot leaving adequate room for the siting of a dwelling house. The uncontrolled fill area is most likely to be the rear gardens of each dwelling. The land is considered suitable for subdivision into residential lots despite this constraint.</p> <p>Condition C16(f) already contains a requirement for restricted building zones and can be slightly modified to deal with the geotechnical constraints on Lot 607. No landslip or instability constraints have been identified and the site is considered suitable for development of dwellings from a geotechnical point of view.</p>



## **APPENDIX B SUBMISSIONS**

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## **APPENDIX C    CONCEPT PLAN MP06\_0094 & PROJECT APPROVAL MP07\_0032**

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