

# Statement of Environmental Effects

for

proposed Strata Title Subdivision of an  
existing multi dwelling development

at

Lot 1 DP619081  
41 Tyndall Street  
Mittagong

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prepared by



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# Introduction

This Statement of Environmental Effects has been prepared under instruction from the owner of 41 Tyndall Street, Mittagong.

Its purpose is to support a Development Application for the Strata Title Subdivision of an existing attached dual occupancy development. The Strata Title scheme will provide each dwelling with separate title with common property of driveways and some site landscaping areas.

The Development Application has been lodged under the provisions of Section 4.12 of the *Environmental Planning and Assessment Act 1979*. It is not State significant or designated development.

Because the site is identified as bushfire prone land, the subdivision does require a Bushfire Safety Authority under the provisions of s100B of the *Rural Fire Act 1997*.

It has been lodged pursuant to the provisions of *Wingecarribee Local Environmental Plan 2010* under which a strata title subdivision is considered to be a permissible form of development with consent.

Due to the nature, scale and value of the proposal, it can be considered as local development and Wingecarribee Shire Council is the consent authority.

In addition to this Statement of Environmental Effects, the Development Application is supported by:

- Proposed Plan of Strata Subdivision prepared by Richard Cox Surveyors
- Building Report prepared by David McKinnon Building Services
- Bushfire Assessment Report prepared by Australian Bushfire Solutions

This Statement describes the site and the proposed development. It provides an assessment of the development against the relevant environmental planning instrument, *Wingecarribee Local Environmental Plan 2010* and has considered the relevant provisions of the Mittagong Township Development Control Plan.

The development is permissible with consent. In fact the strata title subdivision of the premises was previously approved by Wingecarribee Shire Council under DA03/1098 that was issued on 29 October 2003. This consent was not enacted, hence the requirement to lodge afresh.

The proposal is compliant with all key planning controls and gives rise to no adverse off site impacts. It represents a residential development of suitable type, in a locality that has been identified for this purpose. It is compatible with the prevailing development pattern within the locality.

# Subject Site

The site is known as 41 Tyndall Street, Mittagong.

The site comprises a single land parcel with the legal property descriptions of Lot 1 DP619081.

The site is located on the northern side of Tyndall Street, between Oxford Street to the east and Oxley Drive to the west. It is approximately 500 metres due south of the Mittagong Railway Station.

Tyndall Street is within an established residential precinct that exhibits a range of housing types with some medium density developments of varying scale, character and age although the predominant form of housing remains as single dwelling.

The site has an area of approximately 1660 square metres. It has frontage to Tyndall Street of approximately 61 metres and a depth of approximately 27 metres.

The site sits on the northern (low) side of Tyndall Street.

Situated upon the site is a small multi dwelling development comprising one building of two dwellings and one building of three dwellings. There is on site car parking in a car port structure that separates the two residential buildings.

There is some site landscaping within setback areas and within the small individual courtyards.

It is an established element of the streetscape and its scale and character is similar to other adjoining residential development. There are no significant trees or vegetation on the site.

Site access is provided by a driveway off Tyndall Street to the central parking area.

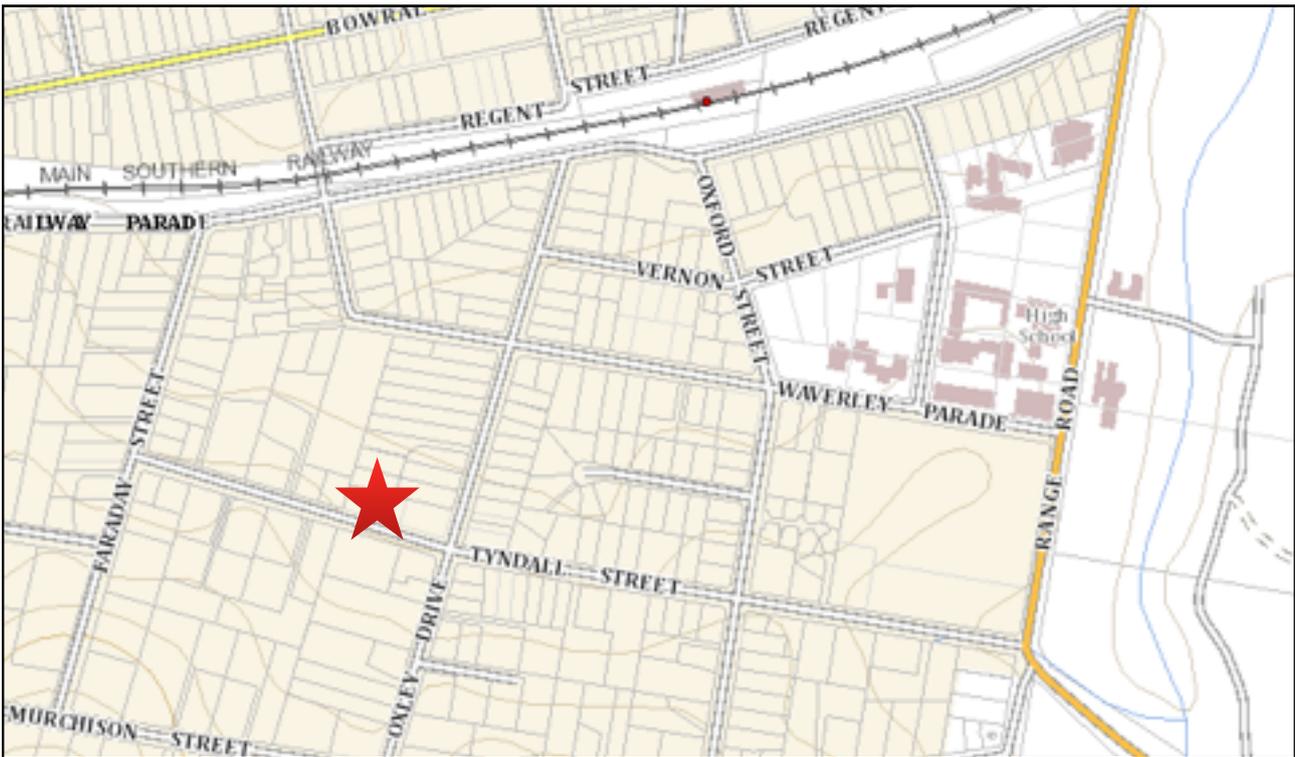


Figure 1: Site locality map (Source Sixmaps)



Figure 2: Aerial view of site showing context of surrounding development (Source Googlemaps)



Figures 3 and 4: Street views of existing multi dwelling development (Source: Googlemaps)

# Description of Proposed Development

The proposed development involves the Strata Title Subdivision of the existing multi dwelling development.

A proposed plan of subdivision has been prepared by Richard Cox Surveyor and submitted in support of the Development Application.

Each dwelling will receive some designated landscaped private open space with direct access from the dwellings internal living area, ensuring the residential amenity of each dwelling. There are some common garden areas identified.

There will be no change to the existing driveways, parking or vehicular circulation around the site. Each of the five dwellings is allocated a car parking space within the existing car port structure. In this respect, the development proposes no change.

In terms of building compliance, a building report has been prepared by David McKinnon Building Services. The purpose of this report was to provide confirmation that previous work undertaken on the existing buildings satisfies Part 3.7.1 of the Building Code of Australia in ensuring fire separating walls between the existing dwellings within the buildings.

It is noted that Council has previously approved the Strata Title subdivision of the existing development on this site. Refer to DA03/1098, issued in October 2003. This approval considered the buildings compliance with the relevant building regulations.

Appropriate conditions of development consent can also be imposed that will ensure any required work is carried out prior to the issue of a Subdivision Certificate if required.

There is no work proposed in relation to the external appearance of the buildings.

There will be no change to the existing stormwater drainage on site.

# Assessment of Environmental Impacts

Every Development Application is subject to assessment under the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*. In relation to the matters that are of relevance to this particular development application, the following comments are provided:

## *Environmental Planning and Assessment Act 1979*

Section 1.5 of the *Environmental Planning and Assessment Act 1979* confirms that the subdivision of land is a form of development.

Section 6.2 confirms that *subdivision* includes the procuring of the registration of a strata subdivision plan.

## *Rural Fires Act 1997*

Notwithstanding its location within an established residential neighbourhood, the land is within an area mapped as bushfire prone land. Refer to Figure 6.

In many case, a subdivision of bushfire prone land is a trigger for a bushfire safety authority under Section 100B of the *Rural Fires Act 1997*.

However, in this case, the *Rural Fires Regulation 2013* is relevant, in particular Clause 45, which states the following:

### *45 Development excluded from requirements for bush fire safety authority*

(1) Pursuant to section 100B (5) (a1) of the Act, the following development is excluded from the operation of section 100B:

...

(b) strata subdivision of a building, but only if development consent for the erection of the building was granted in accordance with section 79BA of the *Environmental Planning and Assessment Act 1979*,

There is no suggestion that the existing multi development was not approved, however, in this case, a Bushfire Assessment Report has been prepared by Australian Bushfire Solutions to support the proposed subdivision. This report raise no issues of concern with recommendations relating to minor ember protection upgrades.



Figure 5: Extract from NSW Planning Portal showing extent of bushfire prone land

## ***the provisions of any environmental planning instrument***

### *State Environmental Planning Policy No 55 – Remediation of Land*

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. As the site constitutes a residential use and has a long history of residential use, this should allow Council to reach the conclusion that the land is not a site of possible contamination and therefore no further assessment of contamination is required in order to satisfy the requirements of the State policy.

### *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*

The State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 has been considered.

The State Policy requires the consent authority to be satisfied that the development would have a neutral or beneficial impact on water quality. With reference to the *Neutral or Beneficial Effect on Water Quality Assessment Guideline 2015*, the proposed development would fall within Module 5 (other development). The Guidelines state that:

*It is safe to assume that a development will have no identifiable potential impact on water quality if the development is unlikely to result in:*

- a concentration of flow of water*
- the impedance of flow of water*
- discharge of effluent, dust pollutants or stormwater, and*
- other matters considered to result in a water quality impact, such as the potential for contamination.*

*In this case, the neutral or beneficial effect test is satisfied and consent can be issued with respect to water quality, without further detailed assessment regardless of the development type.*

Council should be satisfied that the development will have no identifiable impact on water quality. Stormwater from the site will not be contaminated and can be collected and disposed of in the same manner as currently occurs. The dwellings upon the site are connected to the sewerage system. There will be no increase in hard surfaces or building footprints so there will be no change to the existing stormwater management regime.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

This State Policy aims to streamline the planning system by allowing certain development to proceed without the need for a Development Application.

This can extend to strata subdivision in certain circumstances. Refer to Part 6 Subdivisions Code, Division 1 Strata subdivision.

The limitation on the use of the State policy however is that to be complying development, the building the subject of the proposed strata subdivision must have been the subject of a consent no longer than 5 years ago. In this case, the subject dwellings are part of a development that is in the order of 45 years old. Therefore it is not possible to utilise the provisions of the State policy and a Development Application is necessary.

Wingecarribee Local Environmental Plan 2010

The relevant environmental planning instrument for consideration of this Development Application is the *Wingecarribee Local Environmental Plan 2010* (the WLEP2010).

The relevant provisions of the LEP are discussed as follows.

Part 2 Permitted or prohibited development

Clause 2.3 Zone objectives and land use table

The site is zoned R3 Medium Density Residential and in this zone 'multi dwelling housing' is permissible with development consent. The objectives of the zone are:

*To provide for the housing needs of the community within a medium density residential environment.*

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

*To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is consistent with the residential focused objectives of the zone. The development will enable ongoing management and ownership of an existing dual occupancy form of housing.

The existing development falls within the land use definition of attached dual occupancy. Development consent for that purpose was issued by Council.

The existing land use is a permissible form of development within the R3 Medium Density Residential zone.

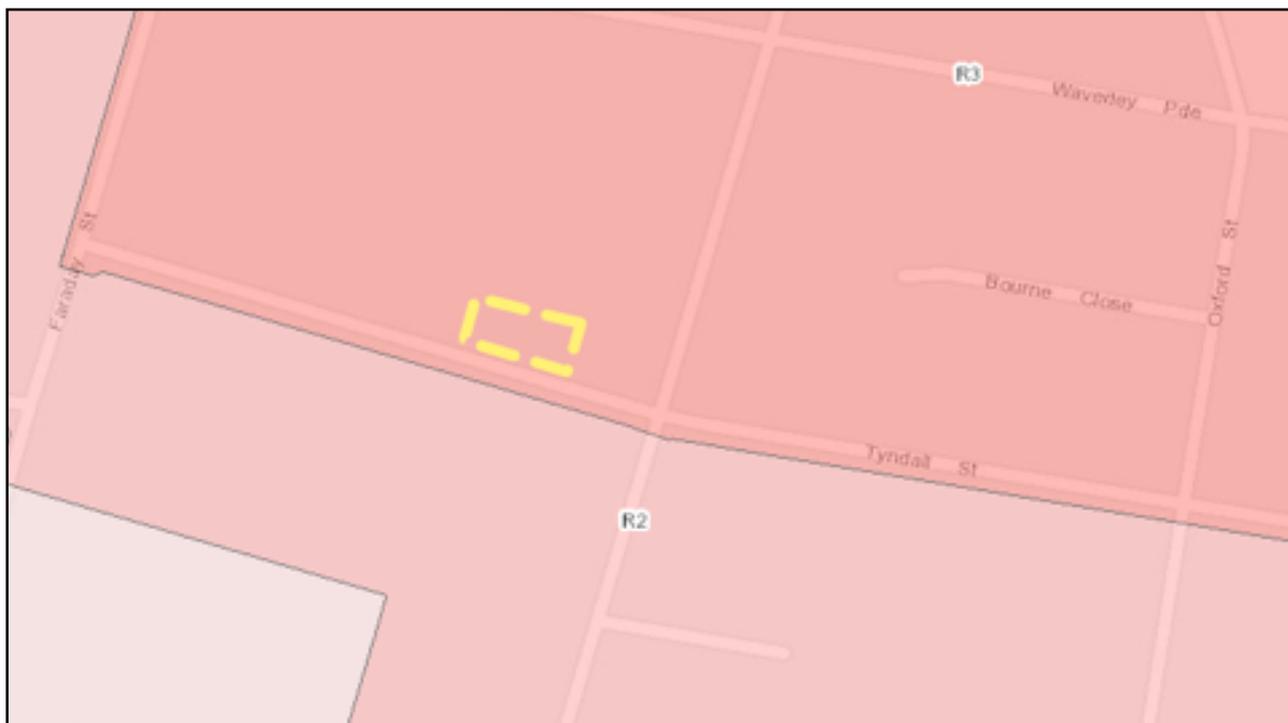


Figure 6: Extract from NSW Planning Portal showing site zoning

### Clause 2.6 Subdivision - consent requirements

The proposed development is subdivision and Clause 2.6 of WLEP2010 confirms that development consent is required for the subdivision of land. This includes a strata subdivision.

### Part 4 Principal development standards

#### Clause 4.1 Minimum subdivision lot size

With reference to the applicable Lot Size Map, the minimum subdivision lot size for the land under Clause 4.1 is 700sqm.

The proposed development does not contemplate a subdivision of the land into smaller land parcels.

Clause 4.1(4)(a) does permit, with development consent, the strata subdivision of development and states that the minimum lot size, in this case, 700sqm, does not apply to lots within a strata scheme. This development application seeks approval for strata subdivision and as a result there is no necessity to seek a formal variation pursuant to Clause 4.6 of WLEP2010 to the minimum lot size development standard.

Strata subdivision of dual occupancy and medium density developments is common place and should be expected in most cases subsequent to the development of the built form.

Strata subdivision is a management tool, not a way of enforcing or regulating the bulk, scale, density or character of development. Unlike the subdivision of land under a Torrens Title, strata subdivision follows development, it does not lead it, facilitate it or direct it. Strata subdivision is not a subdivision of land.

The WLEP2010 does not contain a floor space ratio or height of buildings control for the R3 Medium Density Residential zone and therefore Clauses 4.3 (height) and 4.4 (FSR) are not relevant.

#### Part 5 Miscellaneous provisions

There are no miscellaneous provisions that are relevant to the site or to this development proposal.

Clause 5.10 Heritage conservation is not relevant in this case. The site is not a listed item of heritage under Schedule 5 of the WLEP2010, nor is it adjoining or adjacent to any items. The site is not within or within proximity to, any Conservation Area.

#### Part 7 Additional local provisions

There are no particular provisions within Part 7 of WLEP2010 that relate to this site or to this type of development in this locality.

### ***the provisions of any development control plan***

The subject site falls within the area covered by the Mittagong Township Development Control Plan (the DCP).

The DCP has the general objectives of ensuring that development is of a high quality, contributes to the economic and urban function of Mittagong, respects heritage conservation where necessary and provides for improved residential amenity and diversity throughout Mittagong.

At a more specific level, the DCP identifies particular development types and identifies development controls/guidelines that development of this type should meet (Refer to Part C Section 2 Low Density Development).

It also identifies particular precincts within which development is anticipated and describes, where appropriate, some development outcomes that need to be secured. The subject site is within the Medium Density Precinct. (Refer to Part C Section 17).

In this case, it is not considered critical to undertake a comprehensive analysis of all of the DCP requirements that generally apply to low density or medium density development. In this case the test for the development is not compliance with the DCP - it is whether or not the strata subdivision results in a better outcome than exists now, measured in terms of management, safety and amenity.

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

The likely impacts of the development are positive.

In terms of the natural environment, the site does not contain any sensitive natural characteristics that would restrict or prohibit the development from proceeding. It is not within an environmentally sensitive zone or subject to critical environmental hazards such as flood or any significant threat of bushfire. As far as bushfire is a threat, this has been covered by the submitted bushfire assessment report.

In terms of the built environment, the existing development is of a scale that is suitable for the locality and for the size of the subject site. The built form is within the heights allowed by the DCP and is of similar scale to many of the residential buildings within Mittagong generally and with other residential developments in the proximate locality. There are no overshadowing, privacy or view loss issues. The original architectural form of the development is maintained and the building has a reasonable street presentation.

In terms of the social environment, the development should be viewed favourably because it will add to the diversity of housing stock available within the Shire, which is necessary to cater for the full range of demand from the resident population. Wingecarribee still has a very low proportion of attached or medium density housing and development such as this, which is well located, will assist in meeting a growing demand.

In terms of the economic environment, it must be viewed as a positive outcome that suitable and viable development can proceed within localities that the Council has earmarked for medium density. The development represents an economic use of land, a return on investment and stimulates the local economy in the short term through the construction process and in the long term through an increase in resident population.

## ***the suitability of the site for the development***

The site is suitable for the proposed strata subdivision. Multi dwelling housing development is a permissible and encouraged form of development within this locality, being a locality that has been specifically zoned for a range of higher density residential options. It is well located to the multitude of services and facilities of Mittagong town centre.

The site contains no significant environmental features that could be described as being sensitive to development and the opportunity to strata title the existing development will lead to an improved presentation and amenity for the dwellings on the site.

On all measures, the site is capable of providing an attractive residential location for future residents without diminishing the amenity currently enjoyed by existing residents.

The submitted building assessment report demonstrates that the existing dwellings are appropriately fire separated, compliant with the relevant building code requirements.

The proposed plan of strata subdivision demonstrates that each dwelling has access to car parking entitlement and open space.

## ***any submissions made in accordance with this Act or the regulations***

It is understood that the Development Application will be notified in accordance with the Council's standard procedures. Any issues arising from the public exhibition process will be addressed as necessary.

The application has taken particular care in addressing design issues that were identified as unacceptable in the previous scheme.

## ***the public interest***

This Development Application is not considered to be of a type, or of such significance, that gives rise to particular issues of public interest.

The development as proposed is consistent with the planning regime for the land and the impacts arising are negligible. The public interest, as described in Council's planning controls for the site, is being met through the development achieving the planning objectives set by Council.

# Conclusion

The proposed strata subdivision of an existing multi dwelling development at 41 Tyndall Street, Mittagong, represents an appropriate use of land that has been identified by Council in its planning instrument as being a suitable location for an increased density of residential development.

The strata subdivision is permissible with consent and does not breach any provisions of the *Wingecarribee Local Environmental Plan 2010*.

The proposed strata subdivision should be judged against its impact upon the amenity and safety of the existing dwellings. When this is done, the conclusion should be that the development is positive.

The Strata Title subdivision allows for the management of each dwelling as a separate entity if desired by the owner of the site.

The strata subdivision of this development has previously been approved by Council but that consent was never instigated, therefore making this fresh application necessary. From a planning perspective, nothing has changed that would now act to restrict or prohibit the application, nor lead Council to a different conclusion.

The proposal is suitable and worthy of support and can be recommended for approval with appropriate conditions of consent.