
COUNCIL ASSESSMENT REPORT

Panel Reference	2017HCC027
DA Number	1029/2017
LGA	Central Coast Council
Proposed Development	61 lot subdivision (56 small lot housing development, 2 x battle axe lots for the intent of 2 x dual occupancies), 3 residue lots, road construction and associated works in 2 stages.
Street Address	27-61 Nikko Road, Warnervale
Applicant/Owner	Kingston Property Fund No2 Pty Ltd
Date of DA Lodgement	18/08/2017 Amended plans received on 06/03/18, 15/08/18, 8/10/18, 22/05/19, 16/09/19
Number of Submissions	18 submissions received
Regional Development Criteria (Schedule 4A of the Act)	Development with a capital investment over \$20 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none">• State Environmental Planning Policy (State and Regional Development) 2011• State Environmental Planning Policy 55 – Remediation of Land• State Environmental Planning Policy (Infrastructure) 2007• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004• State Environmental Planning Policy 44 – Koala Habitat Protection• Wyong Local Environmental Plan 2013• Wyong Shire Development Control Plan 2013<ul style="list-style-type: none">- Chapter 1.2 – Notification of Development Proposals- Chapter 2.1 – Dwelling House and Ancillary Structures- Chapter 2.3 – Dual Occupancy- Chapter 2.11 – Parking and Access- Chapter 3.1 – Site Waste Management- Chapter 3.6 – Tree and Vegetation Management- Part 4 - Subdivision- Chapter 6.5 – Warnervale South
Is a Clause 4.6 variation request required?	No
Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Yes - Satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure

Have draft conditions been provided to the applicant for comment? Have any comments been considered by council in the assessment report?	Yes
List all documents submitted with this report for the Panel's consideration	<p>Attachments:</p> <ol style="list-style-type: none"> 1. Architectural – D13662288, D13662291 2. Landscape plans - D13696840 3. Subdivision plans – D13662299 4. Draft Conditions of consent 5. Part 4 Subdivision compliance table 6. DCP Chapter 2.1 compliance table 7. DCP Chapter 2.3 compliance table 8. Department of Planning Certificate of Satisfactory Arrangements <p>Supporting Documents:</p> <ul style="list-style-type: none"> • Statement of Environmental Effects - D13662315 • Waste Management Plan – D12800538 • Traffic Impact Assessment – D12800545, D13548883 • Noise Impact Assessment – D12800550 • Preliminary Site Investigation for Contamination – D12800546 • Civil engineering plans - D13662303 • Flora and Fauna Assessments – D12800549, D12851104, D13188566, D13188567, D13252034, D13293589, D13662305 • Vegetation Management plan – D13188564 • Railway level Crossing Impact report – D13353897 • Retaining wall sketches – D13662308 • Amended Solar Access Report – D13662293 • Equinox Shadow Diagrams – D13662295 • Driveway texture reference – D13662311
Recommendation	Deferred commencement subject to conditions
Report prepared by	<p>Ross Edwards – Senior Development Planner</p> <p>Emily Goodworth – Section Manager – Development Assessment</p> <p>Andrew Roach – Unit Manager - Development Assessment</p>
Report date	27 November 2019

CENTRAL COAST COUNCIL

Development Application Assessment Report

For The Hunter Central Coast Regional Planning Panel (RPP)

Summary

The application proposes a 61 lot subdivision (56 small lot housing development, 2 x battle axe lots for the intent of 2 x dual occupancies), 3 residue lots, road construction and associated works in 2 stages at 27-61 Nikko Road, Warnervale NSW 2259.

The application has been assessed having regard to the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements.

The NSW Rural Fire Service, Natural Resource Access Regulator, Sydney Trains and the Roads and Maritime Services have no objection to the proposal subject to conditions of consent.

The proposal is supported by Council's assessment officers.

There were 18 objections to the proposal submitted during the consultation process. The objections raised a number of issues in relation to ecology, traffic, overdevelopment, car parking, servicing and character. These matters have been considered in the assessment of the application.

RECOMMENDATION

- 1. The Hunter and Central Coast Regional Planning Panel as consent authority grant Deferred Commencement Consent to Development Application No 1029/2017 for a 63 lot subdivision (56 small lot housing development, 2 x dual occupancies), 3 residue lots, road construction and associated works in 2 stages on Lot: 1 DP: 349727, 27-61 Nikko Road, Warnervale subject to the conditions attached.***
- 2. That Council advise those who made written submissions of the decision.***
- 3. The those Government Authorities who made written submissions be notified of the Hunter and Central Coast Regional Planning Panel Decision.***

Precis

Delegation level Reason for Delegation Level	Regional Planning Panel Development over \$20 million lodged prior to 1 March 2018
Property Lot & DP	Lot: 1 DP: 349727
Property Address	27-61 Nikko Road Warnervale
Site Area	35.97ha
Zoning	R2 Low Density Residential
Proposal	Stage Development – Stage 1: 63 lot subdivision which includes 56 small lots with associated dwellings and 2 battle- axe lots, 3 residue lots, road construction and associated works. Stage 2: Construction of a dual occupancy and Torrens title subdivision on two (2) of the battle-axe allotments (Lots 30 and 31 proposed under Stage 1 of the development).
Application Type	Development Application – Local
Application Lodged	18/08/2017
Applicant	Kingston Property Fund No2 Pty Ltd
Estimated Cost of Works	\$24,801,392
Advertised and Notification Periods	Exhibition periods closed on 3/10/17, 18/4/18, 3/12/18 & 28/6/19
Submissions	18
Disclosure of Political Donations & Gifts	No
Recommendation	Deferred Commencement, subject to conditions

Assessment

This application has been assessed using the heads of consideration specified under Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements, Council's policies and Section 10.7 Certificate details.

Summary of Non Compliance/Variations

Clause	4.1.2(a) – Corner lots minimum size
Standard	Corner lots should have a minimum area of 700m ² .
LEP/DCP	Wyong DCP 2013 – Part 4 – Subdivision
Departure basis	The minimum proposed corner lot size is 360m ² resulting in a 48.6% variation to the control.

Clause	Clause 2.4 - Road layout and hierarchy (Figure 4)
Standard	Road layout and hierarchy
DCP	Wyong DCP 2013 - Chapter 6.5 – Warnervale South
Departure basis	Variation (non numerical) to road layout due to the realignment of proposed Road 2 and 3 within the development.

Clause	Clause 2.10c – Water Cycle Management Requirements
Standard	Provision of water quality control structures required
DCP	Wyong DCP 2013 - Chapter 6.5 – Warnervale South
Departure basis	Variation (non numerical) as limited/secondary water quality provided in the form of a GPT.

Clause	Clause 2.10c – Retaining walls
Standard	Retaining walls are to be a maximum height of 1m
DCP	Wyong DCP 2013 - Chapter 2.1 – Dwelling houses, Secondary Dwellings and Ancillary Development
Departure basis	The proposed maximum height of the retaining structures is 1.2m resulting in 20% (0.2m) variation to the control.

THE SITE AND SURROUNDING DEVELOPMENT

The subject site is commonly known as 27-61 Nikko Road, Warnervale and is legally described as Lot 1 in DP 349727.

The subject site consists of an area of 35,970m² and contains scattered vegetation and a dilapidated building. The site is located to the east of the Great Northern Railway line and south of Sparks Road. The existing development surrounding the site consists of residential dwellings and semi-rural properties.

The subject site is located within an urban release area of Warnervale South.



Figure 1 – Locality Plan

The Proposed Development

The application proposes a 61 lot subdivision (56 small lot housing development, 2 x battle axe lots for the intent of 2 x dual occupancies under the provision of Clause 4.1B of WLEP 2013), 3 residue lots, road construction and associated works in 2 stages. The proposed development is to be staged as follows:

Stage 1

- 61 lot subdivision which includes 56 small lots with associated dwellings, 2 x battle-axe lots, 3 residue lots (Lots 38, 53 and 54), road construction and associated works.

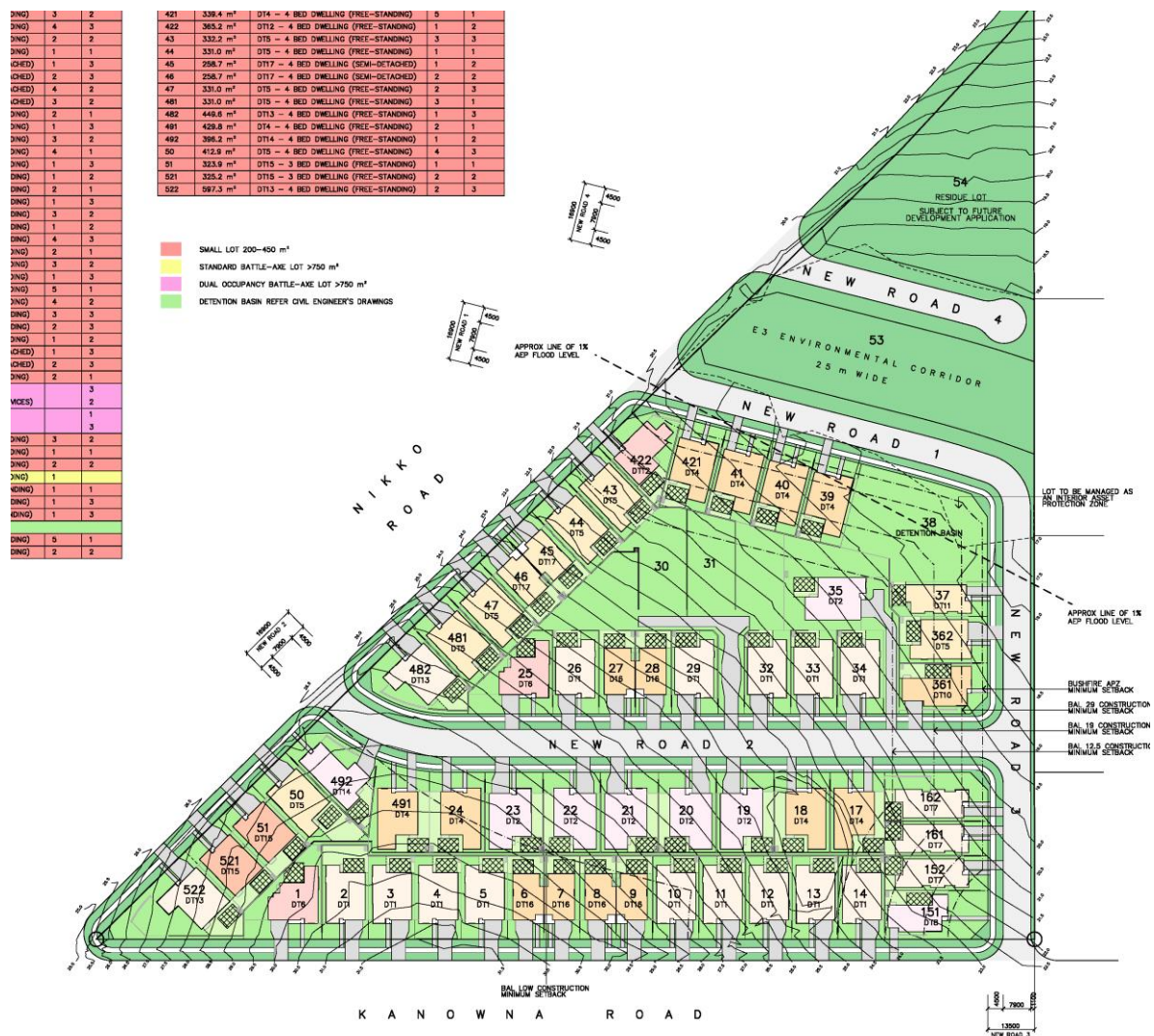


Figure 2: Proposed Stage 1 site plan

Stage 2

- The construction of a dual occupancy and Torrens title subdivision on two (2) of the battle-axe allotments (Lot 30 and 31 proposed under Stage 1 of the development).

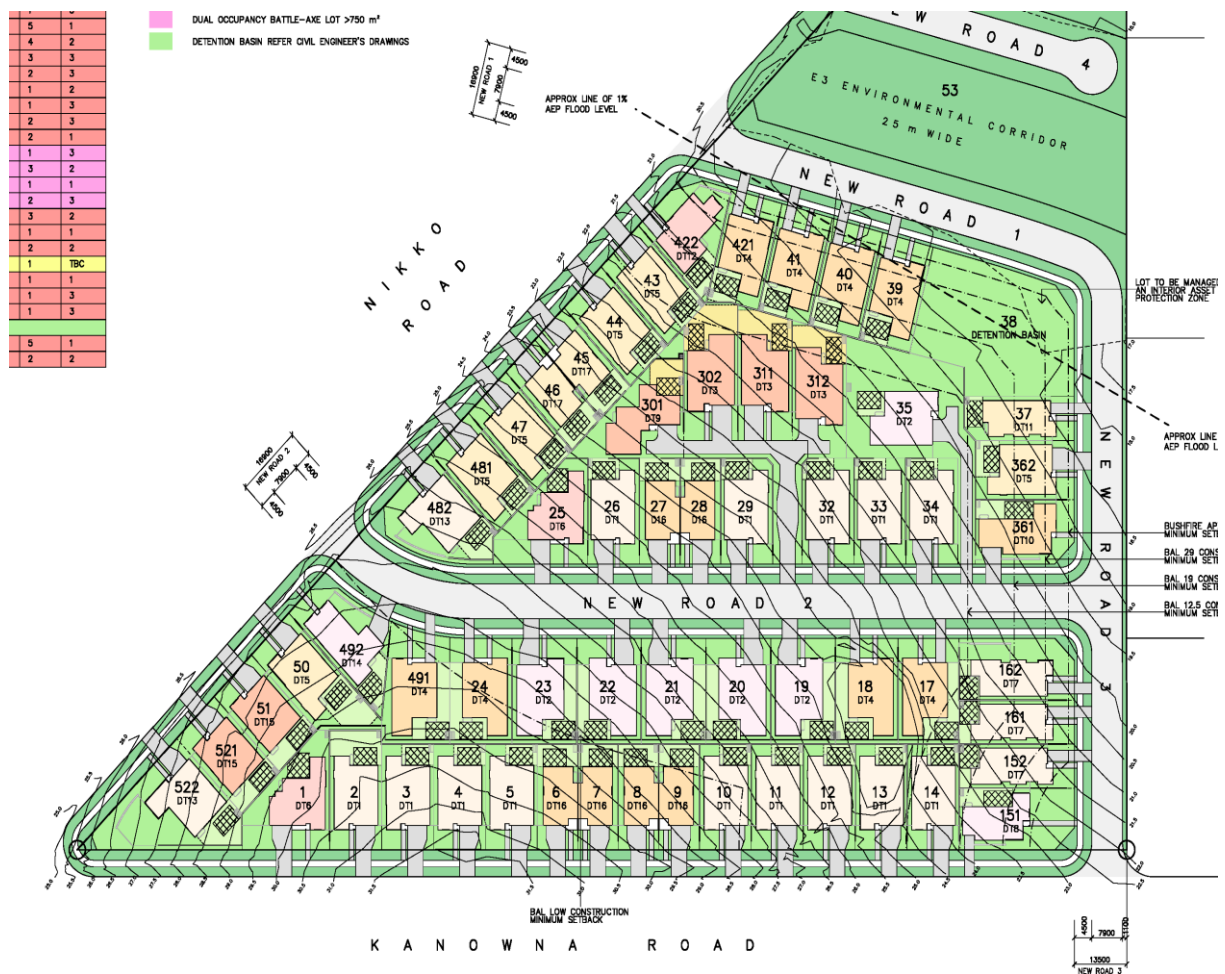


Figure 3: Proposed Stage 2 site plan

Current development Application

During the assessment process there have been a number of discussions between the Applicant and Council in regards to the overall design of the development in relation road layout design, dwelling sizes, access and private open space which resulted in the development being amended a number of times which are as follows:

- 70 Lot subdivision with 70 small lot houses
- 60 Lot subdivision with 60 small lot houses and road layout changes
- 66 Lot subdivision with 60 small lot houses and road layout changes
- 54 Lot subdivision with 41 small lot houses, seven (7) corner lots, three (3) battle-axe lots, three (3) residue lots, road layout changes and associated works as Stage1. Nine (9) x dual occupancies on the proposed the corner lots and two (2) of the battle-axe lots as stage 2.
- The applicant has amended the design of the development to provide the current design as follows:

-
- 61 Lot subdivision (56 small lot housing development, 2 x battle axe lots for the intent of 2 x dual occupancies under the provision of Clause 4.1B of WLEP 2013), 3 residue lots, road construction and associated works in 2 stages

The latest amendment to the plans were not required to be re-notified to the neighbouring sites in accordance with clause 2.10 (c) of Chapter 1.2 of the WDCP 2013. The only change to the proposal involved the changing of the description of the development which resulted in no additional impacts than what was originally proposed.

Any Submission Made in Accordance with this Act or Regulations

Section 4.15 (1)(d) of the EP&A Act 1979 requires consideration of any submissions received during notification of the proposal.

Public Submissions

The application was notified in accordance with WDCP 2013 – Chapter 1.2 Notification of Development Proposals with a total of 18 submissions during the notification periods as follows:

In the first period of notification (29/8/17 – 3/10/17) which was for a 70 Lot Subdivision with 70 small lot houses, a total of four submissions received raised the following issues:

- The proposal will put pressure on services such as with water and sewer.

Comment:

According to Council staff (Development Engineers), the existing water supply in the area can cater for the needs of the proposed development. The development is proposing a sewer line which will connect to the existing sewer infrastructure located on Virginia Road and can cater the proposed development.

- The proposal will create social issues

Comment:

The proposed development meets the objectives of the *Central Coast Regional Plan 2036*, as the intent of the development is to provide an affordable choice of housing to suit the needs and lifestyles of the residents while sustaining the natural environment.

- The proposed development will impact housing prices in the area.

Comment:

Council has no evidence to support this claim. This matter is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. It is however development that provides a greater supply of new housing and choice within the region.

- The proposed loss of vegetation will impact on the ecology in the area.

Comment:

Flora and Fauna Assessment Reports dated 7/8/17, 13/10/17, 5/3/18, 21/3/18, 11/6/18, 30/7/18 and 12/9/19 including a Vegetation Management Plan dated 27/2/18 prepared by Enviro Ecology were provided with the application to demonstrate that the proposed development will not have a significant impact on the ecology within the area. Council staff are satisfied with the report and plans and agrees there will be no significant impact on the ecology within the area. It is conditioned that a number of native species be included in the landscape plantings throughout the development site.

- The location and size of the private open space associated with the dwellings are unsuitable.

Comment:

The size and location of the private open space associated with the proposed dwellings comply with the requirements of Chapters 2.1 and 2.3 of the WDCP 2013 which is a minimum of 24m² for dwellings and a minimum of 45m² for dual occupancies.

- Footpaths are to be provided along Nikko Road and surrounding roads.

Comment:

The development is proposing footpaths along the frontage of Nikko Road and Kanowna Road and through the development.

- Nikko Road should be widened as part of the proposed development.

Comment:

The existing road width of Nikko Road was assessed by Council's staff (Development Engineer) and the road width was determined to be suitable for two cars to pass therefore Nikko Road is not required to be widened.

- There should be regular maintenance of the grass along the railway line and on the corner of Wyreema Road and Nikko Road.

Comment:

The maintenance of the grassland besides the railway line and on the corner of Wyreema Road and Nikko Road is not required to be undertaken by the developer as these areas do not form part of the development site.

- The proposed development is not consistent with the established development in the area.

Comment:

The proposed development is within the Warnervale South urban release area and is of a form that is consistent with strategic and future planning for the area to provide more residential housing. The site is considered to be suitable for the nature, scale and type of development proposed.

-
- The proposed development will create traffic impacts in the area.

Comment:

Traffic Impact Assessment Reports dated 3/8/17 and 21/05/19 and a Railway level Crossing Impact Report dated 21/05/19 prepared by Intersect Traffic were provided with the application to demonstrate that the proposed development will not have a significant impact on traffic within the area. Council's Staff (Development Engineer and Traffic and Transportation Engineer) reviewed the reports and were satisfied that the proposed development will not have a detrimental impact on traffic in the area.

- The proposed development will create amenity issues to the existing properties within the area.

Comment:

The proposed development site is separated from the neighbouring residential dwellings opposite the site by Kanowna Road. The proposed physical distance and separation will address potential visual privacy issues between the development and the private open spaces, bedrooms and living rooms associated with the neighbouring dwellings. The proposed dwellings are compliant with the controls of Chapter 2.1 and 2.3 of WDCP 2013 (in relation to the dual occupancies within the development) in terms of setbacks, building heights, fencing, landscaping etc which provide measures in maintaining the amenity of the surrounding residents.

- The proposed infill development is an overdevelopment of the site.

Comment:

The proposed development is within the Warnervale South urban release area that enables more residential housing for the public and is generally compliant with the controls of WLEP 2013 and Wyong Development Control Plan 2013. The site is considered to be in a suitable context for the nature, scale and type of development proposed and is not an overdevelopment of the site.

- Traffic concerns regarding the intersections of Warnervale Road and Nikko Road and Wyreema Road and Nikko Road.

Comment:

Traffic Impact Assessment Reports dated 3/8/17 and 21/05/19 prepared by Intersect Traffic were provided with the application to demonstrate that the proposed development will not have a significant impact on traffic within the area and the intersections within the vicinity of the site. Council's Staff (Development Engineer and Traffic and Transportation Engineer) have reviewed the Traffic Impact Assessment Reports dated 3/8/17 and 21/05/19 prepared by Intersect Traffic and is satisfied that the proposed development will not have a detrimental impact on traffic in the area or cause unreasonable traffic impacts on the intersections within the area.

- The roads in Warnervale are in poor condition which are required to be upgraded.

Comment:

The proposed development is subject to the Warnervale District Contributions Plan and the Shire Wide Infrastructure, Services and Facilities Development Contributions Plan). The contributions which apply to the development will be conditioned as part of the consent and will contribute to providing infrastructure within Warnervale including the upgrading/maintenance of roads within the area. This is included in the CP.

Public Submissions

In the second period of notification (15/3/18 – 18/4/18) in regards to the amended proposal being for a 60 Lot Subdivision with 60 small lot houses and road layout changes, a total of nine submissions were received. These submissions included concerns which were previously raised and include the following additional concerns with the proposal:

- The proposed development has insufficient off-street car parking

Comment:

The proposed development has provided car parking which is compliant with the car parking requirements under Chapters 2.11 and 2.3 of the WDCP 2013 with each dwelling having off street car parking.

- The proposed development does not provide any parks/community playground for the children including no footpaths or bike tracks.

Comment:

Figure 3 within Chapter 6.5 of the WDCP 2013 identifies that an 'optional additional park location' is to be provided on the development site which is zoned R2 Low Density Residential. However, it is not identified within the Warnervale District Contributions Plan (Figure 10 – Open Space Works Locations) that an open space/park is required to be provided within the development site.

The applicant did not choose to opt into providing the 'optional additional park' as identified within Figure 3 of the DCP, as there is an existing sports field located on Warnervale Road which is within 400m of the development site that provides a recreation area for the residents. Future parks will be provided in the urban release area of precinct 7A (Warnervale South) as identified within Figure 3 of Chapter 6.5 of the DCP. These parks will provide additional recreation areas for the residents within Warnervale.

Footpaths are provided on the proposed roads within the development and on the road frontages of Nikko Road and Kanowna Road.

- The proposed development will create unreasonable impacts on the nearby railway level crossing.

Comment:

Traffic Impact Assessment Reports dated 3/8/17 and 21/05/19 and a Railway level Crossing Impact Report dated 21/05/19 prepared by Intersect Traffic were provided with the application to demonstrate that the proposed development will not have a significant impact on traffic within the area and the intersections within the vicinity of the site. Council and Sydney Trains have reviewed the reports and are satisfied that the proposed development will not have a detrimental impact on traffic in the area and will not cause unreasonable traffic impacts on the nearby railway level crossing.

- The minimum lot size should be 450m² in the R2 Low Density Residential zone.

Comment:

The proposed development is utilising the provisions of Clause 4.1B of WLEP 2013 which permits lot sizes to be less than the minimum lot size requirement on R2 zoned land providing there are five or more lots and the proposal has demonstrated that the development complies with the requirements of Clause 4.1B(5) of WLEP 2013. The proposed lot sizes comply with Clause 4.1B(5) and are supported in this instance.

- There should be a new road connecting Kanowna Road to Virginia Road.

Comment:

Under the road layout pattern within Chapter 6.5 of the WDCP 2013, Kanowna Road is not required to be connected to Virginia Road nor is it necessary according to Council's Staff (Development Engineer and Traffic and Transportation Engineer).

- Street lighting is poor in the area.

Comment:

The proposal is providing street lighting throughout the development. Conditions are provided in relation to street lighting complying with Australian Standard AS 1158: *Lighting for roads and public spaces*.

- There is no community centre as stated in the Statement of Environmental Effects.

Comment:

The applicant has verified that this is a typographical error within the Statement of Environmental Effects. The proposed development is not required to provide a community centre within the site.

Public Submissions

In the third period of notification (1/11/18 – 3/12/18) in regards to the amended proposal being for a 66 Lot Subdivision with 66 small lot houses and road layout changes, a total of seven submissions were received. These submissions included concerns which were previously raised and include the following additional concerns with the proposal:

- There are no shops or petrol stations in Warnervale.

Comment There are shops and petrol stations located within the nearby suburbs of Wadalba, Kanwal and North Wyong. The Warnervale Town Centre is expected to provide these facilities for Warnervale residents and surrounding suburbs.

- Is solar power to be utilised?

Comment:

The development did not propose to provide photovoltaic cells on the roofs of the dwellings. Each dwelling complies with the requirements of SEPP (BASIX) 2004 which aims to deliver adequate, effective water and greenhouse gas reductions across the state. A BASIX certificate has been provided for each dwelling.

- Are rainwater tanks provided?

Comment:

Rainwater tanks are provided for each dwelling in accordance with the requirements of SEPP (BASIX) 2004.

- The proposed dwellings are too close together and do not receive enough sunlight.

Comment:

The proposed dwellings are compliant with the setback and solar access requirements required under Chapters 2.1 and 2.3 of the WDCP 2013.

- House fires will spread to the adjoining houses in the development.

Comment:

The development is conditioned to be constructed in accordance with the Building Code of Australia which requires the dwellings are appropriately fire rated. Asset Protection Zones (APZs) are to be provided within the development in accordance with the requirements of the Bushfire Safety Authority granted by the RFS dated 25 June 2019 which will prevent the spreading of fire from the adjoining bushland into the development.

- The proposed houses have no character.

Comment:

The proposed dwellings are appropriately designed and combined with the proposed landscaping will create a visually appropriate development within the urban area. The proposed development complies with the requirements of Clause 4.1B (5) of WLEP 2013, Chapter 2.1 and Chapter 2.3 of the WDCP 2013.

- There will be storage issues within the dwellings.

Comment:

The proposed plans indicate that the dwellings provide suitable internal storage areas.

-
- The proposed development will lead to childhood obesity and mental health issues.

Comment:

Council has no evidence to support this claim.

- The proposed lot sizes do not provide adequately sized gardens or landscaping.

Comment:

The proposed dwellings private open space (POS) and landscaped areas comply with the POS and landscaping requirements under Chapter 2.1 and Chapter 2.3 of the WDCP 2013.

- There is no provision for small goods outlets.

Comment:

The proposed development is not required to provide small goods outlets (residential shops) within the proposal.

- The airport height restrictions are to be adhered to.

Comment:

The proposed single and two storey dwellings are well below the Limitation or Operations Surface of the Warnervale Airport.

- Bushfire safety

Comment:

The application was referred to the NSW Rural Fire Service under Section 4.46 of the *Environmental Planning and Assessment Act 1979* who considered the location of proposed development and proposed APZ's are satisfactory. Accordingly a Bushfire Safety Authority was granted by the RFS dated 25 June 2019.

- The proposed development has a lack of landscaping.

Comment:

A landscape plan was provided with the application which demonstrates that suitable landscaping is provided throughout the development. It is conditioned that landscaping be carried out in accordance with the landscape plan.

Public Submissions

In the fourth period of notification (30/5/19 – 28/6/19) in regards to the amended proposal being for a 54 Lot subdivision with 41 small lot houses, seven corner lots, three battle-axe lots, three residue lots, road layout changes and associated works as Stage 1. Nine x dual occupancies on the proposed corner lots and two of the battle-axe lots as Stage 2. A total of three submissions were received. These submissions included concerns which were previously raised and include the following additional concerns with the proposal:

-
- The minimum lot size should be 600m².

Comment:

The minimum lot size within the R2 Low Density Residential zone which applies to the site is 450m². However, the proposed development is utilising the provisions of Clause 4.1B of WLEP 2013 which permits lot sizes to be less than the minimum lot size requirement on R2 zoned land providing the land is subdivided into 5 or more lots and the proposal has demonstrated compliance with Clause 4.1B(5). The proposal has demonstrated that the development complies with the requirements of Clause 4.1B(5) of WLEP 2013 and the proposed lot sizes which are less than 450m² are supported.

Internal Referrals

The application was referred within Council to the following officers and the issues raised in the referral process are discussed below and in other relevant areas of the report.

Ecology

Council's Ecologist has reviewed the amended plans and the accompanying Flora and Fauna Assessment Reports and the Vegetation Management Plan prepared by Enviro Ecology and supports the development subject to conditions.

Traffic and Transportation Engineer

The application was referred to Council's Traffic and Transportation Engineer who advised that while this is a large development it is not a significant traffic generator and will not have an impact on the local road network or on the nearby level railway crossing.

The following comments were provided in relation to traffic generation:

The RMS' Guide to Traffic Generating Development's and the RMS Technical Direction TDT 2013/04 provides specific advice on the traffic generation potential of various land uses.

The RMS rates for low density residential are:

PM peak (1) hour = 0.78 per dwelling in regional areas. (Maximum 0.9)

AM peak (1) hour = 0.71 per dwelling in regional areas. (Maximum 0.85)

Therefore, the additional traffic generated by the proposed subdivision can be calculated as:

PM peak hour trips = 61 lots x 0.9 vtp/h = 55 vtp/h.

AM peak hour trips = 61 lots x 0.85 vtp/h = 52 vtp/h.

This equates to approximately 1 vehicle movement per minute on average in the AM and PM peaks, which will not have a significant impact on the surrounding road network or on the level railway crossing on Warnervale Road.

Engineering

The application was referred to Council's Senior Development Assessment Engineer for consideration. No objections were raised subject to conditions relating to:

- Stormwater management,
- Dilapidation reporting,
- Geotechnical reporting,
- On-site detention,
- Road construction; and
- Provision of services.

No objection was raised in relation to the proposed development in terms of additional loading on the existing infrastructure in the area. The application will warrant the lodgement of a Section 305 and Section 307 application of the *Water Management Act 2000*. Conditions have been applied accordingly.

Environmental Health

Council's Senior Environmental Health Officer - Environmental Protection reviewed the preliminary contamination assessment and the acoustic report and raised no objection to the proposal subject to suitable conditions implementing the recommendations provided in both reports.

External Referrals

NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service (RFS) under Section 4.46 of the *Environmental Planning and Assessment Act 1979*. A Bushfire Safety Authority was granted by the RFS dated 25 June 2019 and has been conditioned accordingly.

NSW Natural Resource Access Regulator (NRAR)

NSW NRAR supported the development subject to General Terms of Approval (GTA's) granted on 8 May 2018.

NSW Roads and Maritime Services (RMS)

The application was referred to the RMS under SEPP (Infrastructure) 2007 who advise that no objection is raised in regards to the proposed development. The RMS recommends that the following matters should be considered by Council in determining this application:

The cumulative impacts of the densification of developments in Warnervale and Wadalba on various intersections in the vicinity of this subdivision.

In 2012, Council engaged Hyder Traffic Consultants to undertake a Traffic and Transport Study for the planning area known as Precinct 7A.

The purpose of Hyder's traffic study was to assess the performance of existing and future network capacity within the study area. Hyder used the RMS's Central Coast Regional Strategic Model together with its own TransCAD modelling software. For assessing individual intersection capacity, Hyder used SIDRA software. Future years modelling was undertaken for 2021 and 2031 using land use data sourced from Council.

The traffic model included the cumulative growth from the following planned developments including:

- Precinct 7A;
- Wyong Employment Zone (WEZ);
- Bruce Crescent;
- Warnervale Town Centre (WTC);
- The Lakes Anglican Grammar School;
- Precinct 14, and
- Wadalba Precinct

This traffic study considered the cumulative effects of this and other proposed developments in the greater Warnervale area.

A development contribution will be levied in accordance with Section 7.11 of the *Environmental Planning and Assessment Act 1979* part of which will go towards intersection upgrades in the locality.

Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity. It is recommended that this plan requires construction vehicles to use the available signalised intersections to access the classified road network.

It is conditioned that a Traffic Plan of Management be prepared and approved by Council as the Roads Authority before construction commences to ensure that there is minimal impact on the surrounding road network during construction works.

Council should have consideration for appropriate sight line distances in accordance with the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveways promotes safe vehicle movements.

This has been considered in the assessment of the application.

Sydney Trains

The application was referred to Sydney Train under SEPP (Infrastructure) 2007. Sydney Trains provided their concurrence which supports the proposed development.

NSW Police Force

The application was referred to the NSW Police Force for consideration. As no response has been received from the NSW Police Force, it is considered that NSW Police Force has no objection to this proposal.

Ecologically sustainable principles

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

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

Climate Change

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

This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope / combat / withstand these potential impacts. In this particular case, the following matters are considered to warrant further discussion, as provided below:

- Sustainable design: The proposed lots in the subdivision have been designed to maximise the most energy efficient orientation to allow for sustainable house designs to be accommodated.
- Bushfire Protection: The proposed development is integrated development under Section 4.46 of the *Environmental Planning and Assessment Act 1979* given subdivision of the land is proposed. The application was referred to the NSW Rural Fire Service (RFS) for consideration under Section 100B of the *Rural Fires Act 1997*. The RFS supported the proposed development subject to the development complying with the Bushfire Safety Authority issued by the RFS. The Bushfire Safety Authority dated 25 June 2019 has been conditioned as part of the consent.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES

a) Relevant State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)

The application was lodged prior to 1 March 2018 when the proposal constituted regional development under Part 4 of SEPP SRD as the estimated value of the development exceeded \$20 million. As such, the determining authority for the development application is the Hunter and Central Coast Regional Planning Panel.

State Environmental Planning Policy 55 – Remediation of Land

Under the provisions of State Environmental Planning Policy (SEPP) 55 – Remediation of Land, contamination and remediation are to be considered in determining a development application. Clause 7(1) of State Environmental Planning Policy 55 requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if contaminated, that the land is suitable in its contaminated state (or will be suitable, after remediation) for the development proposed to be carried out.

27-61 Nikko Road, Warnervale is identified in Wyong DCP Chapter 6.5 – Warnervale South as being potentially contaminated given its former use for a chicken farm. A preliminary site investigation for contamination was submitted with the application, prepared by Qualtest Laboratory (NSW) Pty Ltd, dated 19 July 2017. This report has been reviewed by Council and considered satisfactory. Suitable conditions have been applied as part of the consent ensuring that the recommendations provided within the contamination report prepared by Qualtest Laboratory (NSW) Pty Ltd, dated 19 July 2017 are undertaken.

State Environmental Planning Policy (Infrastructure) 2007

Clause 84 – Development involving access via level crossings

- (1) *This clause applies to development that involves:*
- (a) *a new level crossing, or*
 - (b) *the conversion into a public road of a private access road across a level crossing, or*
 - (c) *a likely significant increase in the total number of vehicles or the number of trucks using a level crossing as a result of the development.*

In accordance with the provisions of Clause 84 (2), the proposed development was referred to Sydney Trains (rail authority) for consideration. During the assessment Sydney Trains requested additional information so as to determine that the proposal will not generate an additional level of traffic which will have an impact on the functionality of the existing level railway crossing on Warnervale Road.

In accordance with Clause 84 (3) of the SEPP, Sydney Trains determined that the proposed development will not have an impact on the operations of the existing level railway crossing on Warnervale Road and provided their concurrence supporting the proposal.

Clause 85 – Development adjacent to rail corridors

- (1) *This clause applies to development on land that is in or adjacent to a rail corridor, if the development:*
- (a) *is likely to have an adverse effect on rail safety, or*
 - (b) *involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
 - (c) *involves the use of a crane in air space above any rail corridor, or*
 - (d) *is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*

Note. Clause 45 also contains provisions relating to development that is within 5 metres of an exposed overhead electricity power line.

The proposed development will not have an adverse impact on the railway corridor, as the development is located 17m horizontally from the railway corridor and is separated by the existing roadway of Nikko Road. The proposed dwellings will not have metal finishes on the facades and the development does involve the use of a crane which will be above the rail corridor. Additionally, the proposed development is not located within 5m of an exposed electricity line within the railway corridor. Therefore, the requirements of Clause 85 do not apply to the development in this circumstance. No further consideration is required.

Clause 86 – Excavation in, above or adjacent to rail corridors

The provisions of Clause 86 of SEPP (Infrastructure) 2007 applies to development that involves the penetration of ground to a depth of at least 2m below the existing ground level on land within 25m (measured horizontally) of a rail corridor.

The proposed level of cut on site is within 25m from the railway line, however the proposed level of cut does not involve the penetration of the ground to a depth of least 2m below natural ground level therefore the requirements of Clause 86 do not apply to the development. No further consideration is required.

Clause 87 – Impact of rail noise or vibration on non-rail development

The proposed development is considered to be sensitive to rail noise arising from the nearby northern railway line. As such, any dwelling is to be designed and constructed in accordance with the requirements of *Development Near Rail Corridors and Busy Roads – Interim Guidelines (2008)* and/or AS 3671-1989 – Acoustics – Road Traffic Noise Intrusion – Building Siting and Construction or later Australian Standard issued in substitution thereafter.

In addition, residential accommodation is to be constructed in accordance with the following requirements of Section 87(3) of this SEPP:

- (a) in any bedroom in the residential accommodation - 35dB(A) at any time between 10pm and 7am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) - 40dB(A) at any time.

The development application has addressed the requirements of Section 87(3) of this SEPP in relation to acoustic measures.

An acoustic report for the intent of rail noise and vibration was prepared by Global Acoustics dated 17 August 2017 (Ref. 17328_R01) was submitted as part of the application and recommends that several construction measures be undertaken to achieve the required dBA(A). A condition of consent will require that these construction measures be undertaken in accordance with this report.

Clause 106 – Development permitted with or without consent

The proposal includes works connecting the new subdivision to the existing sewer infrastructure to the east which involve a new sewer line which extends from the site through the adjoining site at 63-67 Nikko Road and 1-13 Virginia Road, Warnervale within the R2 and SP2 zoned land to connect to the existing trunk sewer main located on Virginia Road. Under Clause 106(3C) of the SEPP, the proposed sewerage system works are permissible on the adjoining site and subject site. Clause 106(3C) states:

In any other circumstances, development for the purpose of sewage reticulation systems may be carried out with consent on any land.

The definition of sewer reticulation systems reads as follows:

sewage reticulation system means a building or place used for the collection and transfer of sewage to a sewage treatment plant or water recycling facility for treatment, or transfer of the treated waste for use or disposal, including associated:

- (a) pipelines and tunnels, and
- (b) pumping stations, and
- (c) dosing facilities, and
- (d) odour control works, and
- (e) sewage overflow structures, and
- (f) vent stacks.

Note.

Sewage reticulation systems are a type of sewerage system—see the definition of that term in this Dictionary.

Owner's consent was provided by the adjoining land owner of 63-67 Nikko Road, Warnervale for the proposed sewer line over their land. However, owner's consent for 1-12 Virginia Road, Warnervale was not able to be obtained by the applicant regardless of the written correspondence between the applicant and the lands owner. It is recommended that a deferred condition be placed upon the consent so that the land owners' consent can be obtained for the proposed sewer works which will connect the development into Council's existing sewer system located on Virginia Road.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The study area is larger than 1 hectare so SEPP 44 applies and the Ecological assessment considered the SEPP accordingly. The property is not considered to contain 'potential Koala habitat' as defined by the SEPP. In addition it was noted by the applicant that no koalas were observed during the fauna survey and there was no evidence of previous koala habitation in the area. The subject property is not considered to be 'Core Koala Habitat' as defined by SEPP 44. No further investigation is required.

State Environmental Planning Policy (Building Sustainability Index: BASIX (2004)

The Building Sustainability Index (BASIX) aims to deliver adequate, effective water and greenhouse gas reductions across the state. A BASIX Certificate has been provided for the proposed dwellings which achieve the required target levels.

b) Wyong Local Environmental Plan 2013

Permissibility

The section of the site for the purposes of the residential subdivision is zoned R2 Low Density Residential under the Wyong Local Environmental Plan 2013 (WLEP). Under Clause 2.6 of the WLEP land may be subdivided with the consent of Council. The remaining element of the subject site zoned E3 Environmental Management is not being subdivided and will be contained within a residual lot.

The following definitions are relevant to the proposal:

Subdivision of land means the diversion of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.

Road means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.

Earthworks means excavation or filling.

Dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).

Dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

Dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The development satisfies the above definitions, as the development comprises Torrens Title subdivision, small lot housing and dual occupancy developments which are permissible with consent of Council in the R2 Low Density Residential zone. Additionally, development for the purposes of roads and earthworks is permissible within the R2 Low Density Residential zone.

Clause 2.3 – Permissibility and Zone Objectives

Subclause 2.3(2) of the WLEP 2013 requires the consent authority to have regard for the objectives for development in a zone when determining a development application. The objectives of the R2 Low Density residential zone are as follows:

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

The proposal provides housing needs for the community by providing a variety of housing within a low density residential environment that maintains residential amenity and character within the surrounding area.

Clause 4.1 – Lot size

The LEP map provides for the following R2 lot size:

- R2 Low Density - 450m²

Proposed Lot 35 comprises an area of 822.1m² excluding the access handle which meets the minimum 450m² lot size requirement. A dwelling is proposed on Lot 35 which was assessed against the requirements of Chapter 2.1 of the DCP and is compliant.

Proposed Lots 30 and 31 comprise an area of 1192.8m² and 841.7m² respectively which excludes the access handle and is compliant with the 450m² lot size requirement.

Proposed Lot 38 consists of an area of 1062.9m² and is a residue lot which will contain an on site detention (OSD) system. Any further development of this lot will be assessed under a separate application.

Proposed Lot 54 consists of an area of 2661.5m² and is a residue lot. Any future development on this lot will be assessed under a separate application.

In the instance where the lot sizes are less than the minimum standard, consent is sought under the provisions of Clause 4.1B which is addressed below.

Clause 4.1B – Exception to Minimum Lot sizes

In accordance with clause 4.1B (3), development consent may be granted to a single development application for development on land to which this clause applies that is both of the following:

- (a) *the subdivision of land into 5 or more lots of a size that is less than the minimum size shown on the Lot Size Map in relation to that land,*
- (b) *the erection of a dwelling house on each lot resulting from the subdivision.*

Stage 1 of the proposal includes a 61 lot subdivision and the erection of 56 dwelling houses on the resulting lots therefore complying with this clause.

In accordance with clause 4.1B (4), development consent may be granted to a single development application for development on land to which this clause applies that is both of the following:

- (a) *the erection of a dual occupancy on land to which this clause applies,*
- (b) *the subdivision of that land into 2 lots of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.*

Stage 2 of the proposal involves subdivision to be undertaken concurrently with the dual occupancy development which are proposed to be undertaken on the battle-axe lots 30 and 31 proposed under Stage 1 of the development. Subdivision will occur once the dual occupancy component of the development is completed.

Additionally, clause 4.1B (5) states:

- 5) *In determining whether to grant development consent for development under subclause (3) of (4), the consent authority must consider the following:*
 - a) *The likely impact of the height of the development on development located on adjoining land in relation to visual impacts and overshadowing,*
 - b) *Whether the development provides adequate pedestrian, vehicular and service access and car parking.*
 - c) *Whether the development incorporates the principles of ecologically sustainable development.*
 - d) *The relationship between each of the dwellings comprising the development in relation to location and siting.*

As the proposed small lot dwelling houses are predominately single storey and the dual occupancies are single storey, it is considered there will be minimal impact on adjoining land in terms of visual impact and overshadowing. The proposed development will be commensurate with the adjoining residential development and are consistent with the objectives of the R2 low density residential zone which seek to maintain and enhance the residential amenity and character of the surrounding area.

The proposed development complies with the relevant provisions of Chapter 2.1, Chapter 2.3 and Part 4 Subdivision in relation to car parking, servicing of the site, adequate pedestrian and vehicular access, and each dwelling will comply with BASIX and provide adequate stormwater management. The relationship between each of the dwellings is considered satisfactory.

Having regard for the provisions of clause 4.1B(5) the proposed development is supported.

Clause 5.10 – Heritage Conservation

Clause 5.10 requires Council to consider the conservation of items of Aboriginal and European heritage.

An assessment was undertaken with a search of the NSW Office of Environment and Heritage (AHIMS) services (AHIMS – Aboriginal Heritage Information Management System) and no Aboriginal sites were recorded in or nearby the subject site or have been declared in or nearby the subject site.

A due diligence assessment under Section 8 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales concluded that an AHIP application is not necessary and works can proceed with caution, as the site is deemed to be disturbed land as it has been the subject of human activity that has significantly changed the subject lands surface. Nevertheless, appropriate conditions have been provided as part of the consent to ensure that should any Aboriginal artefacts be found on site during construction that they are protected.

Clause 6.1 – Arrangements for Designated State Public Infrastructure

Clause 6.1 of WLEP 2013 requires that development consent must not be granted for the subdivision of land in an urban release area unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that land.

Council has received written advice from the Secretary that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure, as the developer has:

- Provided a signed copy of the 27-61 Nikko Road Planning Agreement, which is deemed to be an irrevocable offer to enter into a planning agreement, which covers Lot 1 DP 349727.
- Entered into the 27-61 Nikko Road Planning Agreement, which covers Lot 1 DP 349727.

It is considered that the Clause 6.1 of WLEP 2013 has been satisfied therefore the development consent for the proposed subdivision can be granted by the relevant consent authority. (See Attachment 6)

Clause 6.2 Public utility infrastructure

Clause 6.2 requires that development consent must not be granted unless it is satisfied that adequate arrangements have been made for essential public utility infrastructure. The proposed development will require extension of all services, including water supply, electricity, telecommunications and sewerage in accordance with the servicing strategies adopted for that purpose.

The sewer will be connected into Council's existing sewer system located on Virginia Road. However the proposed sewer line is required to be located in the adjoining properties of 63-67 Nikko Road and 1-12 Virginia Road. Owner's consent was provided by the adjoining land owner of 63-67 Nikko Road for the proposed sewer line over their land. However, owner's consent for 1-12 Virginia Road was not able to be obtained by the applicant regardless of the written correspondence between the applicant and the lands owner being Ausgrid.

Therefore, it is recommended that a deferred commencement condition is placed upon the consent so that the land owners' consent can be obtained for the proposed sewer works connecting the development into Council's existing sewer system located on Virginia Road.

Arrangements can be made for the servicing of the new lots for electricity, the provision of vehicular access and satisfactory storm water management subject to recommended conditions. Each allotment will also have newly constructed road frontage allowing for formalised vehicular access and storm water drainage.

Water and sewer contributions will be applicable to the development in accordance with the Shire Wide charges.

Clause 6.3 - Development Control Plan

Clause 6.3 requires that development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) of this clause has been prepared for the land.

Clause 6.3 of WLEP 2013 has been satisfied as Chapter 6.5 Warnervale South Precinct of the Wyong DCP applies to the development site and urban release area which addresses the matters specified in subclause (3).

Clause 7.2 Flood Planning

The subject site is identified on the flood planning map as flood planning area affected by the 1% and probable maximum flood (PMF) which engages the provisions of clause 7.2 of the WLEP. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

(a) is compatible with the flood hazard of the land, and

-
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) incorporates appropriate measures to manage risk to life from flood, and*
 - (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Comment:

The site is subject to flooding from the upstream catchment and the flow is shallow and wide. The 1% AEP flood level at the western boundary is RL 20.1m AHD and the eastern boundary RL 17.6m AHD. The PMF level at the western boundary is RL 20.2m AHD and the eastern boundary RL 17.7m AHD.

The proposed floor levels of the dwellings are to be above the PMF level for the site. The nature of the flood affectation does not warrant particular flood mitigation measures and is not likely to adversely affect the riparian zone or result in unsustainable social or economic costs. The proposed development is compatible with the flood affectation of the land and the proposal is not likely to significantly adversely affect flood behaviour. The development is considered satisfactory in respect to Clause 7.2 of the WLEP 2013.

Clause 7.9 – Services

In accordance with Clause 7.9, the proposed development can be serviced by Council's water supply reticulation system. There is an existing water main on the southern side of Kanowna Road which is a 100mm UPVC main and there is a 200mm UPVC main along the Nikko Road frontage. There are also some large diameter high pressure mains in the northern section of Nikko Road however this development will not be connected into the high pressure water mains. The proposed development will be connected into the existing water mains on Kanowna Road and Nikko Road with the mains being located throughout the proposed road network which the proposed dwellings will be connected to.

The sewer will be connected into Council's existing sewer system located on Virginia Road as discussed under Clause 6.2 of WLEP 2013.

c) The provisions of any draft environmental planning instrument

Draft Central Coast Local Environmental Plan 2018

The proposal has been considered against the provisions of the Draft Central Coast Local Environmental Plan 2018 (DCCLEP). The subject site is zoned R2 Low Density Residential under Draft CCLEP. Development for the purpose of small lot housing within the zone is not permissible with consent within the R2 zone pursuant to the Draft CCLEP.

Draft CCLEP 2018 was not deemed to be imminent at the time which this report was prepared therefore the existing planning controls under WLEP 2013 still apply which permit small lot housing within the R2 zone under the provisions of Clause 4.1B. For the reasons outlined within the report the proposed development is supported.

Under the provisions of the above draft plan the site would remain R2 Low Density Residential and the proposed dual occupancy development would remain permissible. The site would also continue to be subject to the minimum lot size of 450m² for subdivision.

As per clause 4.1B of the WLEP 2013, proposed clause 4.1D permits the subdivision of land less than the minimum requirement provided a single development application for a dual occupancy and subdivision is lodged.

Proposed clause 4.1F requires a detached dual occupancy development within the R2 zone to be located on a lot with a minimum lot size of 700m². The minimum lot sizes proposed for the detached dual occupancies under Stage 2 of the development are a minimum of 700.8m² and as such would be permitted under the proposed clause.

There are no other clauses under the draft plan that would require further assessment.

d) Relevant DCPs

Wyong Development Control Plan 2013 (DCP)

DCP 2013, Part 4 – Subdivision

Clause 4.1(h) of the DCP requires that small lot housing is to be assessed under Clause 4.1.5 of the DCP.

The proposal has been assessed against the requirements of Wyong Development Control Plan (WDCP) Part 4 – Subdivision and a variation is proposed in relation to the corner lot size. The variation is addressed in detail below. A table of compliance is included with this report as attachment No. 3.

Corner lot size

Section 4.1.2 of WDCP – Part 4 – Subdivision states the following in relation to corner lot sizes:

a) Corner lots should have a minimum area of 700m² for the purpose of providing adequate area for addressing dual streetscape impacts, privacy issues, setback implications and intersection sight lines. The larger area will also provide opportunities for subdividable corner lot dual occupancies.

The minimum proposed corner lot size is 360m² which results in a variation to the control equating to 48.6%.

The proposed corner lot sizes within the development are considered satisfactory for the following reasons:

- The proposed development has demonstrated that the corner lots within the development are capable of being developed for the purpose of a dwelling house in accordance with the requirements of Wyong DCP – Chapter 2.1 – Dwelling Houses, Secondary Dwellings and Ancillary Structures, particularly having regard for the relevant setbacks and private open space areas.

-
- The corner lots are capable of achieving suitable levels of solar access and amenity for the residents of the dwelling on site. Moreover, the location of the proposed dwelling house will not result in impacts on intersection sight lines.

Given the proposed development is for small lot housing, the proposed corner lot sizes are considered satisfactory given there will be no possible future subdivision of the lot and the fact that a dwelling can be adequately sited on the proposed lot. Accordingly, the proposed corner lots are supported.

DCP 2013 – Chapter 2.1 – Dwelling houses, Secondary Dwellings and Ancillary Development

The proposal was assessed against the requirements of Chapter 2.1 of the DCP and a variation is proposed in relation to the height of the retaining structures. The variation is addressed in detail below. A table of compliance is included with this report as attachment No. 4.

Cut and fill

Clause 6.1 of Chapter 2.1 restricts the amount of cut and fill to 1000mm within 1m of the boundary. The proposed non-complying cut and fill (benching) is greater than 1000mm within the site. However the non-complying cut and fill is supported for the following reasons:

- Due to the topography of the site, greater than 1000mm of cut and fill is required in this circumstance so as to achieve level/buildable lots.
- The proposed cut and fill will create a coordinated benching strategy within the overall site to ensure site stability.
- The proposed benching will facilitate orderly construction of the proposed dwellings on the lots.
- The proposed benching and retaining work will be undertaken at the same time as the road, drainage and dwelling construction works which is considered to be orderly development on the site.
- The proposed retaining walls will not be viewed from the public domain as the retaining walls greater than 1000mm in height are along the common property boundaries at the rear and side of the proposed dwellings.
- The proposed level of cut and fill is dictated by the road levels and the need to create a level pad for the proposed dwellings. In addition, the benching will allow standard slab construction that reduces unnecessary construction costs and is more affordable than drop edge beam construction.

DCP 2013 Chapter 2.3 – Dual Occupancy Development

The proposal which involved the construction of a dual occupancy on proposed battle-axe lots 30 and 31 as Stage 2 of the development were assessed against the requirements of Chapter 2.3 of the DCP and are compliant. A table of compliance is included as attachment No. 5.

DCP Chapter 2.11 – Parking and Access

The calculation of on-site car parking provision is to be in accordance with Wyong Development Control Plan (DCP) 2013 – Chapter 2.11 Parking and Access while the design of the on-site car parking needs to be in accordance with Australian Standard AS2890.1 – 2004 *Parking facilities – Part 1 Off-street car parking*.

Wyong DCP 2013 requires:

- 1 space per dwelling if 3 or less bedrooms;
- 2 spaces per dwelling if 4 or more bedrooms; with
- At least one fully enclosed garage carpark is required for new dwelling houses in urban areas

Each dwelling has a double garage or at least one garage parking space and one stacked parking space in front of the garage with a minimum parking dimension of 5.5 metres by 2.4 metres within the boundary of the dwelling property. The proposal is compliant with the car parking requirements of Chapter 2.11 and Australian Standard requirements.

DCP 2013 – Chapter 3.1 Waste Management

A Waste Management Plan (WMP) has been submitted with the development application in accordance with Chapter 3.1 of WDCP 2013. The WMP incorporates details of waste management and reuse for the site preparation, construction and ongoing use of the site.

Chapter 3.3 - Floodplain Management

The NSW Government Floodplain Development Manual (2005) (FDM) is the NSW State Government's Manual relating to the management of flood prone land. In assessing the flood environment, elements such as known flood behaviour, evacuation issues, site access and the potential impact of sea level rise are taken into consideration.

Council's records indicate that the site is affected by flooding and/or minimum floor level requirements. The flooding characteristics vary throughout the site and are associated with the existing creek which traverses the site.

The proposal seeks to provide finished floor levels above the 1% PMF and has addressed the stormwater/flooding in the vicinity of the proposed development with a strategy that maintains the existing regime up to and including the 1% annual exceedance probability (AEP) event.

The proposed drainage within the site is considered satisfactory subject to the recommended conditions of consent.

Chapter 3.6 Preservation of Trees or Vegetation

The proposed development will meet the objectives of the Chapter. Flora and Fauna Assessment Reports including a Vegetation Management Plan were provided with the application to demonstrate that the proposed development will not have a significant impact on the ecology within the area. Council's Ecologist has reviewed the Flora and Fauna Assessment reports and the Vegetation Management Plan and did not raise any objections to the removal of the trees and vegetation from the site.

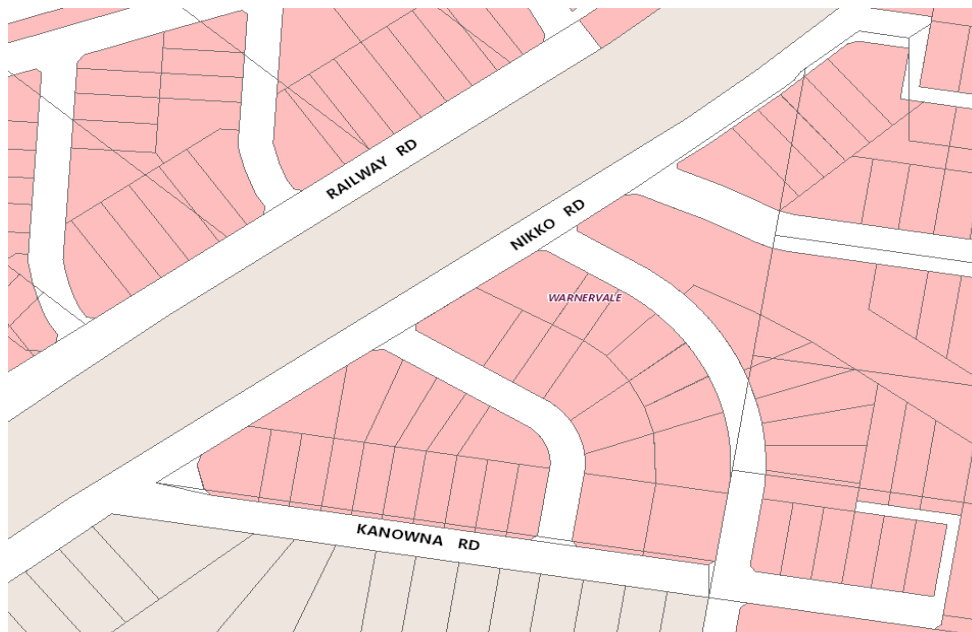
The proposed development will be conserving the existing significant vegetation located within the E3 zoned portion of the site. Replacement plantings are proposed throughout the development as indicated on the submitted landscape plan.

DCP Chapter 6.5 – Warnervale South

The proposal has been assessed against the requirements of Wyong DCP Chapter 6.5 – Warnervale South. A variation is proposed in relation to the road layout hierarchy and water cycle management requirements:

Road Layout and Hierarchy

The proposal seeks a non numerical variation to Clause 2.4 of the DCP which relates to the road layout and hierarchy (under Figure 4).



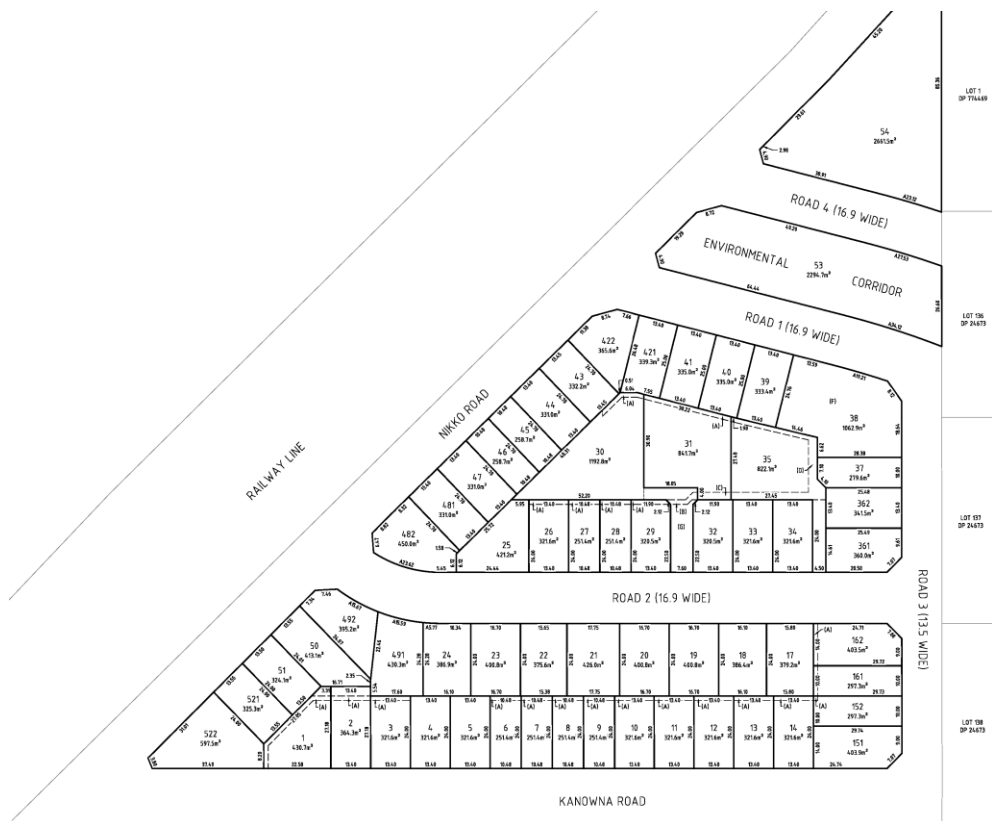


Image 5 – Indicative DCP road layout plan and proposed subdivision plan

The proposed development includes a realignment of the roads within the development by repositioning the full width of proposed road 3 along the eastern boundary into the development and the realignment of proposed Road 2 to connect into proposed Road 3 instead of connecting into Kanowna Road.

The proposed road layout pattern within the development provides connectivity to the adjoining R2 zoned land situated to the east of the site which will provide orderly development, as the development will not result in any land locked parcel that is zoned for residential development.

The intersection of Kanowna Road and Nikko Road is to be squared up to provide an appropriate angle for sight line distance similar to what is proposed for the internal road number 2 with the appropriate amount of road widening to facilitate a 4.5m wide verge.

The future road identified in the DCP road pattern which will be to the south of the development adjacent to the existing oval is unlikely to be built, as there is an existing sewer pump station and a Rural Fire Station on the proposed road reserve. Furthermore, as there is no credit in the contribution plan for the construction of this section of road, it is highly unlikely that a road will ever be built resulting in the temporary turning head at the end of Kanowna Road being of a permanent turning head.

The proposed variation to the road layout pattern is supported.

Water Cycle Management Requirements

The proposal includes a stormwater management system in the form of a temporary on site detention basin. The basin is not for water quality purposes but will assist in the management of the volume of upstream stormwater runoff from the development and adjoining development. The proposal seeks a non numerical variation to Clause 2.10c which states:

WSUD elements must be provided to control suspended solids and nutrients leaving the development area and the drainage system shall ensure that no runoff leaves the development area other than via water quality control structures.

The proposal includes limited water quality structures in the form of Gross Pollutant Traps (GPT) prior to the detention basin which will provide secondary water quality treatment only. The On-site detention (OSD) will provide some ultraviolet sterilisation over the detention and the outlets will discharge into the existing riparian corridor prior to discharging to any sensitive lands. Therefore, there are no primary water quality treatment structures proposed which would satisfy this requirement.

The intent of the proposed stormwater detention basin (stormwater management system) is to temporarily capture the upstream catchment stormwater runoff from the subject site and the existing development to the east of the site until the final regional drainage infrastructure is available for the catchment. The DCP requires (under Clause 2.10c) that *WSUD elements must be provided to control suspended solids and nutrients leaving the development area and the drainage system shall ensure that no run off leaves the development area other than via water quality control structures*. The water quality scheme has constructed wetlands located on the adjacent lots to the east of the development however these are to be built in the future. Therefore, the proposal seeks non numerical variation to this requirement as the basin is for detention purposes and not for water quality purposes.

Earthworks

In order to create the proposed roads in accordance with the road layout plan under Clause 2.4 of the DCP, and to provide benching of the lots for the proposed buildings. Earthworks including cut and fill is required across the development site. The proposed cut and fill and associated retaining walls within the proposed subdivision are needed to address the changes in levels associated with the topography of the site. Additionally, the proposed earthworks will provide finished floor levels above the 1% PMF which will address the stormwater/flooding in the vicinity of the proposed development.

Residential Subdivision

The DCP sets a density target of 15 dwellings per hectare of developable area excluding roads for land zoned R2 Low Density. The proposal provides for a density of 16 dwellings per hectare of developable area excluding roads which meets the density target.

The proposed lot sizes within the subdivision effectively integrates with the existing subdivision of the adjoining site to the south and is generally consistent with the indicative road layout pattern within Wyong DCP Chapter 6.5 – Warnervale South. The proposed lot sizes within the subdivision are acceptable in this circumstance as they will provide a range of lot sizes which will provide a variety of dwelling structures to cater for the needs of the community which is consistent with the objectives of the R2 Low Density Residential zone.

Acoustic mitigation

The proposed development includes the creation of lots with a direct frontage to the Northern Railway Line corridor. It is therefore appropriate for the future dwellings on the lots fronting the railway corridor to incorporate suitable mitigation measures (ie. architectural treatment) to minimise existing and potential future rail noise impacts and in order to ensure residential amenity is achieved for the future occupants.

There are no acoustic mounds or other specific physical measures identified as applying to the site under the DCP. Clause 2.9 of Chapter 6.5 requires consideration of acoustic impacts from the railway corridor environment. The applicant prepared an acoustic report to address the potential impacts of railway noise on future residential uses along Nikko Road. The acoustic report includes recommendations for the construction of future dwelling houses to address this matter and a condition of consent is recommended in this regard.

Contamination

The site is identified as an area of concern under Appendix B of Chapter 6.5 due to the historical use of the site. In accordance with Chapter 6.5, a preliminary site investigation was submitted with the proposal. The findings of this contamination assessment advised that the likelihood of contamination from historical land use activities were considerably low and would not inhibit any future development. This report has been reviewed by Council's Senior Environmental Health Officer and no objection was raised subject to recommended conditions of consent regarding the discovery of potential asbestos contamination and unexpected finds during works.

Ecological

Section 2.14 of Chapter 6.5 requires that all development satisfies the requirements which are identified in any ecological management plan or offset strategy which applies to the development precinct. The *Conservation Management Plan – Precinct 7A, Warnervale and Hamlyn Terrace NSW* (February 2014) provides detailed requirements for vegetation clearing and salvage of habitat features. These requirements are incorporated into the recommended conditions of consent.

e) Relevant Regulations

There are no other matters for consideration under applicable regulations directly relevant to the proposal.

THE LIKELY IMPACTS OF THE DEVELOPMENT

a) Built Environment

A thorough assessment of the aspects of the proposed development on the built environment has been undertaken in terms of DCP compliance and in terms of the submission received.

The proposed development effectively integrates with the established developments of the adjoining sites and is generally consistent with the indicative road layout pattern within Wyong DCP Chapter 6.5 – Warnervale South. The site is located within close proximity to sporting grounds including the Hamlyn Terrace Sporting Facility which contains a sporting ground and associated community facilities. These facilities will provide amenity to future residents within the proposed subdivision. In addition, the proposal is within close proximity to existing primary and high schools and Warnervale Train Station.

b) Natural Environment

There will be no significant impact upon the natural environment as a result of the proposal.

The subject site is largely cleared and contains scattered vegetation on the northern section of the site. The site contains a dam which is proposed to be removed and filled.

Ecological Assessments prepared by Enviro Ecology were submitted to Council as part of the proposed development which provided an acceptable Assessment of Significance under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and demonstrated that the proposed development will not have a detrimental impact on the ecology within the site.

The effects on the vegetation and ecology on the site and within the adjoining sites to the north and east are considered reasonable subject to conditions of consent.

There will be no significant impact upon the natural environment as a result of the proposal.

c) Access and Transport

The impact of the proposal on access, parking and the road network is considered satisfactory for the reasons previously discussed in the report.

d) Context and Setting

The site is located within the R2 Low Density Residential zone under WLEP 2013, and the proposal is for a residential subdivision, small lot housing and dual occupancies which are permissible development within the zone. The impacts of the proposal have been considered in the assessment of the application. The proposal is considered to be consistent with the desired future character of the urban release area.

e) Economic Impacts

The proposed development is suitable for the site and will represent a positive opportunity to improve the local economy by providing a range of additional housing within the local area.

f) Social Impacts

The proposal will deliver public benefit to the community by providing a range of additional housing for the needs of the community within a planned urban release environment.

All other relevant issues regarding the likely impacts of the development have been discussed throughout this report. In general, it is considered that the property is suitable for a residential subdivision and dwellings subject to conditions.

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

The proposed development is located within an urban release area. The site is suitable for the proposed subdivision, small lot housing and dual occupancy developments. As discussed within this report, the subject proposal will not result in any unreasonable or adverse impacts upon any neighbouring properties within the vicinity of the development.

S. 4.15(1)(e) of the EP&A Act: The Public Interest:

The proposed development will increase the supply of residential dwellings in the locality and will be consistent with the emerging residential character of the locality within the Warnervale South urban release area. Accordingly, the proposal is considered to be in the public interest.

Other Matters for Consideration

Development Contribution Plan

The land is located within the Warnervale District Contributions Plan and the Shire Wide Infrastructure, Services and Facilities Development Contributions Plan). The applicable contribution amount was calculated and imposed as a condition of consent requiring the contribution to be paid prior to the release of the Subdivision Certificate. The site is a greenfield site and does not receive a credit for the existing lot. Therefore, the contribution totals \$2,311,494.61 which is subject to CPI increase after 1 November 2019 (refer to Condition 5.2).

It is identified within the Warnervale District Contributions Plan (Figure 15 – Drainage Land – Precinct 7A & WTC) that Lot 53 is to be dedicated at no cost to Council. Lot 53 is conditioned to be dedicated free of cost to Council as part of the consent.

Political Donations

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

Conclusion

The application seeks approval for a 61 lot subdivision (56 small lot housing development, 2 x battle axe lots for the intent of 2 x dual occupancies), 3 residue lots, road construction and associated works in 2 stages. The proposal includes a variation to Wyong DCP Part 4 (Subdivision) in regard to the size of the corner allotment, WDCP Chapter 6.5 (Warnervale South) in relation to the adopted road layout and Chapter 2.1 in relation to the height of retaining walls. For the reasons outlined within the report, the proposed variations are considered reasonable and acceptable.

The proposed development of the site is within an urban release area and is of a form that is consistent with strategic and future planning for the area to provide more residential housing for the public. The site is considered to be in a suitable context for the nature, scale and type of development proposed.

Accordingly, the application is recommended for deferred commencement pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*.

Attachment 1 – Architectural and Landscape Plans D13662288, D13662291, D13696840

Attachment 2 – Draft Conditions of Consent

Attachment 3 – DCP – Part 4 compliance table D13696748

Attachment 4 – DCP – Chapter 2.1 compliance table D13696788

Attachment 5 – DCP – Chapter 2.3 compliance table D13696794

Attachment 6 – Department of Planning Certificate of Satisfactory Arrangements D13364788